

Judging Judy, Mablean and Mills: How Courtroom Programs Use Law to Parade Private Lives to Mass Audiences

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In 2001, reality programs reemerged. With the ratings success of shows like *Survivor* and *Who Wants to be a Millionaire?*, the creative landscape of primetime may be changed forever. The same can be said for syndicated daytime television, once the domain of game shows and, more recently, of talk programs. As these formats lose dominance, another form of unscripted “reality” program has emerged, a program type that combines the best of the game and talk genres. I refer, of course, to “judge shows” such as *Judge Judy*, *Divorce Court* and *Judge Mills Lane*. The format is not new; *They Stand Accused* was popular in the late 1940s and *The People’s Court* made Judge Wapner a household name in the 1980s. The difference between these earlier shows and today’s crop of judge programs is largely one of degree—and ratings. In the current season, there are eleven court themed shows competing for audience share. *Judge Judy*,¹ the ratings leader, regularly outperforms *Oprah* with ratings in

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¹ Paramount Domestic Television; Premiered: Sept. 16, 1996.

the high sixes.² Mablean Ephraim's *Divorce Court*³ and *Judge Joe Brown*,⁴ in their second and third seasons respectively, made strong gains in the fall of 2000.⁵ Others, like *Judge Mills Lane*,⁶ *Judge Mathis*,⁷ *Judge Hatchett*,⁸ *Curtis Court*⁹ and *Power of Attorney*¹⁰ are attracting numbers respectable enough to assure renewal (and a chance to grow).¹¹ Even the old standard-bearer, *The People's Court*,¹² struggling under the gavel of Judge Judy's husband, Jerry Sheindlin, is gaining strength.¹³ Compared to other syndicated program formats, courtroom shows have become the most highly rated program genre in daytime.

So why is it that, in 2001, a format that has been around since the dawn of television, has become so prolific and popular? Economics certainly plays a role. Like its primetime reality counterparts, judge programs are extremely cheap to produce.¹⁴ With the exception of a celebrity judge (Judy is reputed to earn over \$100,000 a week),¹⁵ the shows do not require highly paid staff such as writers and actors. The result is a much higher profit margin than a scripted program with special effects, actors or animation. But economics is not the main reason for the genre's recent surge. In a culture that places great value on voyeurism and sports, shows that present litigation as entertainment

² Mark London Williams, *Women Win, Judging or Joking: First-run is Proving to be Female Haven*, ELECTRONIC MEDIA, Jan. 8, 2001, at 32. See also BROADCASTING AND CABLE, Jan. 29, 2001, at 43.

³ Twentieth Television; Premiered: Aug. 1999.

⁴ Paramount Domestic Television; Premiered: Sept. 1998.

⁵ Chris Pursell, *Courting Disaster; The Verdict: 10 Shows in Genre is Too Many for Growth*, ELECTRONIC MEDIA, Nov. 6, 2000, at 8.

⁶ Paramount Domestic Television; Premiered: Fall 1998.

⁷ Warner Bros. Domestic Television; Premiered: Fall 2000.

⁸ Columbia-TriStar Television Distribution; Premiered: Sept. 11, 2000.

⁹ King World Productions, Inc.; Premiered: Sept. 11, 2000.

¹⁰ Twentieth Television; Premiered: Aug. 28, 2000.

¹¹ Chris Pursell, *A Hot Winter for Strips; Talk, Court Shows on Rise as Weather Focuses Viewers*, ELECTRONIC MEDIA, Jan. 15, 2001, at 125.

¹² Warner Bros. Domestic Television Distribution; Premiered: Fall 1981.

¹³ Chris Pursell, *More Viewers under the Tree*, ELECTRONIC MEDIA, Jan. 1, 2001, at 8.

¹⁴ Mike Scheider, et al., *The Green Behind the Scene*, ELECTRONIC MEDIA, Aug. 2, 1999, at 19.

¹⁵ *Id.*

have dual appeal. Like *MTV's Real World* or CBS's *Big Brother*, judge shows purport to offer viewers a window into the private, often turbulent lives of ordinary people. At the same time, the programs play like sporting events; an unrehearsed competition between litigants refereed and ultimately decided before the closing credits by the judge. The difference between other reality programs and judge shows, I would argue, is the air of legitimacy judge shows project as they go about making sport of an individual's private turmoil. The shows essentially are postmodern simulacra of the courtroom that exploit law and trial process to unmask intimacy and air dirty laundry.

To put it another way, judge shows are really no different from *Jerry Springer*, except that the law is a gimmick that makes them appear more legitimate. In this way, they tap into a long history in which the lawyer is used to breakdown distinctions between public and private space in American culture. On the one hand, like *Jerry Springer*, judge programs entice people to make a spectacle of their private lives on television. On the other hand, the courtroom setting evokes the public sphere of the government and judiciary. The judge plays into this dichotomy. The judge presides over the court, but also conducts herself as a parent. She uses the mantle of public authority to offer guidance, express outrage, or impart sympathy on her "litigants." The cases themselves generally do not involve an application of law; most cases have to do with passing moral judgment on a litigant's private behavior.

In order to get a more systematic understanding of the genre, I reviewed ten episodes of each of the following court-themed programs: *Judge Judy*, *Divorce Court*, *The People's Court*, *Judge Joe Brown*, *Judge Mills Lane*, and *Judge Mathis*. These episodes aired in Los Angeles between November 2 and November 15, 2000. Varying program formats and interruptions for post-election bulletins make it difficult to use the quantitative data I collected to compare one judge's program to another's. Still, the data is useful in illustrating how the genre as a whole operates. (See accompanying box).

In general, there are three categories of cases: (1) intimate subject matter, (2) non-intimate matter with legally irrelevant intimate testimony, and (3) non-intimate matter. Out of the 74 cases I considered in my sample, 51 per cent of the cases involved intimate subjects. Many

Judicial "Box Scores"	
Percentage by race:	<i>Plaintiffs:</i> Black = 37.18%; White = 55.13%; Hispanic* = 6.4%; Asian = 1.3% <i>Defendants:</i> Black = 31.25%; White = 53.75%; Hispanic = 12.5%; Asian = 1.25%; Other = 1.25% <i>All parties:</i> Black = 34.18%; White = 54.43%; Hispanic = 9.49%; Asian = 1.27%; Other = 0.63%
Percentage by gender:	<i>Plaintiffs:</i> male = 28.21%; female = 71.79% <i>Defendants:</i> male = 56.25%; female = 43.75% <i>All parties:</i> male = 42.41%; female = 57.59%
Percentage of parties who were disrespectful:	<i>Plaintiffs:</i> 7.69%; <i>Defendants:</i> 20%; <i>All parties:</i> 13.92%
Percentage of disputes with intimate subjects:	51.35%
Percentage of non-intimate disputes with intimate testimony:	24.32%
Percentage of non-intimate cases:	25.67%
Percentage of cases in which judicial mockery is present:	60.81%
Percentage of cases where judge shouts at a litigant at least once:	51.35%
Total number of cases in sample:	74
Total number of litigants:	158 (includes multiple parties)

* Hispanic surnamed or Spanish speakers, excluding contestants also denoted as Black.

of these disputes (and virtually all of the cases heard on *Divorce Court*) were about a sexual relationship gone bad. Frequent topics included adultery, alienation of affection, domestic violence and nasty break-ups. Allegations of sexual assault were more frequent than one might expect for television, especially since such behavior could expose a litigant to serious criminal charges in an actual court.

Roughly 24 percent of the cases presented non-intimate disputes with intimate testimony or settings. These cases typically involved former lovers, ex-friends, and family members battling over unpaid

phone bills, petty assaults, and disputes over property or money. While the legal dispute did not rest on private issues, one or both of the litigants would attempt to bring intimate testimony before the judge. Examples of this would be a defendant who claims that she does not owe her ex-roommate a \$400 phone bill because the plaintiff used the phone as an alibi in order to cheat on her husband;¹⁶ a landlord-tenant dispute for property damage caused by defendant's domestic violence;¹⁷ a suit over a truck repair that leads to a discussion of plaintiff's teen pregnancy and defendant's non-payment of child support;¹⁸ and a defendant who claims that a plaintiff had agreed to paint her house for free because he wanted to begin a sexual relationship with her.¹⁹

Nineteen of the 74 cases, roughly 26 per cent, were legal disputes that did not center on, or make reference to, private issues or contexts. This category includes consumer disputes and allegations of damage to person or property in which an intimate relationship or setting played no role. More than half of the consumer cases, interestingly, were contract disputes relating to wedding and prom plans. Completely absent from the sample were cases in which the parties were suing over an arm's length business arrangement. Deals involving corporations and other commercial entities may be the staple of the American court system, but they evidently are too complex or boring for television.

While the shows can get a little repetitive, they are rarely dull or hard to understand. Indeed, the best way to characterize the atmosphere in the courtroom is studied chaos. Faced with a parade of litigants who can at times be unruly, the judges are the ones called upon to reestablish order and resolve conflict. The result is that they act as the authority against the disorder of the litigants before them. But the disorder is part of the program. Television judges may seem frustrated or angered by disrespectful behavior or allegations of egregious misconduct, but the producers favor it. Litigant outbursts and salacious allegations are routinely incorporated into the bumper promos for the

¹⁶ *Judge Mills Lane* (Paramount, Nov. 7, 2000).

¹⁷ *The People's Court* (Warner Bros., Nov. 9, 2000).

¹⁸ *Judge Joe Brown* (Paramount, Nov. 13, 2000).

¹⁹ *Judge Judy* (Paramount, Nov. 14, 2000).

next segment or episode on all of these shows. Typical examples of salacious promos include clips in which litigants say “he climbed on top of me while I was sleeping and attempted to have sex”²⁰ or “my personality is not on trial here!”²¹ Announcers also participate in the hype with promos such as “defendant never agreed to bare her breasts over a nazi flag; plaintiff says ‘that’s not germane,’”²² or “when *Divorce Court* returns, Patricia will testify about how she went back to Calvin after having sex with another man.”²³ If a judge gets indignant, the outburst is almost always previewed at the close of the previous segment. Usually, it’s a line like “You’re not listening!”²⁴ or “Grow Up!”²⁵ or “Do you think I’m stupid?”²⁶ Sometimes it can be a more specific comment such as “you are an embarrassment to black women”²⁷ or “he could have been Jack the Ripper!”²⁸ This is not chaos that happens to fall into the courtroom. It is encouraged and given a privileged position in the narrative. It is also something the producers can carefully control. Cases, after all, are selected in advance and litigants must meet eligibility requirements. It is also interesting to note that, like *Jerry Springer*, which also exploits chaos, all of the judge programs feature a wrap-up segment in which the judge comments on the case or the “courtroom journalist” calmly interviews the litigants. Mablean Ephraim even adopts the same circumspect morality of Springer’s “Final Thoughts” when she reflects on the litigants with her bailiff during the closing credits.

The judge is, of course, also pre-selected on all of these shows. It is no coincidence that the most successful judges are ethnic or racial minorities, and that they are mostly women. They wear their otherness on their sleeves. Judy Sheindlin, for example, delves deeply into Brooklyn Jewish shtick and accent from the bench. Mablean Ephraim does much the same thing, except that her shtick is to affect a southern

²⁰ *Judge Mathis* (Warner Bros. Nov. 3, 2000).

²¹ *The People’s Court* (Warner Bros., Nov. 13, 2000).

²² *The People’s Court* (Warner Bros., Nov. 6, 2000).

²³ *Divorce Court* (Twentieth Television, Nov. 8, 2000).

²⁴ *Judge Judy* (Paramount, Nov. 9, 2000).

²⁵ *Judge Joe Brown* (Paramount, Nov. 8, 2000).

²⁶ *Judge Judy* (Paramount, Nov. 13, 2000).

²⁷ *Judge Mathis* (Warner Bros., Nov. 8, 2000).

²⁸ *Divorce Court* (Twentieth Television, Nov. 13, 2000).

drawl and use homespun, African-American slang. This otherness makes these judges less threatening to litigants and audiences. Being an other allows the judge to pass judgment on a litigant and not be viewed as suspect or abusive of her power. The more a judge can avoid associating his or her authority with the power of the establishment, the more palatable the discipline and punishment meted out to litigants. This is especially true since more than 70 percent of the plaintiffs are female and roughly 47 percent are persons of color. As a woman or person of color, a judge is in a better position to be viewed as someone who is not part of the system, an individual with whom the audience can more readily identify.

Among shows with non-white male judges, *Judge Mathis* stands out as the program that strongly promotes the judge's otherness to viewers. *Judge Mathis* begins with photos of an African-American youth on an inner-city street strewn with garbage. A hip-hop beat plays as an announcer explains that Greg Mathis had been in and out of jail. Mathis then explains that, after his mom told him that she was going to die because of him, he decided to go straight. As he explains it, "I decided to make the law work for me." The announcer concludes by announcing that Mathis was elected judge as a young man and that he's a good, honest man. Judge Mathis is thus established as someone with whom miscreants and lawbreakers can identify. The fact that he credits his mother as the one who turned him around indicates a respect for women and an understanding of the pain he caused her. This judge's race is not merely symbolic in his presence on the bench; the narrative presents it as part of his history. This is an important ingredient to Mathis's success since it both personalizes him as a judge and makes him credible as someone who judges and punishes minority litigants.

Judge Mills Lane and *The People's Court's* Judge Jerry Sheindlin, as white males, are the exception to the rule. Each program, however, addresses this issue through the use of symbolism and imagery designed to compensate for the judge's establishment posture. This is especially the case with Judge Mills Lane, who, as an ex-boxing referee, may appeal less to women and people of color. In its first two seasons, *Mills Lane* opened with images of its star leaving a New York courthouse dressed as a marine and posing with boxing paraphernalia.

In Season 3, which began in the fall of 2000, the producers have Mills jogging along a sunny beach with three beautiful women and some children. The three women, of mixed race and ethnicity, sing a new feel-good theme in which they refer to Judge Mills Lane as "America's Judge." Mills is depicted as participating in the fun along with the women and children, and, later, with a waitress at a diner who hugs him like a cuddle toy. Gone are the military and boxing images, except for his signature line "Let's Get It On!" which is now incorporated into the women's lyrics and playfully repeated by Mills before the women remind us one last time that "he's America's Judge. And we love Judge Mills Lane." Mills Lane, once known as a tough guy who excelled in manly pursuits such as the marines and title fights, has repackaged his macho image in a non-threatening and indeed palatable way for women. And to some extent, women seem to be responding.

Judge Jerry Sheindlin, as the successor to Ed Koch on *The People's Court*, does not reap the benefit of a carefully worded opening theme that softens his image. *The People's Court* opens much the way it did in its 1980s' incarnation, under Judge Wapner, except that its theme music is gone; plaintiff and defendant proceed into the courtroom as bongo drums play and an unseen announcer intones the specifics of the case. Jerry Sheindlin seems tough and earnest. Part of his appeal to women, I believe, comes from the fact that his wife is Judge Judy Sheindlin, the queen of entertainment litigation. Jerry, in fact, behaves very much like his wife before litigants. He interrupts frequently, casts blame quickly, lectures as if he is a parent, and scolds based on the way he feels, not the law. And like his wife, Jerry plays his ethnicity on his sleeve, peppering his speech with yiddishisms that he occasionally defines and prominently displaying his heavy New York City accent. As with Judge Mills, Jerry Sheindlin is supported by a female bailiff who enforces his courtroom edicts and leads litigants out of the courtroom. Mills has the added benefit of pseudo-courtroom journalist Kim Adams, a young African-American woman who acts as announcer and post-case interviewer for the program. With its women-dominated opening and a softer courtroom set, *Mills Lane* has been able to pull in ratings as much 12% higher than last year's.²⁹ *The People's Court* has had less luck masking Judge Jerry

²⁹ See *supra* note 11.

Sheindlin's lack of otherness. Saddled with flat ratings, the show announced in January 2001 that Sheindlin's second year on the bench would be his last.³⁰ It seems that Sheindlin may have suffered from the same weakness that led former New York Mayor Ed Koch from the bench of *The People's Court*. Koch did not want to make distinctions between his personal life and public persona as a politician. Thus, he may have simply come across as being too closely identified with the establishment. Whatever the explanation, *The People's Court* is not about to make the same mistake twice. Sheindlin will be replaced by a woman, 39-year-old Judge Marilyn Millian.³¹

What do these judge programs say about our system of justice? Most of the shows proudly echo the substance of *Judge Mathis's* opening announcement: "Real people with real disputes, before a real judge delivering real justice." Virtually all of the shows also emphasize that the judge is imparting "real justice." To the extent that any of today's ultra-hyped and slickly edited "reality" programs reflect ordinary experience, some might include these courtroom confections in the genre. These shows, in reality, have little to do with real justice and even less to do with real cases. While it is certainly hard to argue that the great rush of middle and lower middle class litigants are not real people, the circumstances these "litigants" are in do not fully reflect the reality of actual parties to a court case. Indeed, using a video player's freeze frame, one can see the truth in the scrolling fine print during the end credits. These real people are not litigants in any real sense of the word; they are contestants. The identical disclaimers that appear on *Judge Judy* and *The People's Court* are typical of the judge show genre's lack of gravitas: "Monetary awards are paid from a fund maintained by the Producers." Real litigants have real risks and real expenses. Thanks to television, these contestants enjoy the possibility of a payoff with little or no risk of loss. Out of town contestants may even receive the additional benefit of an expense-paid trip to Los Angeles, Chicago, or New York. What better incentive is there for two adversaries to set aside their legal disputes and participate in televised spectacle? After all, both parties must mutually agree to dismiss the original case and arbitrate it in front of the television judge. While

³⁰ Melissa Grego, *'People's' New Judge*, VARIETY, Jan. 1, 2001, at 33.

³¹ Id.

bad blood between the parties often simmers to a boil once the cameras are rolling, cooler heads must prevail off camera before the taping can begin.

Apart from surface considerations such as a set that looks like a courtroom, props like a gavel and robes, and a cast that includes judge, bailiff, spectators, and a court “journalist,” these shows bare little resemblance to what goes on in an actual courtroom. Only on television, for example, does a civil case involving assault or a domestic dispute move from opening statement to verdict in 22 minutes or less. Even the minority of cases that do not involve salacious or intimate disclosure, the type of cases that might be litigated in a real small claims court, would likely take more time to litigate. In television courtrooms, the “real” cases seem easy to resolve and easy to watch. In a real courtroom, judges call litigants to the bar as if they are in line at the Department of Motor Vehicles. The litigants are often inarticulate, perhaps nervous, and the judge has had little if any opportunity to learn about the litigants or review details of the case in advance. In the halls of Judge Judy and her colleagues, however, the parties are announced with great fanfare and music as they are led to their positions, an approach made famous by *The People’s Court*, or with voice-overs and other effects that make their entrances seem more dramatic.

Of course, these shows are all about being dramatic. Few real judges could sustain the type of vitriol that spews regularly from Judges Sheindlin, Mablean Ephraim, or Mills Lane on a good day. Of the shows I watched, judges yelled at litigants in over half of the cases before them. Mockery of a litigant was present in 61 percent of the cases. While Judges Joe Brown and Greg Mathis were a little more subdued, even they engaged in an occasional shouting match, stern scolding, or sarcasm. Part of the reason for all the tongue lashings is to remind viewers that the judge is the final authority in the courtroom. This is especially necessary, I would argue, in the television courtroom since, unlike real judges, the tele-judges do not have the power to punish disobedient participants with contempt of court or perjury, citations that would mean fines and possibly jail time in a real court. As a consequence, these judges go out of their way to shout, mock and gesture at their litigants; it is the only way they can exert control over an errant plaintiff, defendant, or witness. Many litigants, for their part,

seem eager to challenge the authority of a judge whose final punishment is paid by the producers. While similar disrespectful or deceitful conduct would be a serious problem in a real courtroom, it enhances the drama in the television courtroom, making for a more entertaining viewing experience. It is not uncommon to see a sound bite of a misbehaving litigant being upbraided by a judge in a preview bumper for an upcoming segment or case. Egregious acts or other contemptible behavior that might undermine the judge's status or make her look bad would presumably not be included in the final version of the show, since every one of the programs are edited for time and content before broadcast. The personality and reputation of the judge is the focus of each of these shows; footage that might tarnish those assets would be counterproductive to the show's mission. If only the judge at O.J. Simpson's trial had had the luxury of a post-production editor!

Television judges give the impression that they are all-knowing, all-powerful, final arbiters with an innate sense of truth and justice. Essential to the successful formula for these shows is a judge that audiences must like and respect. The judge must always have the upper hand over litigants when it comes to the facts and the law. Real judges presiding over actual cases rarely have that luxury. On television, litigants are often completely ignorant of what the law requires. A defendant being sued for assaulting an ex-lover may begin his case by admitting the assault and then argue with the judge or the plaintiff for the moral high ground. While this may make for interesting television, real judges applying the law would only be interested in the defendant's admission and whether any legally relevant exculpatory circumstance is present. Tearful expressions of regret or mutual recrimination between the parties, because of their dramatic impact, are front and center in the television courtroom. References to the law and, more specifically, what the law requires in order for a party to prove or defend her case successfully are rare. Among the tele-judges, Judges Mathis and Mills are more likely to describe the elements of a case that a plaintiff must prove under the law. Least likely to discuss the law are, interestingly enough, Judge Judy and Mablean Ephraim, the two women judges who preside over the genre's highest rated programs.

The near total absence of law on these programs is underscored by

the complete absence of a player whose role is key to the administration of justice: the lawyer. With one exception, the only lawyer inside the television courtroom is the judge. As a result, party-contestants arrive in court not only ignorant of the law, but without an expert to show how the law applies to the case. In a real courtroom, the lawyer is the mouthpiece for a party. If a client is inarticulate, unschooled, or unsympathetic, a good lawyer can be critical to a successful outcome since it is the lawyer who conducts the case, not the client. Litigation attorneys investigate facts, know the specific applicable law and research case precedents before they argue on their clients' behalf. The result is a courtroom atmosphere in which lawyers make very specific arguments about how a law applies, or what a law requires, before the judge. With the power of lawyers eclipsed, television judges appear even more knowledgeable and powerful than their real counterparts. Disputes over how a law should be interpreted or how it applies to the facts are non-existent since there is no one present in the courtroom to challenge the judge's initial understanding of the law. Indeed, it is these challenges to the judge by lawyers that helps keep judges from abusing their authority or making errors. Real-life lawyers make objections to testimony, evidence, and rulings from the bench. They also have the right to appeal the decision of a judge or jury. Television litigants do not have any of these rights. In the world of television justice, the judge is not only the one who presides over the trial; she's the Supreme Court and trial jury rolled into one. In order to compete for the producer's prize money, contestants agree that they will be bound legally by whatever the host-judge decides. The safeguards that apply to incompetent, wrongheaded, or unruly judges simply do not apply to judges accountable to no one but Nielsen families.

The success of the courtroom genre has led to new shows that offer variations on the established formula. *Moral Court* brings parties with non-legal disputes before a robed judge who must decide who is right or wrong. *Arrest and Trial* is a reality version of *Law and Order* that looks like a combination of *COPS* and *Court TV*. Both of these programs, new this season, are struggling to build audiences. The most successful of this new generation of court programs is *Power of Attorney*, featuring former New Jersey superior court judge Andrew Napolitano. Napolitano presides over a program that, in many respects, is no different than *Judge Judy* or *Divorce Court*. The cases

are generally salacious; disputes between ex-lovers and allegations involving sexual conduct or other abuse are common. The distinguishing characteristic of this program is the presence of attorneys in the courtroom and, as the show's title suggests, the results are indeed powerful. Instead of litigants who are ignorant of the law and try to bully each other, there are famous attorneys such as Gloria Allred, Chris Darden and Geoffrey Fieger who ignore the law and bully the opposing party. The result is a twenty-minute trial in which high-profile attorneys engage in shouting matches over disputed facts with little discussion of law or attention to the rules of evidence. One defense attorney will attempt to prove that a female plaintiff was, in fact, a prostitute.³² Another will retort that opposing counsel should not be allowed to ask what color her client's underwear is.³³ One might have thought that the presence of attorneys would make the program a more powerful legal experience. The reality is that it merely makes for more powerful television. *Power of Attorney* has raised the bar for salaciousness and competitiveness in the television courtroom. Unfortunately, it may prove to lower the bar for the rest of us.

³² *Power of Attorney* (Twentieth Television, Jan. 2, 2001).

³³ *Id.*

