

UNIVERSITY OF CALIFORNIA, SAN DIEGO

Stand-Up Justice

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of Philosophy

in

Communication

by

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ABSTRACT OF THE DISSERTATION

Stand-Up Justice

by

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Doctor of Philosophy in Communication

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This dissertation examines the performances of reality television courtroom judges through the frames of television studies, linguistics, and critical legal studies to comment on what justice is, how justice functions within this genre, and the greater societal impact of these programs in America. In my research I draw a connection between the linguistic practices of the stand-up comedian and reality television

courtroom judges, such as Judge Judy, in that both verbally chastise their audience, whether it is a heckler or a litigant who has committed the deplorable act of not returning a video rental on time. Although judicial programs, such as Judge Judy, appear to be little more than a cheaply mass-produced form of mindless entertainment, the genre of reality courtroom television has seeped into the real world and become a phenomenon that actively situates the practice of justice in America. The language of moral condemnation and humor, extensively performed by television judges, is evident within ‘real’ courtroom hearings when judges prefaced how the justice system works, and does not work, using reality courtroom programs as a common reference point for the layperson. This question of how the comedic spectacle has entered into sacred places, such as the courtroom, and impacted the American judicial practice has led me to think about how the sensationalism of celebrities can offer potential sites for social formations to occur as well.

## INTRODUCTION

*You feel there's something calling you;  
you're wanting to return...a place you can escape the world.*

*- Geddy Lee (Rivendell)*

The genre of reality television entered the American landscape some 20 years ago and, with it, ushered in a billion dollar industry that has grown to phenomenal heights. Within this genre lies the reality television courtroom program giving birth to such household names as Judge Judy and Judge Joe Brown. At the heart of a reality television courtroom program is conflict, and conflict feeds a very basic need of our psyche (Guthrie, 1938; Churchman, 2013). The desire to fight or watch others fight has been present since the dawn of civilization and brings to light the old adage that 'nothing attracts a crowd like a crowd.' When groups of people are living in close quarters with one another there is going to be disagreement over issues ranging from land boundaries to murder. Some type of leader, or leaders, must be appointed in such societies in order to deal with such conflict and render verdicts; typically, such matters would be decided publically to ensure that citizens understood the laws of the land (Diamond, 1997). By clearly marking what is acceptable or unacceptable behavior, a society could continue without chaos.

Citizens of a particular society would not simply be witness to a trial for the sake of learning about laws, but because trials are genuinely entertaining and provide satiety of a need to see justice unfold and, at a very basic level, see a wrongdoer be served a fair punishment. This is evidenced relatively early in world history with Ancient Greece

performing plays, such as *The Oresteia*, which feature a lengthy courtroom scene that teach citizenship and the laws of Greece but also features characters and situations that are intriguing. Reality television courtroom programs tap into this ancient, yet still relevant, idea of conflict and present it in a modern day courtroom setting with the larger than life personalities of such individuals as Judge Judy or Judge Joe Brown. How is it that contemporary reality television judges are able to present legal information to a culture that dreads attending jury duty, maintain their attention, and keep them coming back for more?

Figures such as Judge Judy firmly sit parallel to other television giants such as Oprah or Dr. Phil in terms of popularity and earning power. However, Judge Judy also sits parallel to other reality television personalities who are known for their crass and over-the-top antics, such as Jerry Springer or Snooki from the shows *Jersey Shore* and *Snooki & Jwoww*. So, here sit reality television courtroom judges in a liminal space in which they deal with the dramatic elements of daytime talk shows but also deal with the sensationalism of reality TV, often referenced as trash TV.

A program like *Judge Judy* is similar to a daytime talk show such as *Dr. Phil* in that both offer individuals some type of analysis of their circumstances; Dr. Phil (Dr. Philip McGraw) was once an actual practicing psychologist who now offers psychological counsel for those who have suffered a traumatic event, such as a death in the family, while Judge Judy (Judge Judith Sheindlin) was once an actual practicing judge who now offers legal counsel for those seeking resolution to a problem, such as unpaid rent. A program like *Judge Judy* is also similar to a reality television show such as *Jerry Springer* in that both offer individuals a forum in which to be mocked; Jerry

Springer relies on one-liner jokes to make fun of the guests on his stage for their outlandish behavior and Judge Judy comically berates the litigants in the courtroom for not obliging their civic duty. *Judge Judy* differs from *Dr. Phil* or *Jerry Springer* in that her show is thought to offer some insight into how conflict is actually resolved within a real courtroom. Contemporary reality television courtroom judges offer some type of real educational lesson for American citizens on what justice is, and how the legal system operates, but also package such information in an entertaining fashion.

*Judge Judy* is a program intended to provide a legal ruling for cases featured on the show, but because it is synonymous with reality television it must also be profitable, entertaining and, hence, competitive with the personalities in the genre. Given the fact that *Judge Judy* is in its 18<sup>th</sup> season on television (and, not to mention, Judge Judith Sheindlin earns \$47 million a year) it is fair to say that the show, and her personality, has been lucrative for the corresponding broadcast network: CBS. Of course, one need look no further than the Nielsen ratings in America to discover that reality television courtroom programs have a large audience. It is precisely because reality television courtroom programs rest in a liminal space in which they evoke the seriousness of legality, but also the sensationalism of crass humor, that make them a point of interest.

This project seeks to historicize the current moment of reality television courtroom programming, examine the comedic rhetoric of contemporary reality television judges, and discuss how such rhetoric impacts courtroom protocol. Firstly, the growth of radio programming, particularly crime dramas, in America during the early 20<sup>th</sup> century will be discussed in order to contextualize the contemporary state of courtroom shows. Secondly, transcripts of both stand-up comedians and reality

television programs will be examined to align the discursive styles of the two seemingly disparate performers to illustrate the linguistic techniques judges employ to entertain audiences. Finally, if reality television courtroom judges do utilize the linguistic patterns of a stand-up comedian, then such rhetorical devices will have an impact on the judicial process and the kinds of rhetoric circulating around justice. Hence, the reality television courtroom becomes a place not in which the language of law is an objective and rational contract seeking to assist its citizens in creating a common good; rather, law becomes an entity that is subjective and makes moral assessments about individuals and chastising them for not actively disciplining themselves.

### **1. Finding my way**

Being a citizen of America, I am hardly immune to the charms that daytime television offers. I vividly remember entering my living room one weekday afternoon with an unwavering hope that the programming of that day would cure my languid disposition. Slouching slightly to the right and being slowly engulfed by a large couch, I casually lifted the remote control that led me to find a series of moving pictures quickly igniting the landscape of the flat screen. A shadowy figure seated behind a wooden bench and wearing a black robe slowly emerged into focus as the raspy and brazen voice of a woman shattered the silence and endlessly reverberated throughout the small room in which I was seated. The lower left side of the screen revealed a black square with gold lettering that read *The People's Court*.

Here was a reality television program that featured real people and real cases standing before a real judge. Certainly it had the makings to assuage my thirst for

entertainment. I came to realize that Judge Marilyn Milian was the mysterious and shadowy figure with the brazen voice overseeing the cases brought into *The People's Court*. Although I happened to enter the case as it was drawing to a close, and not familiar with the intricacies of the case or the names of the litigants, the conclusion of the case proved to be quite intriguing in that Judge Marilyn Milian displayed her dominance within the courtroom and was ruling unabashedly with an iron fist:

MM: Judge Marilyn Milian

DD: Defendant

1 MM: You're dead wrong.

2 DD: That's your opinion.

3 MM: No. That's my ruling pal! [Throws down her glasses]

4 And let me tell you something Mister University of Miami Law School. I

5 have taught at UM for many, many years and you, right now, are

6 embarrassing us. You do not show that kind of disrespect! Okay! If you

7 don't like what the judge is doing, then you take it to the next forum! But

8 you do not sit here and say

9 'that's your opinion' like a baby when a judge rules against-

10 DD: [Indistinguishable]

11 MM: Don't even utter another word! You got a lot to learn about what it means

12 to be a litigator and a lawyer.

13 DD: I don't want to be either.

14 MM: Good! Because you don't have it in you! But you got a lot to learn about

15 what it means to be a member of the Florida Bar! And if you think that

16 this kind of petulance and babyishness on your part, to turn around and tell a

17 judge you disagree with 'well that's your opinion', is going to get you

18 anywhere, you are sorely mistaken! If there's nothing you learned over

19 the last two years as a law student, there's something you should have

20 learned as a human growing up. That you do not show that kind of

21 disrespect! You don't like it? Take it to the hallway! But you do not look

22 a judge in the face because I don't care what you think about me, you

23 gotta respect this process! [Bangs hand on bench]. And if there's anybody

24 I expect to respect this process it's a second year law student at the

25 University of Miami! [Bangs gavel] Verdict for the plaintiff in the amount

26 of four-hundred and fifty dollars...and court costs!

As Judge Milian viciously impelled the wooden gavel upon the block and dispensed her

final ruling with a mighty force I recall sharing the gasp of the studio audience. Here was

a real judge who was screaming at the top of her lungs and displaying this colossal sense of rage directed at the litigant that stood before her because of his flagrant illustration of disrespect to both her and the courtroom. Following the influx of gasps clouded with laughter reverberating from the television set via the studio audience I caught myself asking why the studio audience taken aback by the language of Judge Marilyn Milian? Why was the studio audience laughing and gasping within the hallowed halls of a supposed courtroom? Perhaps even more perplexing was my own indulgence in the performance of this judge. But, somehow, I could not bring myself to turn the channel. After all, I was undoubtedly entertained, as millions of others in America presumably are given the massive ratings for such daytime reality television court programs. Although this judicial performance I had just witnessed is considered a part of reality television, it certainly could not be placed in the same category as programs synonymous with the term reality television, such as *Jerry Springer*. Or, could it? The question that immediately began to emerge for me involved asking about the rhetorical position of ‘real,’ or reality, performances of justice on television. That is to say, do the linguistic tools embodied by Judge Marilyn Milian accurately reflect the linguistic tools embodied by real judges that serve in real courts across America?

The Los Angeles evening news broadcasts on television brought forth a myriad of seemingly endless atrocities and injustices plaguing the world, or at least Southern California, during the 1980s. I sat wide eyed and distraught as a young child glaring at the images of the United States President Ronald Reagan warning of the imminent war with Russia, a police sketch of a bright blue eyed man with large glassy blue eyes labeled The Night Stalker who had just claimed a victim in my city of Whittier, and stories of

children being kidnapped from local elementary schools in the area. In addition to informing the Los Angeles area of an ever-present threat presented by individuals committing criminal behavior, the local television news also offered stories of justice ultimately being served. For instance, I vividly remember The McMartin Preschool Trial of the 1980s, which involved allegations of sexual abuse towards children, being heavily covered on television and lasting three years. Obviously, the sensationalized nature of the bad guys v. good guys narrative told and retold on a nightly basis by the evening news sparked apprehension about entering the world around me.

The anxiety I felt produced from these stories of danger was quickly forgotten as I turned the channel and found stability and solace in *A & E's An Evening at the Improv*. The roaring and ever-present alto saxophone greeted me as images of the Hollywood skyline swept across the screen and ultimately transitioned into a stage featuring a dark red brick wall as a backdrop with a single spotlight in the center that revealed a lone microphone seated upon a black die cast microphone stand. There was something real and raw about a single individual armed with little more than a microphone and wry wit treading through the landscape of cable television during the 1980s. Although I had no idea who these aspiring comedians were at the time, many of them eventually became the revered comedians of today. And their success was undoubtedly due to the way in which they conveyed information to the audience. More specifically, their discursive style is what was so appealing to me as a child and, although I was not completely cognizant of it at the time, this fascination with language is what ultimately led to questions regarding televised performances.

Some twenty years later I found myself inexplicably drawn towards the genre of reality television court. Perhaps the justice served within the reality television courtroom was reminiscent of the justice that I witnessed as a child. Or, perhaps my attraction to justice on television was not so distant from my love for comedy. That is to say, as I began to examine the two seemingly disparate genres more closely, I found the performances of the reality television courtroom judges as eerily similar to those of the stand-up comic. The anger that Judge Marilyn Milian of *The People's Court* displayed while setting an unruly litigant straight was exactly the same as comedians who must deal with a heckler speaking out of turn.

For instance, I recall one particularly infamous incident in which stand-up comic Bill Hicks dealt with a woman in the crowd who yelled 'you suck' to Hicks to which the audience gasped. As I watched I remember thinking to myself how is Hicks going to handle this woman who is disrespecting him and the sanctity of stand-up comedy? Not surprisingly, Hicks began a mighty tirade directed at the heckler in a very similar way in which Judge Milian yelled at the litigant. Hicks looked the heckler in the eye and shouted: *Get out! Fuck you! You idiot! You're everything that America should be [sic] flushed down the toilet! You fucking turd! Fuck you! Get out! Get out! You fucking drunk bitch! Take her out! Take her fucking out!* The consequences of speaking out of turn in the night club are being escorted out by security, being verbally barraged by a performer, and not having an opportunity to finish an undoubtedly expensive alcoholic libation. The consequences of speaking out of turn in an actual courtroom are being escorted out by security and having to pay a fine.

So, while yelling at another individual and telling them what a horrible person they are is certainly fair game within the confines of a comedy club, this use of language is not seen as being the case within a courtroom. There are laws that prohibit the judge from treating litigants in certain ways. I think the reason that I gasped at the behavior of Judge Marilyn Milian, perhaps why the studio audience did as well, is because of the dissonance that presented itself within this situation. I was raised in an environment in which I was taught to believe that courts are a place of objectivity and devoid of human emotion. However, *The People's Court* featured emotion within a courtroom space. And, there is a tension that exists within the example of Marilyn Milian between emotion (as in lines 9 and 16 in which Milian says the defendant is acting like a baby) and authority and objectivity (in line 23 in which Milian speaks of respect for the judicial process).

## **2. Just variations on a theme**

Judge Marilyn Milian, and her contemporary colleagues featured on daytime television, are all working within the performance space of reality television. More specifically, the judges are 'dispensing rulings' within the sphere of reality television. The term 'reality television' has become synonymous with the colloquial phrase 'trash tv' within popular culture and the two are often used interchangeably. To be sure, critics have unabashedly voiced their grievances with reality television, stating it lacks culture and mental stimulation. For instance, MTV's recently canceled *Jersey Shore*, which chronicled the lives of eight housemates from New Jersey, ran for six seasons and garnered much attention due to its depiction of those with Italian heritage who are from

New Jersey. Journalist Isable Lee (2011) states of the reality television program *Jersey Shore*.

I discovered that the greater the lack of intelligence there is in a television program, the easier it is to watch. Watching Snooki get arrested on the beaches of Seaside Heights, Sammi ‘Sweetheart’ Giancola duke it out with Ronnie Ortiz-Margo over a situation that never happened, and Deena Nicole Cortese get kicked out of a club after partying for a mere 6 minutes and 53 seconds, was surprisingly entertaining.

Perhaps *Jersey Shore* is intended to simply entertain the audience devoid of any intellectual dialogue with the audience. Perhaps it is something more. Regardless of the intention of the program, reality television is stereotypically set aside and condemned to a fate of being labeled as ‘mindless’ or simply ‘trash’, as many felt was the case with *Jersey Shore*.

Although reality television courtroom program are grouped within the umbrella term of ‘reality’ and in the company of such shows as *Jersey Shore*, the court show is unique from its counterparts in that it is thought to explicitly offer some sort of educational information about the inner workings of court procedures to the spectator while providing entertainment as well. This point is made evident within program listings in which reality television courtroom programs are distinguished from others by not simply being labeled as ‘reality’ but with the additional label of ‘education’. The term ‘educational program’ is the same one affixed to many of the shows featured on the *Public Broadcasting Service* such as *NOVA*, which explores the world of science. So, does an episode of the documentary chronicling the history of justice in America entitled *The Supreme Court* that has aired on PBS offer the same information that an episode of

*Judge Judy* does? Or, is it simply a matter of framing various programs in relation to an intended audience?

Born & Prosser (2001) examine broadcasting as a bifurcated practice in which a state of commercial activity exists on one side while a state of cultural norms exists on the other:

the two conceptions imply radically different visions of the nature of the television viewer, as sovereign consumer making a choice from a range of services offered by the marketplace, or as a citizen participating in a culture serving the purpose of his or her self-development as well as that of the society of which the citizen is a member (p. 657).

The Big 4 Networks (ABC, CBS, NBC, and FOX) or privately owned television, are viewed in this paradigm as ultimately being concerned with consumerism and seeking the most efficient way in which to earn high ratings and, thus, money. Public television is viewed as an entity that is publicly owned and operated by members of society. It is precisely this division of publicly versus privately owned broadcasting that impacts how each is labeled.

In addition, public broadcasting has a tendency to stereotypically be framed as a part of elitist high culture in America more so than its commercial counterparts that rely not on funding from viewers, but funding from advertisers; consequently, public broadcasting is also seen as limited and not an economic threat to its larger private counterparts. Ouellette (2002) has noted that public television has defined itself “as a pocket of quality, authenticity, and seriousness in an otherwise shallow and hedonistic mass-produced television culture” (p. 217). Typically, programs on *PBS* such as *NOVA* utilize what may be considered highfalutin discursive elements, such as electromagnetic radiation, when dealing with earth sciences. Consequently, *Jersey Shore* would feature

what would be considered crude speech, such as Snooki consecutively utilizing the metaphor ‘a watermelon and a pinhole’ to describe the unlikely possibility of a fellow cast member, Vinny, being a sexual partner. Television programming indicates a preferred taste and is often used to distinguish one as a consumer of high or low culture (Bourdieu, 1984).

It would stand to reason that if one were seeking ‘reliable’ information about the world around them that public broadcasting would be sought versus private broadcasting, which is solely intended to entertain and, more importantly, earn money. But, is it that simple? Are the personalities seen on private broadcasting, particularly the Big 4 Networks not to be trusted? Similarly, can the personalities on PBS be trusted? The question here is not who should be trusted, but how information is framed in regard to a perspective audience. It is a question of elitist knowledge versus cultural, or common, knowledge.

With the landscape of contemporary television and the issue of high and low culture, or elitist versus common knowledge, arises the issue of authority and who can be trusted. In an era in which the personality of an individual marks what he or she may, or may not, do, identity is increasingly important. For instance, aforementioned ‘Snooki’ of the *Jersey Shore* is a popular figure within the reality television genre and has the ability to establish her own line of jewelry and hair accessories under the label ‘Snooki Couture’ (Viscount, 2012). However, Snooki holds little, if any, clout to speak on matters concerning rulings of the Supreme Court of the United States of America. Her personality is fixed within the context of being a ‘Jersey girl’ who loves shopping and tanning. As such, it is difficult to break out of this type casting. Similarly, the

personalities of *PBS News Hour*, anchors Judy Woodruff and Gwen Ifill, have the ability to speak on a variety of political issues given their positions. However, they would most likely not fare very well producing their own line of jewelry and hair accessories. A figure like Judge Judy, however, has the ability to speak authoritatively on a myriad of topics that are not limited to one particular context.

Real judicial figures do engage with the media on occasion, but only to discuss popular trials that have caught the attention of the masses. Once reporter for the *New York Times* and now communication scholar, Goldstein (2007), says the law has remained a mysterious, elusive and, hence, objective, entity among the American public largely due to the fact that the judicial branch of government has remained the most resistant of the three branches to personally reveal itself to the public (p. 191). Further, James E. Graves, Jr. (2007), Supreme Court Justice of Mississippi, claims:

The courts and the media generally have an uneasy relationship. A large percentage of what the media deems newsworthy emanates from the courts. The courts (judges) are very apprehensive about talking to the press either because of judicial canons that discourage or prohibit it or because of concerns that the coverage will show the judge in a negative light (p. 118).

So, while the legislative and executive branches of government engage with the media on a seemingly daily basis; indeed, Americans are aware of such mundane aspects of president's life as their favorite fast food restaurant or the name of their dog. But, the same cannot be said of Supreme Court Justices or any other real judges for that matter. Part of this may be due to the restrictions placed on judges to interact with the media while the other involves not wanting to seem impartial when dealing with the neutrality of law. So, when a real judge, such as Judge Judy, enters the limelight and speaks not

only of her own opinions regarding cases but also her personal life, she becomes a celebrity that America embraces.

For instance, Katie Couric of the self-titled program *Katie* welcomed Judge Judy onto her program in November of 2012 in which Judith shared photographs of herself celebrating her 70<sup>th</sup> birthday in a white bikini while vacationing in the Bahamas. She spoke of her time on the cruise ship and feeding the island's famous swimming pigs during an excursion to Exuma. In addition, practicing physician Dr. Oz, who has a television show of the same name, welcomed Judge Judy onto his show in November of 2013 to discuss the mini-stroke she suffered on the set of her show. However, Judge Judy has also been featured on such programs as CNN's *Larry King Live* to discuss controversial politician Sarah Palin and ABC's *The View* to discuss gay marriage. The personalities featured on reality television courtroom programs (the judges) sit in a liminal space that allows them to move seemingly effortlessly between two worlds. The judges can walk onto a daytime talk show and discuss their personal lives with candid language or walk onto a primetime political show, utilizing judicial discourse, and discuss legal issues of the day.

Judge Judy, and her colleagues ruling within the reality television courtroom, can be said to represent a breakdown between high and low culture. Judges are stereotypically thought to be a mature straight white man, such as Judge Wapner of the television show *The People's Court* during the 1980s. However, this show was canceled due to poor ratings. However, the traditional gatekeepers of legal knowledge, embodied by Judge Wapner, have shifted drastically. Audiences are now fixing their eyes on new sets of television judges embodied by minority figures with empathic personalities. Both

Judge Judy and Judge Wapner have the same knowledge of the courtroom and legal aspects, but their presentations are quite different from one another. Whether or not people trust Judge Judy more today than they do the stereotypical straight white man is debatable. What is not up for debate is the sharp ratings climb that Judge Judy, and the like, has experienced within the last 10 years. These contemporary reality television courtroom personalities represent a particular style of justice being performed on television.

The contemporary reality television courtroom justice always embodies some type of personality that is clearly distinguishable from others in the genre. Again, this deployment of personality by the reality television judge to elicit laughter, dispense rulings, and ultimately garner ratings is similar to the stand-up comedian who embodies a particular type of personality to dispense jokes. The reality television judge, or stand-up comedian, may be angry and insult the litigants, or heckler. They may be sympathetic and genuinely care for the litigants. They may be skeptical and question the motives of the litigants. Whatever personality the reality television courtroom judge chooses to adopt, there is always humor utilized in order to dispense rulings. It is precisely this type of 'human' behavior, necessary for reality television, which conflicts with the objective disposition and, hence, lack of human behavior stereotypically associated with the courtroom. This tension of humor being utilized as a means to judge others within a courtroom is the focus of this project. There is a palpable tension found in the reality television courtroom programs that wish to find an audience, entertain, and be successful among the Nielson ratings while simultaneously educating an audience about the intricacies of the justice system.

### **3. The question**

The performances of reality television courtroom justices involve a thematic tension that posits rigid and authoritative language versus colloquial language. This tension found in the reality television courtroom will be examined through various lenses. The initial question to be asked involves the history of reality television courtrooms and the kind of information that such a history can provide in terms of the emergence of humor within courtroom programming. The foundation of reality television courtroom production involves a tension of wanting to entertain and ultimately garner high ratings from a target audience versus wanting to educate a target audience about court proceedings. The field of television studies will inform this conversation by providing details about the infrastructure of television and its development from the middle of the 20<sup>th</sup> century into the current state of affairs in the 21<sup>st</sup> century.

The second question to be asked involves the discursive performances of reality television courtroom judges. Again, because the reality television judges are a part of daytime television there must be an aspect to their stage identity that captivates the audience so they continue watching. However, the judge is also in a position in which a verdict must be rendered within a relatively short amount of time. As such, a tension exists in terms of deciding what style of language to utilize for the viewing audience. Will the reality television judge adopt a stoic stance by utilizing legal jargon that may be inaccessible to a mass audience or a passionate stance by utilizing language that is accessible to a mass audience? The field of linguistics will inform this conversation by providing details about the structuring of language and the deployment of humor when rendering decisions about the cases brought before judges.

The third question involves the protocol, particularly rhetorical protocol, involved when justice is administered within a real courtroom versus a reality courtroom. In America, the iconic image of Lady Justice wielding a sword, holding the balance scales, and donning a blindfold illustrates the adage that justice is blind and, hence, objective. Because justice involves the maintenance of neutrality and the search for truth, the judges who act as gatekeepers for equality are expected to weigh the relevant evidence brought before them in court. Indeed, the phrase ‘just the facts’ uttered by Sergeant Joe Friday of the 1950s television series *Dragnet* has become a way in which to view the judicial process. However, reality television courtroom judges are not simply interested in acquiring the information pertinent to a case; reality television courtroom judges seek to understand the human component of a given case by asking questions involving the morality and character of the litigants. While judges are supposed to be objective and render verdicts solely based on facts, the emotional performances of reality television courtroom judges illustrate the rendering of verdicts based on information about the litigants that is external to the case. The fields of critical legal studies and political science will provide insight into defining what justice is given the tension found within the mock courtroom.

The conclusion will raise questions for further research concerning the actual impact of television on the justice system, as well as the diversity seen on television versus the homogenous landscape found within real courtrooms. There is a disproportionate of minority judges actually found on the bench in courtrooms across America, while minorities are the only judges found on reality television. The overwhelming majority of actual judges serving across America are older straight white

men. Why is there dissonance that exists between real courtrooms and reality courtrooms? The field of performance studies will inform this conversation by examining the types of bodies and personalities that are allowed to be broadcast and the types of bodies and personalities that go unused by television.

#### **4. History**

The image of The Honorable Judge Marilyn Milian fades on the television set as I try to make sense of her passionate performance of justice. However, her performance is not unique in that surfing through the terrain of daytime television reveals multiple judges employing colorful language in order to render verdicts concerning a multitude of various circumstances. The current wave of courtroom programs is immensely popular with numerous judges presiding over their own courtroom. Moreover, the wider genre of reality television has inundated the catalog of programs with virtually every kind of interest, from capturing the reality of the courtroom to capturing the reality of being an aspiring Hollywood actor to capturing the reality of being a teenage mother to capturing the reality of being an elderly person learning to deal with technology, having its own reality show. Yet, this thing called ‘reality’ that is circulated in American television today did not suddenly surface within the confines of a vacuum in the late 20<sup>th</sup> century. The term *reality television* is a relatively new label affixed to various kinds of programming, yet ‘reality’ being featured on the television is hardly a new phenomenon.

Some scholars claim that the origins of reality television began during the middle of the 20<sup>th</sup> century with *Candid Camera*, the brainchild of Allen Funt, which documented real and unsuspecting people being confronted with unusual situations to capture their

reactions. However, the show was not only pivotal because it featured real people in real situations, but because it also gestured towards a tension that existed within the cultural climate of America at that time. Clissold (2004) states:

Allen Funt's...contribution to twentieth-century culture and society goes beyond merely producing hidden-camera gags for laughs – even though this may have been *his* primary intention. His show's famous tagline, 'Smile! You're on *Candid Camera*', not only signaled the moment of comic revelation when the concealed camera was exposed; it also functioned as an ideological directive to stop worrying about being watched in the Cold War climate of surveillance (1945-1991) (p. 33).

The era in which *Candid Camera* aired, particularly during the 1950s and 1960s, was one marked by constant worrying. In this post World War II environment in which the threat of nuclear holocaust seemed all but imminent, it is little wonder the phrase *The Age of Anxiety* became popularized by poets and philosophers. *Candid Camera* ushered in humor, or comedic relief, into this otherwise serious era in which violence featured on the nightly news, police dramas and westerns ruled the airwaves. To assuage the anxiety of Americans not only was a comedic program needed, but real people were needed. To see real people on television gave spectators the ability to empathize with them and realize that they are not alone. Seeing a high profile and wealthy actor on the screen that is removed from the troubles of the real world, differed tremendously from seeing someone similar to a neighbor or a local merchant. The realness that was performed on *Candid Camera* provided Americans with a sensation of unity and nationalism (Clissold, 2004).

Other scholars point to the documentary style reality television program entitled *An American Family* that first aired on the *Public Broadcasting Corporation* in 1973 as the first reality television series. Ruoff (2002) states: "This documentary chronicled seven months in the lives of the Loud family of Santa Barbara, California, including the

divorce proceedings of the parents and the New York lifestyle of their gay son, Lance” (p. xi). The Loud family was explicitly chosen by producer Craig Gilbert in order to parallel, and ultimately critique, many of the upper class families that were seen on television during the 50s and 60s, as with *Leave it to Beaver*, *The Adventures of Ozzie & Harriet*, and *The Brady Bunch* (p. xii). The reason for choosing the Loud family was to explicitly present this tension between the performances of upper class families during the 1950s and 1960s and the performance of a ‘real’ upper class family.

Americans were invited into the real lives of a typical American family and, for the first time, invited to see reality performed. *An American Family* was said to break barriers that had never before been done on television, or anywhere else for that matter, by presenting raw footage of real people and their daily experiences. Of course, the show was not without its share of criticism. Many reviews for the documentary stated that the performance of the Loud family was no different from the seemingly perfect television families, such as the Brady Bunch. In addition, the Loud family was also critical of the show, claiming they were exploited and that the footage was manipulated and taken out of context to present them in a negative light (Ruoff, 1996, p. 285). Obviously, the Loud family saw a tension between what was presented on the Public Broadcasting Service (PBS) versus how they felt they lived their lives. A dissonance existed between reality and the presentation of reality. This is a theme that continues to exist within conversations about the genre of contemporary reality television: an evident tension that exists between perceived reality and broadcast reality.

Regardless of when reality television initially began and who can lay claim to the origins of this phenomenon, one thing is certain: reality television was, and continues to

be, extremely popular. One needs look no further than the current television channel listings to find that reality television has become an extraordinarily popular form of entertainment in the last 20 years that has been exploited not only by small cable channels, nestled within the double or triple numerical digits of our cable box, but by the Big 4 Networks (CBS, NBC, ABC, Fox) as well. And it is little wonder why. These reality television programs are extremely inexpensive to produce and have the potential to yield high ratings and, hence, high profits.

For instance, recent reality television phenomenon *Here Comes Honey Boo Boo* (a reality television series chronicling the life of an authentic Southern family from the small town of McIntyre, Georgia) attracted nearly 3 Million viewers on the cable network The Learning Channel, while it is reported the family earned \$2,000 per episode (Stiehl, 2012). The star of this program, 6-year old Alana whose nickname is Honey Boo Boo, is a beauty contestant participant who gained fame in another reality television series also housed on The Learning Channel entitled *Toddlers & Tiaras* that documented various beauty pageant contestants. Alana and her family have become celebrities because of their outrageous behavior and being self-proclaimed rednecks. Additionally, their deployment of catchphrases, such as Alana's "A dolla make me holla, Honey Boo Boo Child," have circulated into American discourse and have found their way onto various kinds of merchandise for the program.

Within the genre of reality television programming, everyday 'ordinary' people using everyday 'ordinary' language have the opportunity to be on television provided their personality is big enough to fill the screens of American viewers. The genre has become a literal embodiment of Andy Warhol's iconic phrase 'in the future, everyone

will be famous for 15 minutes.’ While the Big 4 Networks may be able to acquire celebrity status participants for reality television series (as evidenced by Donald Trump’s *The Celebrity Apprentice* in which celebrities such as comedian Adam Carolla and actor Stephen Baldwin compete to win \$250,000 for a charity of their choosing or the Fox Network’s *American Idol* in which celebrity judges such as Steven Tyler, Mariah Carey, Nicki Minaj, and Ellen DeGeneres) comment on the talent of aspiring singers, the format is still the same: personality. This presentation of personality is certainly evident within the reality television courtroom program, as evidenced by Judge Marilyn Milian.

Despite the rich scholarly work conducted on the history of reality television and its impact on society, little has been said of reality courtroom programming specifically and its own history within the genre of reality television. Chapter 2 entitled *The History of Reality Courtroom Television* will offer to historicize the emergence of reality television courtroom programs in particular. Although reality television has become an umbrella term that lumps together various kinds of tropes, such as game shows or talk shows, the reality television courtroom program differs from other shows in that it is thought to actively situate justice and morality in a practical and real sense.

The point of departure for this discussion of reality courtroom programming will be radio broadcasts of the early 20<sup>th</sup> century that featured reenactments of ‘real’ infamous trials. Then a discussion of the ubiquity of television during the middle of the 20<sup>th</sup> century will be addressed to reveal how the drama of real courtroom cases was presented to mass audiences. Finally, the later portion of the 20<sup>th</sup> century features the development of *The People’s Court* with Judge Wapner and leads to the current wave of reality courtroom programming on television.

## 5. Language

Any given individual possesses numerous types of codes at their disposal that they choose to utilize based on a given context (Gumperz, 1982). People can choose to make any given interaction formal or informal based on intonation and style of their language. However, contexts are often dictated by the locale of a given interaction. For instance, one would expect to use formal language within a courtroom while informal language would be used when interacting with a close friend. There exists a place and time in which formal language is expected, and there exists a time and place in which informal language is expected. Fasold (1984) states the “relationship of language form and social function has been much studied from the perspective of a phenomenon known as *diglossia*” (p. 34). Ferguson (1959) was the first linguist to introduce this term and it later became expanded by Fishman (1967). Diglossia sets up a binary distinction between codes (this could mean separate languages or dialects of the same language) and their respective distribution in society in which there is a *High* language and a *Low* language. Within this discussion, Standard English can be seen as the High language and various kinds of non-standard English, which will be discussed later in detail, as the Low language. Specifically, Susan U. Philips (1998) notes that within the courtroom “the spoken procedure...is also a containing or boundary-creating genre in the constitution of ideological diversity within law” (p. 118). Within the boundary-creating genre of law comes the use of a common code: Standard English.

Hence, it is no surprise that if one were to sit in an actual courtroom they would find the judge employing Standard English and little, if any, humor when addressing litigants. The utilization of humor within the courtroom, particularly on the part of

judges, is heavily mitigated by institutional limitations. Smith (1990) notes that a “judge’s probability of success in using humor in an opinion is decidedly low, for a number of reasons”: the humor used by a judge cannot compromise the seriousness of the case; the judge depends largely on the written word that is devoid of non-verbal aspects such as facial expressions; the judge must be appear to be spontaneous while being confined to the relevant aspects of the case, and; the judge does not have an audience that anticipates laughing (p. 4). Rudolph (1989) adds to this discussion by saying humor in the courtroom is like “a tortuous nuisance, judicial humor is basically ‘the right thing in the wrong place.’ People should enjoy a good laugh, but not in the traumatic and expensive context of litigation” (p. 179).

The linguistic delivery of law, as embodied by the courtroom justice, heavily impacts the behavior of others within a courtroom. Americans have traditionally been socialized to view the courtroom as a sacred and serious space in which the use of Standard English as well as language that often mirrors the written discourse of law books involving the deployment of Latin phrases such as *stare decisis* or *jura novit curia* (O’Barr, 1982). However, is this standard style of language utilized within the reality television courtroom? As exemplified by the language of Judge Marilyn Milian, reality television judges often utilize language associated with the seedy atmosphere of a darkened comedy club. The reality television courtroom justice embodies two seemingly disparate identities; they are a master of law, possess elite knowledge, and can perform the stern language of the court, but they are also human with emotions and ultimately administer the law with humorous discourse.

The field of performance studies can be used in order to examine this contrasting style of rhetoric found within the real courtroom versus the reality television courtroom. Schneider (1997) discusses performance art and how high culture can be seated directly alongside low culture to create a dissonance she labels *binary terror*. The example provided by Schneider is a black and white photograph by Robert Mapplethorpe entitled *Marty and Veronica*. The photograph depicts a nude black man with his back to the camera; his back is slightly arched revealing the soft outline of his spine as he crouches on the ground, not unlike the position a baseball catcher adopts during game play; his left arm is tucked under his left thigh and not visible to the camera eye; his right arm reaches up and his hand is placed upon the left knee of another model who is a white woman. The white woman is seated in a chair and she is facing the camera; she is wearing stockings, high heels, a tank top made of lace and what appears to be a thick velvet necklace; her head is tilted to the right and her eyes are lightly closed with her mouth slightly open revealing the immediate affect of a pleasurable experience; her right hand is reaching for her left breast and her left hand is running through her long hair; her legs are open and her high heels are placed on top of the legs of the crouching man. The man's head is covering the genital region of the woman and the camera only sees a portion of the woman's pubic hair. The two subjects are engaged in a sexual act with one another.

Although the image may initially seem reminiscent of a photograph published by *Hustler* founder Larry Flynt, closer inspection of the image reveals an elite level of artistic framing. There is a tremendous amount of attention devoted to the detail that the photograph possesses: the shadows fall upon both of these figures displayed in the photograph gently embracing certain portions of their body; the contours of the subjects

are softly lit and each limb flows delicately into the other. The smooth charcoal backdrop upon which the photograph is set reaches out to the spectator and gracefully demands to be recognized as a work of high art. This photograph was not taken in a trailer somewhere in Reseda, California, with a disposable camera by a novice photographer. Rather, the subjects associated with low culture, a prostitute and her client, are framed with expertise associated with high culture, which happens to be the eye of Mapplethorpe (p. 24). It is precisely this border crossing of high and low culture that creates binary terror. Although Schneider is explicitly discussing the liminal space of performance art in which high and low can co-exist, the idea of binary terror can certainly be found within the reality television court program in which low and high culture also co-exist.

The photography of Mapplethorpe upsets the binary structure of high and low in which society has come to depend on so heavily in order to provide some sort of order to the world. By having both the high and the low present within the confines of a single photograph, Mapplethorpe forces us to rethink where the so-called battle line can be drawn between the two seemingly rigid categories. Mercer (1991) states of Mapplethorpe's work:

The psychic/social boundary that separates 'high' and 'low' culture is transgressed and decentered precisely by the superimposition of two ways of looking, which thus throws the spectator into the flux of uncertainty and undecidability, experienced as the feeling of ambivalence and disturbance in which one's subject-position has been called into question (p. 192-193).

The spectator is forced not only to confront the discomfort of having high and low intertwined with one another, but one is also forced to confront him or herself and to confront the rigid discourses around which he or she centers his or her life. The 'normative expectations', as Mercer states, of society no longer become relevant when

being confronted with the photography of Mapplethorpe. Our fixed structures become ‘unfixed.’

It is precisely this kind of discomfort, or binary terror, with which the spectator is faced when viewing reality courtroom programming. Being exposed to comedic language that is traditionally associated with low culture is not an issue. Rather, the fact that high culture is merging with low culture creates binary terror. When one watches *Judge Judy* or *Judge Joe Brown* they are not seeing a stereotypical deployment of Latin jargon embodied by a hallow android that merely represents the long arm of the law. The reality television courtroom judge is in a position of authority and sits behind a bench while utilizing phrasing that is considered inappropriate for a courtroom. The discursive performances of the reality television courtroom judge will be examined and aligned with the discursive performance of the stand-up comedian. The four particular reality television courtroom justices that will be examined are Judge Judy, Judge Joe Brown, Judge David Young, and Judge Cristina Perez. Each judge has a very particular stylized and, hence, stereotyped rhetorical performance when serving at the reality television bench.

## **6. Justice is blind: objectivity v. subjectivity**

When the word justice is mentioned, a variety of iconic images may spring to the mind of one who has been socialized within the United States of America. Some may have childhood recollections of July 4<sup>th</sup> and watching fireworks while devouring a cake decorated as the American flag. Others may recall their experience in secondary school and carrying a book of U.S. history emblazoned with images of the American Bald Eagle

or George Washington. Still others may think of their tertiary education in which Lady Justice, blindfolded and holding balancing scales in her right hand and a sword in her left hand, served as a talking point when court cases, due process and morality are mentioned. As for me, I recall being indoctrinated into the American system of justice via my primary school classroom that housed an American flag to which I recited the pledge of allegiance every morning. I vividly remember one rainy day in Los Angeles as I languidly shuffled in a single file line among other elementary school students through the maze of concrete that inevitably lead to a dark hollow that echoed at the slightest sound. As we entered, the lights slowly illuminated the barren space and we were seated on the cold green and white-checked linoleum flooring. The uneven smooth and rough texture beneath revealed a thin coat of Teflon that had long since been destroyed by the marching shoes worn by thousands of little feet. On a typical movie-day at Ocean View Elementary School during the 1980s the students were quite pleased to enter the cafeteria to revel in a cinematic experience. However, such was not the case today. The other students and I sat before a 32-inch Zenith television set and were invited to be a part of the congressional experience through a television series on one of the four large networks, now which I cannot recall, entitled "We, the People" that chronicled the signing of the declaration of independence. This series not only provided information about the events leading up to the signing of the declaration of independence but also discussed how the ideas regarding governance from over 200 years ago are still applicable today.

No doubt the series I viewed in elementary school was laden with stimulating information regarding the foundations of the legal system in America. Unfortunately, I

cannot remember the greater intricacies involving jurisprudence nor the idyllic aspirations brought forth by America's Founding Fathers. Such is to be expected given the waning attention span of an eight year old. The only idea I recall from that video series involves neutrality. I remember the video presenting this idea that everyone in America is treated equally under the law. I remember the video presenting the idea that the laws governing citizens are objective and impartial.

It is, of course, little wonder why this idea of having an objective set of rules to govern the lives of Americans is so prominent. The stereotypical idea that law and justice are objective, neutral and free from any cultural bias is certainly not a new idea.

Hyde (1997) states:

Pretty much the entire history of sociological and philosophical thinking about law could be written as the story of successive attempts to model it as a system of rules and principles divorced from human empathy and identification, followed by the amazing repeated discovery that law is shot full of human empathy and identification (p. 31).

The law wishes to keep the corporeal experience at a distance and focus on a unifying objective truth: a series of rules that we all must obey. The set of 'objective rules' are seemingly absent of the human condition simply because they are not viewed as belonging to any human *body*.

Today, Americans, such as myself, were and are socialized in various ways, such as through an elementary school education, in which it is taught the law and those enforcing law are always objective. Because of this socialization process it is taught that courts are good because they bring about justice. Legal theorists Gibson, Caldeira and Baird (1998) state: "Simply put, to know courts is to love them, because to know them is to be exposed to a series of legitimizing messages focused on the symbols of justice,

judicial objectivity, and impartiality” (p. 344). There are a series of these iconic symbols of justice to which Americans are exposed early on in life: the black robe that literally and metaphorically hide the human body, lady justice who is literally and metaphorically blind, and the gavel that ultimately renders a decision.

All of the aforementioned symbols of justice perpetuate the ideal that judges refer to a set of ‘neutral principles’ to rule. Wechsler (1959) is a heavily cited legal scholar who actively served alongside the court system, assisting Supreme Court Justice Harlan Stone, was director of ALI (American Law Institute), and wrote several pieces that altered the way in which the legal community thought about how law and courts function. Among the writings of Wechsler was *Towards Neutral Principles of Constitutional Law* in which he refers to these neutral principles as guiding ideologies free from the chains of historical and immediate context that judges utilize in order to render decisions.

The foundation for the discussion regarding the protocol found in courtrooms will be the discussion of objectivity or, more specifically, the ideas of liberalism and neoliberalism. The master narrative of liberalism embodies many of the aforementioned ideals such as neutrality and the non-human stance of the judge, who serves merely as an extension of the long arm of the law. This liberal performance of justice can be found in a real courtroom as well as within the first reality television courtroom program from the 1980s entitled *The People’s Court* with Judge Joseph Wapner. However, this idea of neutrality shifts in the 1990s with the rise of such programs as *Judge Judy*. The television judge is no longer objective but becomes human and makes moral judgments about those who are present within *their* courtroom. Moreover, the contemporary reality

television judges deploy the discourse of neoliberalism in which they continually explain to litigants that they need to be responsible and not dependent on anyone to be successful.

## **7. Television & identity politics**

The rise of reality television courtroom programming occurred alongside a desire to create entertainment for the masses featuring real people in real situations. In order to entertain citizens, whether they are Athenians living some 2,500 years ago or whether they are Americans living in the early 21<sup>st</sup> century, a strong and recognizable narrative must be told with recognizable characters with which the spectator can empathize. The aspects of conflict, drama, and humor have been used throughout history from Greek tragedies to Shakespeare to the reality television courtroom. Despite this idea that real courtrooms are vast and great in numbers, the reality courtrooms do receive much more representation on television. Does this mean that the reality television courtrooms are more powerful than real courtrooms? Phelan (1993) notes of this visibility: “If representational visibility equals power, then almost-naked young white women should be running Western culture” (p. 10). In American television, it is the young blonde haired skinny bikini clad woman that receives a good majority of airtime, whether one is viewing a sports event on television with cheerleaders or a commercial with a female model marketing a product and embodying the adage ‘sex sells.’ However, the immense presence these women have on television cannot be equated with their political power in the real world. Similarly, visibility on television is not an accurate depiction of who is actually in charge of American courtrooms. Indeed, if the reality television courtroom

served as an accurate portrayal of real courtrooms then all of the comedic and minority personalities performed would be ruling the court system in America.

The issue concerning the representation of identity within the genre of reality television courtroom programming begs the question: who is benefiting from such depictions? There are two reasons (and two separate factions that may be the benefactors of these judicial depictions) why the recent surge of courtroom programs has featured only minority identities. The first reason may be that Americans trust the minority voice over the traditional white conservative voice, such as Judge Wapner.

Perhaps the personality of the minority is more entertaining than its conservative counterpart and with this amusing identity comes a type of accessibility, credibility and humanistic wisdom that speaks to a mass public. A new mode of power is taking shape and audiences favor the lived experience and practical expertise of judges, rather than the traditional highfalutin discourse associated with law (Collins & Evans, 2008). Perhaps this new mode of power gestures towards a breakdown of the conventional architecture of power in which Judge Judy is seen as more reputable than Judge Antonio Scalia. Perhaps it is simply the genre of reality television that maintains the diversity seen today. Braxton (2009) notes: “The much-maligned world of reality television is winning praise these days for ‘keeping it real’ in an unexpectedly relevant way – reflecting a more diverse America than its more highbrow cousins in scripted prime-time shows.”

However, if the minority voice were truly more powerful than the straight white man, then certainly there would be some type of physical manifestation of this within the real world. Again, this is not the case. The white voice continues to maintain a strong presence within the demographics of real courtrooms across The United States of

America: 70% of judges are white men and 15% are white women (Belczyk, 2009). This issue of visibility versus power gestures towards the second possible reason why only minorities are depicted as reality television courtroom justices.

The second reason why minorities are featured on reality television courtroom programs may be that actual judges serving in courtrooms across America are not interested in plunging into the world of entertainment. One could hardly picture Supreme Court Justice Antonin Scalia unhappy with his current position and seeking retirement to have his own reality television courtroom program. Public perception of justice, whether altered by reality television courtroom programs, does not mitigate the power that practicing judges have to render verdicts according to law books. If citizens wish to be entertained by minority personalities in black robes on television, it is of little to no concern for the white men behind the bench. Chapter 5, *Conclusion*, will end the discussion of justice and reality television by briefly examining the types of identities that we see on reality television courtroom programming and raising questions for further discussion.

## **CHAPTER 1: The History of Reality Television: The rise of reality television courtroom programming**

*I like that show where they solve all the murders, an heroic point of view  
It's got justice and vengeance too, at least so the story goes.*

- Neil Peart (Bravest Face)

The narrative of human drama and conflict that emerges from the arena of courtrooms has long captured the attention of the public. Perhaps this is because the very word justice elicits a myriad of emotions and, regardless of the varying definitions found in varying cultures, connotes a universal human experience. Sen (2009) has noted the central question being asked when seeking a theory of justice is “what is it like to be a human being.” Moreover, throughout the course of human history, conflict has always arisen and the need to resolve this conflict has been paramount. Although the ways in which conflict resolution has manifested itself among humanity across time and space, the process of justice has always been a factor at work. Moreover, throughout recorded human history, there has been a tradition of presenting justice to the public through some type of performance.

For instance, Ancient Greece provided a series of plays that dealt with this theme of justice and how courtrooms operated; the Bible provides numerous examples of how justice functions and inspired stagings of justice that continue to be performed today; and several of Shakespeare’s plays, such as *The Merchant of Venice*, feature courtroom scenes and are embedded with famous lines such as ‘a pound of flesh’ to evoke justice. As such, the performance of justice and the desire of the audience to see such performances is nothing new. However, the late 21<sup>st</sup> century has brought about a

particular form of staged justice that seems to fall somewhere between fiction and reality: reality television courtroom justice. So, how did American television reach this point in which Judge Judy and Judge Joe Brown have become household names that, regardless if one thinks these television justices are little more than jokes or regardless if one thinks these television justices are respected and authoritative figures, often serve as a starting point for a discussion about justice among many Americans?

The interpersonal confrontations among citizens are synonymous with courtrooms, either real or fictitious, and are at the heart of how justice is performed within the television courtroom. Courtroom television has emerged as a hybrid of the institutional practices found within actual courtrooms across the country and institutional practices of television. Technological advances in mass communication allotted for larger audiences to have immediate access to the conflicts arising within courtrooms. The point of departure for this section on courtroom television will be the advent of radio because it offered a forum in which the masses could simultaneously witness the procedure of conflict resolution. Radio marked a pivotal moment in terms of legal dramas, in particular, for several reasons. First, no longer was the 'courtroom' audience limited by geographic location; one could listen to the drama of a courtroom unfolding from the comfort of their living room. Hence, an audience was not merely localized to 12 jurors or a small group of people sitting in a trial; an audience could now consist of potentially hundreds or thousands of people all scattered across America. Secondly, the immense popularity of dramatic radio broadcasts during the early 20<sup>th</sup> century served as a prime location for courtroom performances to flourish. Perhaps the most famous radio broadcast in American history was in 1938 with Orson Welles's version of *War of the*

*Worlds* that convinced many that aliens from outer space were actually attacking earth. Regardless of whether people were authentically frightened by the precipice of alien beings taking over the world or simply enjoying an evening of entertainment one thing was clear: people were listening. The fact that such a large audience all across America was able to simultaneously be a part of a live broadcast served as a catalyst for things to come. Indeed, what could be more dramatic than the story of real people involved in real cases throughout the course of American history?

One of the most successful courtroom related radio programs was entitled *Famous Jury Trials* and aired from 1949-1952. The radio program was billed as “the dramatic story of our courts, where rich and poor alike, guilty and innocent, stand before the bar of justice” (“Old Time Radio Archive”). The show was a recreation of sensationalized jury trials throughout American history, such as *The State v. Aaron Burr*. Trials from the earlier portion of the 20<sup>th</sup> century were also featured but names of the litigants were altered. For instance, *The People v. James E. Brown* was a case from the 1920s that took place ‘in a certain mid-west town’ in which senator Brown was accused of offering a bribe to a member of congress to vote against prohibition. However, the show did not simply feature actors reenacting what had occurred in the courtroom, but outside the courtroom as well. Although the writers of *Famous Jury Trials* could only speculate as to the content of conversations between litigants, such as one between senator Brown and his fellow congressman, the dramatization of such undocumented interactions found favor with audiences. In addition, the inclusion of orchestral music underlying the narratives of famous jury trials also enhanced this radio performance.

The popularity of this show also sparked other similar radio programs that were largely based on fictitious situations, such as *Perry Mason*, which later became a hit television series featuring the actor Raymond Burr. Despite the popularity of these radio courtroom programs, there were limitations that existed in terms of how much they could convey the theatrical ‘reality’ of courtrooms. However, the advent of television offered a promise to the spectator to provide a depiction of reality that would be unparalleled to all other forms of media. Audiences would no longer have to imagine the dramatic scenes of the courtroom that were taking place from little more than aural narration; audiences could now empirically experience the litigants.

As television became widespread in America during the 1950s, so too became court programs. These courtroom television programs mirrored their counterparts featured on radio in that they were reenacted performances of actual cases. One of the more successful courtroom television programs that emerged during the later portion of the 1950s was entitled *Traffic Court* which aired on the American Broadcasting Company (ABC) (“Traffic Court”). The show featured actors who would reenact real court cases and arraignments involving traffic violations. Undoubtedly, the conflict between authority and citizens, particularly in regard to traffic concerns, was of particular interest as street racing emerged during the 1950s and was glamorized by such films as *Rebel Without A Cause*. Given the success of this courtroom program, there followed other programs with similar formats. For instance, a television series entitled *Night Court*, not to be confused with the 1980s television series, was filmed in Los Angeles through KTLA and aired during 1958 (“Night Court”). In addition, the television show *Divorce Court*, which has been reinvented for a contemporary audience, aired from 1957 to 1969

also featured real cases performed by actors (“Divorce Court”). Despite the widespread production of these courtroom dramatizations on television, they were not necessarily considered successful in their original format.

However, both professionals and audience members alike plagued many of the courtroom programs airing during the 1950s with criticism. Although the idea of watching real court cases was a novel concept and garnered audience attention, the acting was seen as over-the-top and not very realistic for a courtroom proceeding. It is little wonder, of course, that audiences responded negatively to the actors featured on the courtroom programs who were not, by any means, considered celebrities of the day. Television critic Cecil Smith (1981) states of courtroom programs during the 1950s:

By saying that these shows used actors, I am perhaps, exaggerating a bit. What they used were the cheapest actors around, would-be actors and beginners. They often invited newspaper people to do the shows. Not only were we distinctive types, we worked cheap. (Those were the days before integrity set in on the newspaper business; such a circumstance would never happen today).

In addition, real lawyers were often cast to play lawyers in that they ‘worked’ as an actor relatively inexpensively and they were ‘natural hams’ when standing before a television camera (Smith, 1958).

However, there was a larger issue at hand with these real court television programs. Such programs as *Divorce Court* featured an actual judge who was still serving a term while concurrently filming the show. *Traffic Court*, for instance, featured Judge Evelle J. Younger of the Los Angeles Municipal Court. An acting judge reenacting actual court cases on television with a sponsorship, in this case Chevrolet vehicles, was a violation of a code of ethics for judges (Grace, 2003, April 3rd). As such,

the court programs that emerged from radio to television format during the 1950s declined during the 1960s.

## **1. Reality**

Although the courtroom television programs of the 1950s featured dramatic conflicts and actual cases lifted from actual courtrooms, the performances were still embodied by trained actors. What was missing from these programs was the reality and authenticity of ‘real’ people. Game shows, on the other hand, had long established popularity among audiences and this idea of real people taking risks and winning prizes intrigued America. One of the earliest game shows that received high ratings in America was entitled *Queen for a Day*. The premise of this game show was to have women share their stories of hardship before a live studio audience and ultimately be judged by the audience via an applause meter; the contestant deemed to have the most heart-wrenching story, and hence receive the loudest applause from the studio audience, would be awarded a cash prize (“Queen for a Day”). *Queen For A Day* aired in various formats, both on radio and television, between the 1940s and 1960s. Although the program did feature aspects of what might later be labeled reality television, at the time it was labeled as a game show.

The creative mind behind the game show *Queen For A Day* was a man named John Masterson. What drove Masterson to create these programs was his vision and passion for presenting real people, unscripted actions, and gaining authentic reactions from audience. Of course, the ‘reality’ of any game show on television is mediated by numerous factors such as the physical location providing a theater-like atmosphere with a

stage, lighting, host, and rows of seating for the audience. One could certainly raise questions regarding what is authentic in terms of the performances that Masterson produced. However, critiquing the authenticity of reality presented in *Queen For A Day* is not the issue for this discussion. What is of importance is the fact that these shows were explicitly presented to the audience with the labels of ‘real’ and ‘authentic’ when referencing the contestants involved. Regardless of whether or not the viewing audience felt game shows presented real people with real problems or whether the viewing audience felt these shows were nothing more than a well thought out spectacle, one thing is certain: people had their televisions tuned to these game shows. This is evidenced by the lengthy commercial success of *Queen For A Day*.

Following the successful run of *Queen For A Day* on two major networks, ABC & NBC, Masterson toyed with the notion of recording real proceedings among various courtrooms in the Los Angeles area and airing segments from them. Roger M. Grace is a lawyer who began practicing during the early 1970s in Los Angeles and served for several years as legal counsel to the *Radio & Television News Association of Southern California*. The interest Grace had in mass communication and law coupled with his geographic location of Los Angeles placed him in continual contact with many producers of television programming. A column in Grace’s Los Angeles newspaper *Metropolitan News Enterprise*, entitled ‘Reminiscing’ is dedicated to providing first-hand accounts of various judicial programs filmed in Los Angeles, including the original *The People’s Court* with Judge Wapner. Grace notes in 1975, Masterson approached Monty Hall, a producer and developer best known as the host of *Let’s Make a Deal*, with the idea of recording actual courtroom proceedings (Grace, 2003, July 3<sup>rd</sup>). Hall displayed interest

in this initial pitch of what would later become *The People's Court*. At this time, a young Stu Billet, an associate of Monty Hall, was given the task of shopping this idea to networks in hopes of ultimately producing a real courtroom drama. However, such a task would prove to be rather daunting.

## **2. Ladies & gentlemen, no pictures please**

As Billet wandered throughout Los Angeles pitching the idea of *The People's Court* to the big three networks of the 1970s (CBS, NBC, and ABC) he faced nothing but rejection. Whether the executives at the big three networks loved or hated the idea of featuring a program dedicated to having a camera film the conflict of actual courtroom proceedings was of little importance. The issue with pitching such a show was the impossibility of obtaining permission to film and broadcast from within the hallowed halls of the court. There has been a long and tumultuous relationship between the mass media, represented by recording equipment, and courtrooms.

The initial piece of technology with which the court had to confront was having photographs taken in the courtroom. The mechanics of photography was plagued with limitations upon its inception: photography initially required a lengthy exposure time, precise lighting techniques, was costly, and the machinery to take a photograph was virtually immobile. As such, the idea of recording court proceedings by camera was non-existent. Indeed, it would be impossible for a courtroom to avoid being distracted by a photographer using a Daguerreotype requesting the participants of the court case remain still for 15 minutes during the proceeding. However, during the middle of the 20<sup>th</sup> century

the advent of the compact 35-millimeter news camera...made still photography less obtrusive. Today, most judges require that still courtroom cameras be encased in 'blimps' – padded housings that absorb the distinctive 'ker-atch-a-tee' noise of a closing camera shutter. Photographers are typically assigned to fixed positions at the rear of the room away from the normal line of sight (Cohn & Dow, 2011, p. 24).

As photography equipment and audio recording equipment became more accessible and easier to distribute during the early 20<sup>th</sup> century, so too did a looming threat of destroying the court system.

Threats of disturbing justice or somehow removing the veil of authority from the judge were always a threat when the presence of a camera was felt in a courtroom. Critics of cameras in the courtroom, such as Judge Alfred T. Goodwin, expressed “the fear that selectivity of the few minutes chosen for broadcast will distort or conceal what the jurors saw and heard”; in addition, the concern was that the court and the justice system would turn into little more than a circus in which justice would become a laughing matter (p. x). This is not to say that this fear of distorting justice was the national consensus in America. Proponents of cameras in the courtroom “claim that television coverage is desirable because conveying real courtroom procedure to millions of homes will enhance public understanding and reduce misconceptions about the administration of justice without necessarily interfering with what goes on within the courtroom” (Gerbner, 1987, p. xii).

With varying ideologies regarding what the camera would or would not do in terms of justice and the courtroom, it is little wonder that judges were not uniformly aligned with one theory of how cameras and audio recordings would shape cases and public opinion. As such, inconsistency existed in terms of which judges would allow

cameras in the courtroom during the early 20<sup>th</sup> century in which recording technology became ubiquitous, particularly in America (Barber, 1987, p. 2). Those courtrooms that did allow photography and audio recordings are reported to have taken on a carnivalesque appearance. It is reported that juries were distracted by the fiasco caused by courtroom photographers; quiet whispers of gossip and outright bickering became prominent among the court. In addition, the photographs of defendants were labeled with degrading terms by the press and photographs of the plaintiffs were labeled with sympathetic and victim-like terms, and crowds of intrigued onlookers clamored outside the walls of courtrooms to gain a glimpse of these media created angels and demons (p. 3).

Perhaps the most infamous moment in which a carnival atmosphere overtook a courtroom was during the 1935 trial of Bruno Richard Hauptmann who was accused of kidnapping and murdering Charles Lindbergh's infant son. Several 'hidden' cameras were mounted in the courtroom but served as little more than perpetual eyesores for the gallery. Although the maximum capacity of the courtroom was 260 people, the room was crowded beyond this point featuring both journalists and celebrities of the day, such as Ginger Rogers, Jack Dempsey, and Jack Benny; those in the courtroom often had to be kept under control as "71-year-old Judge Trenchard admonished the gallery for outbursts of laughter and even applause" (Cohn & Dow, 1987, p. 15). However, it was not just the journalists and interested parties that were fueling the spectacle. Defense attorney Edward Reilly "boasted that he would name four people who were the real kidnappers of the Lindbergh baby" and prosecuting attorney David Wilentz referenced Hauptmann as an 'animal' and 'public enemy number one' in his closing arguments (p. 16). Such

verbiage from both the defense and prosecuting attorney were emotionally charged and inevitably received reaction from the public.

It is unclear whether or not cameras and recording devices were directly responsible for the theatricality of the courts (Barber, 1987, p. 7). However, because this ‘new’ technology of photography and audio recordings were seemingly the only variable that could be easily marked for sparking the changes in courtrooms, an official stance was taken on media within the courtroom. The American Bar Association formally banned radio broadcasting and courtroom photography via Cannon 35 in 1937:

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted (Barber, 1987, p. 9).

This Cannon explicitly wishes to promote the sanctity of the courtroom by utilizing such verbiage as ‘dignity’ when discussing how a courtroom should be maintained. The sentiment from the American Bar Association posits that the court has become little more than a carnival due to emerging technology and such an atmosphere has no place in American justice.

Of course, over the years there has been a tremendous amount of push and pull between courtroom reporters and courtroom justices as to whether or not recording devices have a home in the courtroom. The Oklahoma Supreme Court allowed for the pretrial hearing of Gene Leroy Hart, accused of murdering three Girl Scouts, to be publicly televised in 1953 (p. 10). The reason for media coverage being permitted was “in part because public interest in the trial was high and the courtroom could not

accommodate large numbers of spectators” (p. 11). Of course, restrictions were placed on how the case was recorded: “the single camera had to be in a fixed location and operated by one cameraman, no rebroadcast of the proceedings was allowed, and the trial judge had the authority to terminate or restrict the coverage at any time” (p. 11).

The sentiment of cameras being viewed as a threat to the ways in which justice is practiced has remained at the forefront of discussion for courtroom justices. Throughout the 20<sup>th</sup> century and into the 21<sup>st</sup> century, judges have always been hesitant to allow television cameras into the courtroom. Several cases since Gene Leroy Hart have illustrated this point from the televised trials of serial killer Ted Bundy to O.J. Simpson to Scott Peterson. Although cameras are now allowed in courtrooms on a permanent basis, there is always restrictions placed on such media and the judge is the ultimate decider in whether or not it can continue from case to case (p. 12).

A television producer convincing a judge to allow a camera, or multiple cameras, unlimited access to the various trials occurring in the courtroom was going to be rather difficult, to say the least. This is particularly evident given the stringent guidelines for California Courtrooms that continues to this day, which explicitly labels what media coverage is: ‘Media coverage’ means any photographing, recording, or broadcasting of court proceedings by the media using television, radio, photographic or recording equipment (Rule 908 (b) (4), California Rules of Court). This is not to say that continual courtroom coverage by the media was completely impossible. Ted Turner’s Turner Broadcasting System would eventually launch Court TV, now Tru TV, in the early 1990s. This channel was initially dedicated to broadcasting unedited and live trials. However, these trials were typically ‘newsworthy’ to the public due to the circumstances

of the case, which usually involved homicide. But, certainly a judge would never allow for small claims court cases to be recorded. How was this issue of having court hearings recorded for an audience going to be dealt with by Stu Billett? The idea of recording real courtroom proceedings was an uphill battle and put on the shelf for several years and seemingly would never be produced.

### **3. What is really going on in the courts?**

Stu Billett ultimately parted ways with Monty Hall and decided to enter the entertainment world on his own. Despite the initial rejection he faced when soliciting Masterson's idea of filming real court cases to major networks, Billett remained fascinated by real cases and real people. As such, Billett decided to visit a few Los Angeles county small claims courtrooms in order to gain a sense of the atmosphere. Billett states: "I went from courtroom to courtroom to see what was going on...it was so dull. People standing there reading off their long, yellow pads. Judges propping their eyes to keep them open" (Grace, 2003, July 3<sup>rd</sup>). Such an observation on the part of Billett gestures towards this idea of how reality is mediated on reality television. That is to say, Billett was intentionally searching for cases and people within the courtroom that were humorous and entertaining. Following a series of disappointing visits to various courtrooms, Billett eventually found himself within the confines of a small claims court that presented some character and humor. Billett recounts sitting in the courtroom while witnessing a case in which a "little Jewish man (the plaintiff) was suing a black kid (the defendant)" (Grace). The Jewish man had purchased three pairs of glasses trimmed with reflective tinsel from the youth; however, once the man arrived home the tinsel had fallen

off. The plaintiff insisted that the glasses were faulty products and demanded his money back. Yet, the man “insisted on putting the three glasses in one bag” to transport them and it turned out the man was suffering from palsy (Grace). As such, his hand shook which caused the glasses to collide with each other in the bag and eventually remove the tinsel. Billett found this case entertaining and funny and noted that with 75,000 small claims cases being filed in Los Angeles during the course of a year there must be a percentage of them that were humorous, like the case with the glasses.

Billett knew that bringing a camera into the courtroom to film cases, such as the aforementioned involving three pairs of glasses, would be problematic. However, Billett had an idea that would allow actual courtroom cases to be filmed without having to worry about the legalities of media coverage within the actual courtroom. The physical stage of the courtroom was relatively easy to recreate for networks, as evidenced by the numerous court programs aired during the Golden Age of television. As such, Billett altered Masterson’s initial idea of bringing a camera in the courtroom and decided that bringing the actual litigants into the mock courtroom in a studio setting would be the best way to get around the inflexible rules of the court. Because Masterson was the person who originally thought of the concept of airing real cases on television he is given credit as the creator of *The People’s Court*.

While the mock courtroom satisfied the issue of allowing cameras to film real litigants, there was another issue with which still needed to be dealt. Was the show that Billett envisioned planning on acting as a collection agency for the debt that either party accrued in accordance with the decision of the judge?

The jurisdictional maximum in small claims court was then \$750...it was decided that a winning plaintiff would be paid the amount of the award, with a \$750 ceiling on it, out of the show's account. To get on 'People's Court,' the parties dismissed their actions and agreed to binding arbitration, in a simulated courtroom setting (Grace).

The show would feature a retired courtroom justice overseeing a conflict between two parties via the act of arbitration. Both parties involved would allow cameras to document the process of arbitration involved in their case and agree to have the network pay for damages in return for appearing on camera. With these two legal issues (cameras in the courtroom and collection of a debt) no longer a concern for the production of the show, the next question was whether or not networks would find interest in such a program.

#### **4. Ralph Edwards & Stu Billett productions**

While seeking a company to produce *The People's Court*, Stu Billett met an executive producer by the name of Ralph Edwards. Edwards was no stranger to the arena of what would later be dubbed reality television; he was the creator of the popular show *This Is Your Life*. In this show, 'real' people were brought before a live audience and surprised by having their life stories told via the narratives of those close to them in a documentary style format. It is little wonder that Edwards took to the idea that Billett had in that this idea of placing real people in front of an audience was at the heart of *This Is Your Life*. With Edwards & Billett now formally partners, and Edwards bringing his experience in the entertainment industry to the duo, the two were able to convince local production company KTLA, Channel 5 in Los Angeles, to produce a pilot episode for *The People's Court* (Grace). The next step to bringing a reality courtroom program to

fruition was to choose a particular judge to preside over the cases that were brought forth to the court.

The duo of Edwards & Billett had made note of several judges throughout the Los Angeles area that had garnered media attention for their methods within the courtroom. However, when Edwards & Billett approached several judges about the possibility of being part of a courtroom television series, they all declined. The judges being sought were currently serving in Los Angeles courtrooms and were very hesitant to leave the bench and take a risk on a show that may not provide the stable income that practicing law would. Perhaps the best choice for the television program was a judge who was not necessarily practicing, but not a judge who had been out of practice for too long as to be out of touch with courtroom proceedings. A judge was needed who had recently retired.

### **5. Enter Joseph A. Wapner**

Joseph A. Wapner had served nearly twenty years on the Los Angeles Superior Court before making the decision to retire during the later portion of the 1970s (“Wapner”). During his service on the bench, Joseph A. Wapner was a part of an annual tennis tournament for judges in Los Angeles. Wapner’s tennis partner for these tournaments was fellow judge Christian Markey, who then served on the Los Angeles Superior Court. Markey happened to be friends with Ralph Edwards and the two would engage in conversations about filming cases brought before a small claims court. Of course, Markey was initially offered the position to preside over these televised cases but he declined due to the fact he was not prepared to retire at this point during the late 1970s. However, Wapner had just retired and Markey was quick to recommend his

tennis partner, and friend, to Edwards. After a lengthy conversation between Wapner and Edwards, Wapner agreed to film a pilot episode for *The People's Court* (Grace, 2003, June 26<sup>th</sup>).

Now that Billett had restructured the format of producing courtroom television that Masterson had initially designed, it was time to pitch this idea to the networks. However, would the networks be responsive given the new design of a mock court versus a real court? The National Broadcasting Company (NBC) showed interest in the idea of having a mock courtroom with real litigants presenting their cases before the camera. However, NBC was not sold on the idea of having a silver-haired white judge presiding over these cases. The network conceived of having a black comedian listen to the cases and act as a moderator while making jokes. Then, during the commercial break the black comedian would consult with a real judge off camera and return to render a verdict based on this consultation (Grace). Billett notes that he was provided with two names in particular, Nipsey Russell, who at the time had a very successful career performing as a panelist on various game shows such as *Match Game*, *To Tell The Truth & What's My Line*, and Pigmeat Markham, who was known for his novelty recording entitled *Here Comes the Judge* which found recurring fame on Rowin & Martin's series *Laugh-In*. Not only was NBC in support of this idea of having a comic judge, but Tony Cassara (president of the Television Division of Golden West Broadcasters which owned KTLA Channel 5 in Los Angeles) also supported the idea. Billett was very uneasy about this formatting of the show simply stating, "it was a stupid idea" (Grace). However, the studio said that in order for them to support *The People's Court*, they wanted two pilot episodes filmed: one with Wapner and one with a black comedian.

Billett decided to have Wapner come to the KTLA studio in Los Angeles on a Monday to film a pilot episode for the People's Court:

He [Joseph Wapner] came to the production company's office...and presided over a case in which a woman, who was about five feet tall, 100 lbs., was suing a six-foot man who weighed about 275 lbs., for battery. These weren't actors. Just as on the actual show that was being planned, 'real people' were there with real disputes. Wapner conducted binding arbitration in a mock small claims court setting. As Wapner recalled it, it was when he told the irate defendant to sit down and be quiet, in an authoritative tone, and the hulk complied, that the producers became impressed (Grace).

However, it was not simply Wapner's authoritative tone or his ability to control a courtroom that caught the eye of the producers. Wapner also had the proper 'look' that the studio wanted. Billett said of encountering Wapner for the first time: "I thought – this was Tyrone Power...what a great looking guy" (Grace). In addition, Wapner, unlike some of the other younger prospective judges at the time, had silver hair, which made him appear more distinguished and experienced.

Following the filming with Wapner, Billett could not bring himself to film an alternative 'humorous' version of *The People's Court*. So, Billett decided to sell the pilot only with Wapner. Needless to say, NBC and KTLA were not pleased with this decision and were unwilling to distribute the program. However, *The People's Court* was very inexpensive to produce in that no expensive actors or writers were needed to complete each program. As such, the show found a home in syndication, which meant that it would be distributed and sold to various television stations according to region in America. When a program is on NBC, for instance, it has the luxury of being broadcast nationally in America by one station. Although some syndicated programs had found

success during the 1970s, the majority of these programs were game shows (also inexpensive to produce), such as *Let's Make A Deal*.

When *The People's Court* initially aired in 1981, the term "Reality Television" had not yet entered the American lexicon. Hence, it was difficult to affix a particular label onto a program such as *The People's Court*. Was it a game show like Masterson's *Queen For A Day*? Was it a documentary like Ralph Edward's *This is Your Life*? Eventually, *The People's Court* was labeled in TV Guide as a crime-drama or judicial program. Shows labeled as game shows already had an audience in daytime and had the opportunity to succeed in syndication. With the ambiguity faced in determining the genre of *The People's Court* and entering a market of well-established genres, it was unclear how audiences would respond. But, syndication often meant that the show would almost certainly be met with a fate of low ratings and a short run.

## **6. The rise and fall of the People's Court**

*The People's Court* debuted on September 14<sup>th</sup> of 1981 and was an enormous success in terms of Neilson ratings. The show brought forth a new genre of television that emphasized the aspect of reality and received mainly positive reviews. Bob Greene of the *Chicago Tribune* wrote in 1982:

And thus comes the genius of 'The People's Court.' Its producers know that there is nothing we enjoy more than to see other folks who don't like each other arguing and trying to take advantage of each other in public. There are enough upbeat, heartwarming shows on television; 'The People's Court' gives you people who are upset and angry. The subject matter isn't as exotic as that on the soap operas. But 'The People's Court' makes up for this by the fact that its participants are real.

In addition, *The People's Court* became such a staple in American culture that "by the

late 1980s, six times more Americans could identify Judge Wapner by name than could identify Chief Justice William Rehnquist” (Mather, 2005). The court program became such a piece of popular culture that it was referenced in such films as 1988’s *Rainman*, in which an autistic man named Raymond (played by Dustin Hoffman) has an obsession with watching Judge Wapner on television. Despite the success of *The People’s Court* in the early 1980s, changes in the landscape of television were rapidly occurring. Although *The People’s Court* can be seen as a vanguard in terms of reality television, it occupied a liminal space between game show rhetoric (in its attachment to Edwards, Billett and Masterson) and its crime /drama rhetoric. The show would have to change with the times or face extinction.

During the later portion of the 1980s, what Americans were seeing on television began taking a sharp turn. Smaller stages and lesser-known entertainers were replacing the lavish stages on which big name actors were performing. Many television scholars point towards the expansion of independent stations and cable television, advertisers having to spread their revenue among these rising stations, audience fragmentation, and corporate debt among the big three networks (Raphael, 2009, p. 121). As such, the television corporations faced great difficulty meeting the demands of the high-end talent featured on their networks that included actors, producers, and writers. For instance, actor Ted Danson of *Cheers* was earning \$500,000 per episode during the peak of its run in the late 1980s. Corporations were quite hesitant to release their talent, which brought in ratings, and decided to deal with these difficult economic times by cutting back on those who worked ‘below-the-line’; this included technicians, engineers, and extras (p. 123). In addition, production companies also bypassed the labor associated with SAG

(*Screen Actors Guild*) and only took labor that was not a part of this in order to cut costs because the companies would not have to pay out various costs associated with the SAG union (p. 124).

One of the longer running programs that emerged from this situation was *America's Most Wanted*, which premiered in 1987 on Fox. The host of this program was John Walsh who had his own personal history with crime and punishment prior to the premiere of the show. Walsh's son, Adam, was murdered in 1981 and from that point on Walsh became an advocate for victim's rights and anti-crime campaigns. Each hour-long episode featured various fugitives wanted for various crimes such as murder and theft; each episode also featured missing persons. The program produced re-enactments of the circumstances surrounding each person and provided personal information about each person as well. The purpose of *America's Most Wanted* was to make the public aware of issues regarding public safety and, most importantly, to bring fugitives to justice. That is to say, the public would watch the program and if they had seen anyone matching the description of the fugitives shown they would alert authorities. The host, John Walsh, would always announce at the beginning of each program the number of fugitives that had been brought to justice so far with the assistance of the public. This program was highly successful and ran for 24 seasons until 2011. The program was also inexpensive to produce since each segment featured a different freelance crew unbound from the demands of the SAG union (p. 125).

The actions of these big production companies eventually led to a strike by labor associated with the SAG. Big production companies responded to this strike by ordering more of the few reality-television programs that were already on the air, such as

*America's Most Wanted*. In addition, the labor strike also led to the creation of more inexpensive reality television programs as well. *The People's Court* aligned with *America's Most Wanted* in that it was a relatively low-budget program to produce and had acquired reasonable ratings; hence, the court show could not possibly face cancellation in light of the turmoil that was plaguing Hollywood. Could it?

## **7. True story**

Mary-Ellis Bunim & Jonathan Murray were two producers working with MTV during the early 1990s and had envisioned a soap opera style program that would target the youth population of the time known as 'Generation X'. However, MTV was still a relatively young channel and was facing similar issues that its larger network counterparts were, such as not being able to hire costly talent; so, Bunim & Ellis restructured their initial idea and decided to employ real young people instead of actors ("The Real World"). The show in question, *The Real World*, premiered in 1992, and continues to air today, which makes it one of the longest running reality programs in history. The first season, and all subsequent seasons, had a simple premise that was clearly announced through the actual voices of the respective cast members during the opening credits of each episode: *This is the true story. True story. Of seven strangers. Picked to live in a loft. And have their lives taped. To find out what happens. What. When people stop being polite. Could you get the phone? And start getting real. The Real World.*

*The Real World* did not, however, focus on the loft or the big city lights of New York but focused on the identities of the cast members. In addition, the show featured a

variety of real individuals with a variety of identities: the aspiring musician Andre, the conservative southern girl Julie, the model Eric, the openly gay artist Norman, the aspiring hip-hop artist Heather B., the aspiring folk artist Becky, and the poet Kevin. The show was a huge success at the time, and continues to be, for MTV; the show is also credited with being the first reality television program and ushering the term *reality TV* into the American lexicon. It was *The Real World* that ignited a slew of television programs dedicated to depicting reality.

The early 1990s marked a time in which the television airwaves of America were inundated with reality programming featuring real people. Perhaps the most notorious of these shows is *Jerry Springer* in which real people were brought on and seemingly encouraged to engage in physical confrontations with one another. For instance, one show featured David, a self-proclaimed kung-fu hillbilly, who was brought on the show to ask his brother, Wayne, if he could pimp out his girlfriend, Ashley, as a hooker. As a desire for real life drama became paramount, so too began a search for new ways in which to present such drama. Networks began producing a seemingly endless amount of reality television shows that featured camera crews following real police officers, cameras following real cheating spouses, and camera crews fixed on a group of real people on a real deserted island. Whether these reality television programs were authentically real or not did not seem to be too much of an issue with ratings being so consistently high. Chants of Andy Warhol's infamous '15 minutes of fame' quickly became linked to reality television.

Perhaps the elderly straight white man that is Joseph A. Wapner had no place among the culture of personality that was emerging during the later portion of the 1980s

in which only those who were extremely over-the-top would be televised. Perhaps that is why the ratings for *The People's Court* plummeted during this time and eventually led to its cancellation in the spring of 1993. However, when one thinks of drama and reality, isn't the courtroom a site that may have been overlooked among all the arenas in which cameras could plausibly go? After all, what better way to present real life drama than in a setting that is intended to resolve conflicts: the courtroom.

### **8. Try that in heels**

As the original *People's Court* and Judge Wapner were losing favor with the Neilson ratings, another 'real' judge from New York was gaining some notoriety for her unabashedly brazen behavior. Judge Judith Sheindlin was the object of discussion for an article in the *Los Angeles Times* on February 14<sup>th</sup> of 1993. The article was titled "Law and Disorder: Tart, tough-talking Judge Judith Sheindlin presides over the grim pageant of dysfunction known as Manhattan's family court." The article explicitly features unconventional verbiage one might hear from a judge. Sheindlin is quoted in the article: "I can't stand stupid, and I can't stand slow...I want first-time offenders to think of their appearance in my courtroom as the second-worst experience of their lives...circumcision being the first" (Getlin, 1993).

Although Sheindlin's behavior featured in the newspaper was a far cry from the stern and seemingly emotionless embodiment of justice that Wapner performed, Judge Judith Sheindlin gained the attention of television executives on CBS and was featured on a segment of the news program *60 Minutes* the same year as the Los Angeles Times article was released. The woman whom *60 Minutes* reporter described as a "5 foot 2

package of attitude, with a capital A” received national attention from her brief segment and soon television executives showed interest in Judge Judith Sheindlin.

But, in what capacity could Judge Sheindlin serve on television? *The People’s Court* had just been canceled and led many network executives to believe audiences were not really interested in seeing another courtroom program. Creator of *Judge Judy*, Peter Brennan, felt confident that the outspoken Judith Sheindlin would fit perfectly into the foray of reality television programs that were running wildly rampant during the middle of the 1990s. In 1996, Judge Sheindlin retired from her position in the New York State court and was offered her own reality courtroom program. However, it would not simply be a remake of the 1980s counterpart *The People’s Court*. It would not be *The People’s Court with Judge Judith Sheindlin*. Instead, audiences were offered *Judge Judy*. Having her name in the title suggested that it was, indeed, her courtroom and put her in control. Judge Judy had remained in the headlines for her outspoken disposition and even wrote a book prior to retiring entitled *Don’t Pee On My Leg And Tell Me It’s Raining* in 1996. This meant that her name was visible in the public eye prior to the premiere of her courtroom program. From the time *Judge Judy* hit the television airwaves, it has consistently maintained a large share (an average of 10 million viewers per episode) of the Nielsen Ratings for Syndicated television programs.

With *Judge Judy* doing well in the ratings, Peter Brennan kept his eyes on the judicial scene seeking new talent. In 1997 James Earl Ray, incarcerated in 1968 for the assassination of Dr. Martin Luther King Jr., motioned for a new trial. The judge who would be overseeing whether or not Ray would receive a new trial was named Joe Brown. Because the case was of public interest it received media attention and Brown’s

behavior was now thrust into the limelight. Brown, however, was removed from the case due to an alleged bias in which he felt the rifle James Earl Ray was accused of firing did not belong to him. Despite the fact, Brennan was intrigued with Brown, and in the fall of 1998 the reality television courtroom television series *Judge Joe Brown* hit the airwaves to favorable ratings.

With the success of *Judge Judy* and *Judge Joe Brown* followed a myriad of other reality television courtroom justices, each with his or her own unique personality and style of performing justice: *Judge Mathis* (Fall 1999), *Judge Hatchett* (2000), *Texas Justice with Judge Larry Joe Doherty* (March 2001), *The People's Court with Marilyn Milian* (Fall 2001), *Judge Alex* (Fall 2005), *Judge Maria Lopez* (Fall 2006), *Divorce Court with Judge Toler* (Fall 2006), and *Judge David Young* (Fall 2007). With this boom of reality television brought a resurgence of the courtroom drama with such shows as *Judge Joe Brown*, *Judge Judy* and a new version of *The People's Court*. But, this time around the reality television courtroom seemed to be turned into something of a nightclub. That is to say, the courtroom justices no longer had the stoic disposition of Judge Wapner from the original *People's Court* during the 1980s. Instead, this new wave of courtroom judges were adopting unique personas that were reminiscent of stand-up comedians.

## **CHAPTER 2: Linguistic Performance: Television judges ruling with humor**

*Hey order in the court. Let's try to keep it short.  
I don't care what you say. Let's see exhibit A.*

- Neil Peart (Show, Don't Tell)

As discussed in the previous chapter, *The People's Court* of the 1980s featuring Judge Wapner could have looked very different if the executives at NBC ultimately had creative control over the program when it was first launched. These executives wanted to feature a black comedian of the time, such as Nipsy Russell or Pigmeat Markham, to wear the black robe and make humorous comments to the litigants. Nipsy Russell was a stand-up comedian who had gained popularity for his ability to create humorous nursery rhyme styled observations concerning a wide array of topics, and Pigmeat Markham was an entertainer best known for his comedic song 'Here Comes the Judge.' But Stu Billett and Ralph Edwards, the producers of *The People's Court*, decided the authority and objectivity embodied by the straight white man Joseph A. Wapner was the right decision for a program that was intended to depict the reality of a courtroom. Thirty years after the inception of *The People's Court*, reality television courtroom judges have come to embody a subjective and emotional discourse rather than acting as an objective and neutral extension of the law.

The central argument in this chapter is that reality television courtroom judges deploy a comedic discourse when ruling over litigants. This chapter will describe four linguistic techniques that are often utilized in order to elicit humor. A contemporary reality television courtroom judge and a stand-up comedian will exemplify each linguistic

technique; this will act to illustrate how the two types of performers employ similar linguistic tools.

### **1. Here comes the (comical) judge**

Before examining the comedic linguistic techniques utilized by reality courtroom television judges, it is important to examine the context in which humor is deployed.

This section will align the context of a comedy club and a reality television courtroom to illustrate how the two venues are similar and, as such, can feature similar performances.

All stand-up comedy involves, at minimum, standing up or elevation above the audience on some type of stage (Limon, 2000, p. 55). Such physical placement of the single performer above the audience is typically associated with a form of power:

Rows of theatrical seating, often slightly curved as if spectators were in orbit around the stage, shape the relationship of spectator and performer to an even greater extent when the center of that orbit is the single speaker. What little does occupy the stage in the way of props or set pieces – the stool and microphone stand of stand-up comedy...constitutes and legitimates the presence of the solo performer (Peterson, 1997, p. 5).

When examining the context of the courtroom, several similarities between the setting in which justice is delivered and the nightclub: a setting in which jokes are delivered. In both the courtroom and the nightclub, spectators and performers are positioned in a similar fashion: the audience, which includes the litigants, are seated or standing and they face the individual performer, the judge or the comic, at the front of the room. The judge, like the stand-up comic, is elevated above the audience by way of a bench upon which they sit. Finally, as Peterson points out, there exists little in terms of props on the stage of the comic performer. Similarly, there exists little in terms of props on the judge's

bench in the courtroom: an American flag hangs behind the judge, a gavel rests on the bench and perhaps a glass of water beside the judge. Both the arena of the nightclub and courtroom are physically constructed to create a power dynamic in which the single performer is the center of attention.

The moment the single performer, whether it is a judge or stand-up comedian, steps onto the stage, wherever the stage may be and whatever form the stage may take, he or she becomes a commentator on the world and is allotted certain privileges. Scholars and journalists have noted the single performer is embodied with the power to make observations and render decisions about improper social protocol (Campbell, 2013; Holtgraves & Lasky, 1999). However, with this ability to make judgments also comes responsibility. The two performers, stand-up comedian and judge, must embody a language of power that is typically aligned with masculinity. Stereotypically, if an assertive, or in some cases aggressive, stance is not adopted by the performer, they will be labeled deviant by the audience and not taken seriously and lose credibility (Hall, 2005, p. 354). Having access to a particular resource, which in this case is the space of the stage, coupled with the usage of the proper linguistic code, which in this case is typically an overtly masculine code, creates a situation of inequality in which the sole performer, stand-up comedian or judge in this instance, has power (Blommaert, 2010).

However, because the single performer is lording over the audience, this does not necessarily mean that they are in complete control. The performer must give a piece of him or herself over to the very act of performing. Limon (2000) notes, “all stand-ups are abject insofar as they give themselves over to the stand-up condition” (p. 105). Limon uses the definition of abjection supplied by Kristeva (1982) who defines the abject as that

which is improper or unclean in accordance with societal norms; examples of that which is abject is bodily waste, such as vomit or even a corpse (p. 2). Many comics choose to comment on bodily waste in their act because audiences find it humorous and such topics typically assure laughter. For instance, popular comic Dane Cook explicitly mobilizes scatological humor in his performance when he asks the rhetorical question *Why is everything wet in a public restroom?*, suggesting that the entire restroom is laden with urine. In addition, one of the most infamous jokes in stand-up history, *The Aristocrats*, which has been the topic of a documentary film of the same name, features every bodily fluid imaginable. Just as stand-up comedians confront abjection, so must all judges confront abjection in that they also deal with waste. Judge David Young once heard a case in which a man was accused of urinating into his neighbor's cup of apple juice. Judge Young responded to this case, as many would, with a visceral response by grimacing and placing his hands on his face in horror at the precipice of ingesting human waste.

However, abjection does not simply reference literal waste of the world. Abjection also references the metaphorical "waste" of the world: people who are excluded from the realm of normalcy and often find themselves on the fringes of society (Sibley, 1995, p. 10). Comics embody abjection due to the privileges they take in saying what they want, such as explicitly commenting on human waste. They are also outcast from the realm of normalcy in breaking social conventions. The stand-up comic is endowed with a power to break the everyday niceties of social protocol and the stage offers the comic the opportunity to discuss topics thought of as taboo (Gelo, 1999). Hence, comics become "waste" themselves. Similarly, judges must make rulings about

those considered the waste of the world that exist on the fringes of society by virtue of breaking the law. Criminals become feared via the institution of the prison and are looked upon as enemies of the state and, hence, something with which the public does not wish to be in close proximity.

Although endowed with power, the judge, like the comic, must also view the 'waste' of the world. Judges cannot make a decision without initially placing themselves in the position of the litigant; in doing so, the judge is faced with the inescapability of his or her own human body. Even if it is only momentarily, the judge becomes a subject of abjection. Like the comic, the judge, becomes the waste of the world. Indeed, all judges must "consult" their own body prior to making a decision on a case (Hyde, 1997, p. 158). The earlier example of Judge David Young ruling over the case of one litigant urinating in the apple juice of another litigant can exemplify this corporeal experience of abjection. Again, the literal human waste of urine is present in this instance and the fact that Judge David Young is involved in the case puts him in close proximity to said waste; however, the intuitive response of Judge David Young (wincing in disgust) is telling. Young is not simply a mechanism functioning to determine the truth of the case, but he is a real person; his facial expression attests to the fact that he empathized with the litigant who drank the urine laden apple juice. Hence, he is placing himself in a position of abjection by illustrating to the audience that he is disgusted by incident in question. Judges must empathize with the litigants that stand before them; of course, whether they explicitly recognize this point may be another matter. Simply, the body cannot be neatly separated from the practice of law.

The stand-up comic must possess the ability to immediately comment on the world around them. Improvisation is key for the comedic performer, particularly when dealing with a heckler in the audience. The comedian must respond in the present tense to events that are occurring now, whether it is a heckler, a cellular telephone ringing somewhere out in the darkened crowd or a glass that has been dropped by a waiter (Doube, 2005, p. 172). The comic is not only allowed to respond to the immediacy of a situation, but obligated to do so. If the performer fails to respond in a timely manner to a given circumstance, then the audience loses faith in the performer's ability to observe and comment. Similarly, the judge is also expected to respond to any situation in the courtroom, which can include a litigant speaking out of turn. Like the comic, immediate responses on the part of the judge are expected in order to maintain order in the court. In reality television, the way in which judges deal with litigants speaking out of turn is through humor.

The majority of performances by a stand-up comedian feature a live audience. Within the realm of stand-up comedy, the moment of applause and laughter is like an explosion of consciousness for an audience. It is the right of the audience to approve of the performance (Limon, 2000). Why is it that the reality courtrooms have studio audiences? In any other real courtroom, particularly small claims courtrooms (courtrooms that deal with cases involving damages of less than \$5,000), typically there is no audience present. When one enters a real small claims courtroom the audience is made up of little more than other litigants who are simply waiting for their opportunity to stand before the judge. The only time an audience might be present in the courtroom is for high profile cases. Even in such instances, the fascination of the spectator rests with

the litigants involved, *not* with the judges. But in the reality courtroom show the judge is the celebrity; the judge becomes *the* performer with whom spectators are fascinated.

The live studio audience in a reality television courtroom program serves to support what the judge is saying. The audience laughs at the comedic rhetoric dispensed by the reality television courtroom judge and indicates their approval of the message announced by the judge. Moreover, when an audience enters a reality television courtroom program, they are aware that they will be witness to some type of drama and conflict. Within the genre of reality television, producers ultimately hope to ‘produce’ what is referenced as ‘the money shot’, or an explosion of emotion (Grindstaff, 2002, p. 20). For producers of daytime talk shows, such as *Jerry Springer*, it is necessary to ensure that the story presented to the audience is capable of producing a money shot; there must be a conflict in the story, otherwise audiences will not respond and ratings will plummet. Additionally, not only must the storyline set up the participants to be combative, the participants, themselves, must illustrate the personality characteristics to produce a money shot during the pre-interview process (p. 21).

Within courtroom programs, however, conflict is built-in to the very structure of the court via the labeling process of the participants; there is clearly a protagonist labeled the plaintiff and an antagonist labeled the defendant. Moreover, there is not so much a need for litigants to produce the money shot, but more of a need for the primary performer to produce such a shot: the judge. Hence, it is not a question of if the judge will say something humorous and explode with anger during the court case it is a matter of when.

In order for reality television courtroom judges, or stand-up comedians, to elicit laughter from the audience, they employ varying linguistic tools. The following sections will each highlight a particular linguistic technique that is utilized in order to create humor. A stand-up comedian and a reality television courtroom judge will then be discussed in order to exemplify each linguistic technique. The ‘tough guy’, or aggressive linguistic stance, is the first to be discussed and is illustrated by stand-up comedian Denis Leary and Judge Judy. The deployment of rhetorical questions is the second technique discussed and is exemplified by stand-up comedian Bill Cosby and Judge Joe Brown. Self-deprecating humor is the third technique discussed and is illustrated by stand-up comedian Ant and Judge David Young. And, dead-pan humor is the final technique to be discussed which is exemplified by stand-up comedian Anjelah Johnson and Judge Cristina Perez. This comparative analysis of linguistic techniques aligns comedians and judges to reveal that while they may seem different on the surface, they each perform the same task, which is to make a humorous moral judgment.

## **2. Judge Judy: linguistic aggression**

*“You’re 16 years old, you don’t know shit about shit, and PULL UP YOUR PANTS!!!”*

- Denis Leary

The art of stand-up comedy often “begins with aggression toward an audience” and when comics adopt an outright aggressive stance towards the audience on a regular basis they often become associated with anger, toughness and, ultimately, masculinity (Limon, 2000, p. 26). Watkins (1996) describes a type of comic that he labels ‘tough guys’ which all share “a willingness to push comedy toward the edge and broach taboo

subjects that might otherwise remain unexplored. And, whether we are delighted, offended, or merely titillated, it is often their brash, irrepressible attitudes that command our attention” (p. 182). We see this ‘tough guy’ persona enacted through the stand-up performance of Denis Leary and the judicial performance of Judge Judy via the linguistic techniques of accent, masculinity, target, and repetition.

A linguistic characteristic that perpetuates the tough guy persona is the respective accents of the performers. Judge Judy is known for her strong Jewish New York accent and Denis Leary is known for his thick Bostonian accent. Both of these styles are often associated with one another due to the stereotypical dropping of the ‘r’ within certain words such as *car* or *Harvard* that is also associated with the aggressive disposition of speakers with these dialects (Labov, 2006; Tannen, 1981; Lippi-Green, 1997). In addition, the deployment of a stereotyped code, such as an East Coast accent that is associated with invasive vulgarity, creates a performance that is easily recognizable to the audience and can quickly be understood (Jaffe, 2000). Furthermore, such accents are also understood as conveying accessibility in that they represent a ‘down-to-earth’ ideology of the working class. The accent of Judge Judy does not represent the elite and highfalutin speech that a typical judge would utilize.

Although an exclusive relationship between gender and language does not necessarily exist, there are stereotypical ideas about how men and women speak and these stereotypes often become exaggerated in the realm of performance. Stereotypically, men are thought to utilize vulgar language while women are thought to use ‘proper’ language becoming of a lady (Ochs, 1992). Additionally, men are stereotypically thought to be very intentional with word choice, while women are thought

to have moments in their speech consisting of pausing or hedging (e.g., like, you know, well, kind of) (Lakoff, 1975).

Any individual who is angry always has a target at which their anger is directed. For the deployment of this aggressive linguistic technique to be successful, there must exist a person or group of people at which to direct anger. The target does not necessarily need to be standing directly in front of the speaker (Peterson, 1997). The audience may be imagined, for instance noted aggressive comedian Lewis Black often takes aim at Americans who frequent the gym: "If you're working out in front of a mirror and watching your muscles grow, your ego has reached a point where it is now eating itself. That's why I believe there should be a psychiatrist at every health club, so that when they see you doing this, they will take you away for a little chat". This targeted group of muscle bound Americans is not necessarily seated directly in front of Lewis Black, but, rather, they are imagined in the minds of the spectator and speaker. Consequently, a target can literally be seated in front of an individual who employs this aggressive linguistic stance. The example used in the introduction in which comedian Bill Hicks deals with a heckler is one such example. The woman in the audience tells Hicks 'you suck' to which Hicks answers with a barrage of hateful four letter words. In either case, a target is always in play.

Another distinct technique that exemplifies the aggressive linguistic stance is the use of repetition. Repetition is very important in the realm of performance in that it holds the floor for the speaker and often elicits laughter based on the prosody of how the speaker decides to use it (Tannen, 1989; Kelly, 1994). Again, when Bill Hicks responds to the heckler in the audience he says: "Get out! Get out! Fuck you! Fuck you!" This

type of repetition ensures that the heckler has no room to speak and such repetition also elicits humor.

### 3. Denis Leary

A shadowy figure quickly enters the frame of the screen wearing a black leather jacket and blue jeans. His dirty blonde hair covers a portion of his face but does not obstruct his piercing blue eyes from capturing the attention of the spectator. He tightly grips the microphone in his left hand and his permanent accessory, a cigarette, is held in his right hand. He quickly paces back and forth on the stage and given his body language consisting of shrugged shoulders, scrunched mouth and flared nostrils he appears upset. However, once his raspy Bostonian accent is exposed his unabashed view of the world begins to take shape.

In his stand-up performance, Leary utilizes linguistic characteristics that are stereotypically associated with men. For instance, in lines 64 – 73 Leary offers an account of his childhood experience:

DL: Dennis Leary

64 DL: Hey!  
 65 my parents  
 66 used to beat the living shit out of me  
 67 okay  
 68 and looking back on it  
 69 I'm glad they did  
 70 and I'm looking forward  
 71 to beating the shit  
 72 out of my kids  
 73 aren't you!

The language of women is stereotypically thought to be free from the use of expletives, such as ‘shit’, that Leary uses in lines 66 and 71 (Lakoff, 1975). In addition, his ‘brash’ attitude is clearly marked by the fluidity of his speech. Each word is spoken explicitly and loudly without any hesitation in order to establish masculinity and dominance over the audience (Keisling, 2002). The closing of this particular excerpt involves what might be considered a question given various contexts: *I’m looking forward to beating the shit out of my kids, aren’t you?* However, the end of Leary’s tirade is not intended to be a rhetorical question, as will be discussed with Judge Joe Brown, but more of an imposed agreement on the part of the audience that acts to corroborate his ideology on parenting. Leary promotes an ideology of working class parenting and, in doing so, criticizes the upper class for coddling their children.

#### **4. Judge Judy: the tough ‘guy’**

Television spots for Judge Judy market her as an entity that is not human. For instance, one television commercial for the reality television courtroom program features Judge Judy herself proclaiming to the litigants that stand before her that she is a truth machine capable of detecting false testimony from them. Another television commercial features the use of an infrared camera to capture Judge Judy’s movements while seated behind the bench to reveal that she, despite her appearance, does not radiate heat and is, in fact, a machine. At the close of this commercial a technique is used which is reminiscent of Arnold Schwarzenegger’s character from James Cameron’s 1984 film *The Terminator*; a close-up shot of Judge Judy’s face is shown on the screen and, with the help of computer-generated imagery, the left side of her face is replaced with the robotic

steel frame of a skull. Of course, Judge Judy has not remained popular for nearly two decades because of a purely mechanistic disposition. Judge Judy has remained popular precisely because she has a personality with which the audience can relate.

Judge Judy, like Denis Leary, can also be labeled as a tough guy given the deployment of her thick Jewish New York accent and her use of stereotypical masculine language. The following case brought before Judge Judy involves plaintiff Sharyn Martino-Napolitano suing defendant Deborah Desimone who borrowed the plaintiff's vehicle and damaged it:

JJ: Judge Judy  
 SM: Sharyn Martino-Napolitano  
 DD: Deborah Desimone

1 JJ: but for the fact  
 2 that you borrowed the car,  
 3 took it to food town  
 4 the car would have been  
 5 parked in her  
 6 driveway  
 7 if the car was parked in her driveway  
 8 the same driver that hit her car  
 9 from foodtown  
 10 would have had to look for it  
 11 SM: (1.0) can I please say some-  
 12 JJ: Shut up!  
 13 Do you understand!  
 14 DD: Yes I do.

Like Leary, Judge Judy utilizes language that is considered confrontational, aggressive and masculine. For instance, Judge Judy yells at litigant Sharyn Martino-Napolitano in line 12; Judy tells the litigant to *shut up*. Not only is this language characterized as unfeminine, but this direct hostility to a litigant by a courtroom justice can also have severe consequences for the judge, such as being impeached or disbarred. Also, like

Leary, the speech of Judge Judy flows quickly and there is no hedging in her speech and only occasional pauses. However, these pauses are intentional as illustrated in line 13 in which Judge Judy uses a dramatic pause to ensure the litigant Sharyn Martino-Napolitano has been silenced. Again, like Leary, Judge Judy utilizes the structure of a question at the close of her remark when she asks the litigant ‘Do you understand?’ in line 13 in order to display dominance and impose her ideology on the audience or, in this case, the litigant.

### **5. Witness take the stand: imagined audience**

One particular characteristic of Leary’s performance involves creating an implied spectator that is the target of his aggression (Peterson, 1997, p. 147). So, while Leary does not necessarily yell directly ‘at’ the audience, he does set up an imagined audience who will receive his harsh criticisms. For instance, Leary criticizes celebrity culture by attacking their lack of accountability:

31 DL: (1.0) that’s what they do man.  
 32 they go into rehab  
 33 they come out  
 34 and they blame everybody except themselves

The imagined spectator in lines 31-34 are celebrities, ultimately realized through the pronoun *they*. Leary says of celebrities: “That’s what *they* do man; *they* go into rehab; *they* come out and *they* blame everybody except themselves.” The audience, who are presumably not consisting of celebrities, can enjoy a laugh with Leary because the focus of his joke is about others. Moreover, Leary is also attacking the politically correct value that is embedded within the process of undergoing rehabilitation to solve problems.

Just like Leary, Judge Judy attacks the lack of accountability of a perceived group

of people. However, unlike Leary, the receptacle of Judge Judy's anger is not imagined, but comes to fruition in the form of two litigants (a plaintiff and a defendant). As such, the live studio audience and viewing audience at home are sharing in the laughter produced through Judge Judy's aggressive stance towards the litigants: "Judge Judy constitutes the normative citizen--that is, the viewer at home--in opposition to both deviants and victims" (Oullette, 2004, p. 27). A clear dichotomy is produced in the courtroom of *Judge Judy* that distinguishes those who are presumably responsible for their own actions (the audience) and those who are not (the litigants) as in lines 28 – 35:

28 JJ: you had the car  
 29 but for the fact that you  
 30 borrowed the car  
 31 it wouldn't have had this kind of damage  
 32 DD: Correct.  
 33 JJ: This damage.  
 34 Good!  
 35 then we don't have a problem.

The way in which this bifurcation of those who are responsible versus those who are not is marked linguistically through the second person personal pronoun *you*. For instance, in lines 28 Judge Judy clearly labels defendant Deborah Desimone as the guilty party with the linguistic marker *you*. The viewing audience, and the live audience, is able to distance themselves from the defendant by virtue of the pronoun *you*, that is used by Judge Judy to reference defendant Deborah Desimone in lines 28-29, versus *we*, that is used by Judge Judy to reference herself and the audience, who are presumably upstanding citizens, in line 35.

## 6. Call and answer: language as style

Social norms are called into question by Leary and made to seem foolish. The comedic style for which Leary is known involves explicitly examining political correctness in American society and then deconstructing it with unabashed harsh language; this transgressive style of Leary can clearly be seen in lines 128 – 154 in which he attacks psychiatric therapy and self-help which is a ‘mainstream cultural sensibility’ in America (Peterson, 1997, p. 148):

128 DL: “I’m just not happy”  
 129 Shut the fuck up!  
 130 Alright!  
 131 That’s the name of my new book.  
 132 Shut the fuck up!  
 133 By Doctor Denis Leary!  
 134 A revolutionary new form of therapy,  
 135 I’m gonna have my patients come in,  
 136 “Doctor?”  
 137 Shut the fuck up!  
 138 Next!  
 139 “I don’t feel so-”  
 140 Shut the fuck up!  
 141 Next!  
 142 “He made me feel so much better”  
 143 “about myself”  
 144 “you know”  
 145 “he just told me to”  
 146 “shut the fuck up”  
 147 “and nobody had ever”  
 148 “told me that before”  
 149 “I feel so much better now,.”  
 150 [Audience Laughter]  
 151 (1.0) Whining  
 152 fucking  
 153 maggots!  
 154 [Audience Laughter]

Leary dedicates a portion of his stand-up routine to providing a voice, regardless of how superficial, for those who are depressed. For instance, in line 128 Leary projects the

voice of a hypothetically depressed individual seeking therapy in American society when he utters the phrase *I'm just not happy*. The audience is aware that this is not Leary speaking directly because of the quotation quality and higher pitch tonal quality that Leary provides for this voice. What makes this portion of his routine humorous is the fact that he provides a solution to the imagined audience that is problem feeling unhappy, initially materialized in line 129: *shut the fuck up*. Moreover, Leary is very liberal in offering his solution in that there is a distinct pattern of repetition in his discourse in which the phrase 'shut the fuck up' is uttered several times in this excerpt. According to Tannen (1989), same speaker repetition and exact repetition facilitate the process of creating humor both in conversation (p. 63) and within formal types of institutions, such as the theater (Kelly, 1994, p. 57).

Similar to Leary, Judge Judy attacks the niceties of social protocol by offering solutions to those who label themselves victims. However, because Leary is a singular performer he must provide a voice of opposition to ultimately reject it. For Judge Judy, however, she has the luxury of having a litigant that stands before her who can provide a voice for those who are amoral or deviant. Oullette (2004) characterizes Judge Judy as television personality who utilizes her moral radar to quickly detect and label those who are amoral and essentially unfit citizens (p. 22). This process in which Judge Judy deploys detecting, labeling and offering solutions can be seen in lines 46 – 81:

46 SM: Excuse me  
 47 they made it home safely.  
 48 She has a jeep Cherokee  
 49 parked in the same parking lot  
 50 that she could have used her own vehicle  
 51 to go to the store.  
 52 [inbreath]

53           There's no reason to take  
 54           my-  
 55           my little car  
 56           back out.  
 57    JJ:    Let me ask you  
 58           this question.  
 59           Now you're getting angry  
 60           and you already won  
 61           so you have to take a  
 62           you have to go  
 63           [outbreath]  
 64           find your center  
 65           [Audience Laughter]  
 66    SM:    i've been trying to do a lot of it  
 67           i've been trying to  
 68           [i've been trying to find a lot of it]  
 69    JJ:    [Find your center!                    ]  
 70           [Audience Laughter]  
 71           and say,  
 72           it's over.  
 73    SM:    But I would [have never] asked her  
 74    JJ:                   [it's a car.    ]  
 75    SM:    son to use her car,  
 76    JJ:    It's a-  
 77           listen.  
 78           Listen to me.  
 79           It's a car.  
 80           she's responsible  
 81           Done!

In lines 46 – 56 Judge Judy allows Sharyn Martino-Napolitano the space to speak in court solely for the purpose of rejecting her remarks. Martino-Napolitano is quickly labeled as 'angry' by Judge Judy in line 59, despite being awarded the decision in the case. As such, Judge Judy imparts her wisdom to the enraged litigant. Just as Leary offered a solution to those who are depressed realized by the mantra *shut the fuck up*, Judge Judy also offers a solution to Sharyn Martino-Napolitano, who is vocal about feeling victimized, in line 64 in which Judge Judy tells the plaintiff: *find your center*. In addition, repetition of the phrase *find your center* is used in this instance by Judge Judy

and ultimately elicits laughter in lines 64-65 and lines 69-70. Clearly, Judge Judy can express the same sentiment as Leary when chastising litigants; however, she cannot utilize the same four letter words that Leary does because judges are expected to uphold a certain moral standard that does not involve cursing. This boundary is what ultimately distances the two performers.

### **7. Judge Joe Brown: What's the deal with...?**

*"Parents are not interested in justice. They're interested in peace and quiet."*

- Bill Cosby *on parenting*

What's the deal with premoistened towelettes?.... Premoistened towelettes are self-parodying, as are TV channels devoted solely to SoloFlex products and people who use cellular phones in the middle of your theatrical enjoyment of *Curly Sue*....The Observationalist is your tour guide – somebody who, like you, is stranded, Gulliverlike, in this world of silly things gone sillyishly cuckoo...Observationalists validate these absurd parking tickets of modern existence – these Magritte paintings we now call life. I am he as we are me, and we are she, and we are all *together*, and yes, we're all stuck with premoistened towelettes. That's the deal (Coupland, 1996, p. 118).

Douglas Coupland, perhaps best known for his novel *Generation X*, is an author and cultural commentator who recognizes the impact of modern technology on humans, as made evident from his aforementioned quote. Human beings universally have the ability to observe the world around them and make comments about their daily existence and interactions with contemporary gadgets intended to make life easier. However, it is the observational comic who has propelled the seemingly mundane act of observing and commenting to an art form. The quintessential feature of the observational comic is the use of rhetorical questions that reflect shared references (Double, 2005, p. 116). Jerry

Seinfeld, perhaps one of the best-known observational comics, has made a living utilizing the rhetorical question *What's the deal with...* in his stand-up routines when referring to the minutia of daily life in American society, such as hand dryers or premoistened towelettes. Americans all share the reference to these artifacts and find humor in the absurdity of them as pointed out by the observational comic.

Rhetorical questions, in particular, can serve multiple functions but in order for there to be an obviously highlighted and anticipated answer, there must be a common ground shared by the interlocutors (Rodhe, 2006). Common Ground refers to the commitment that interlocutors have publicly when engaged in a conversation; in other words, commitments to public image and the interlocutor's personal beliefs impact their use of language, particularly when regarding the use of rhetorical questions (Gunlogson, 2001).

Koshik (2005) also comments on the function rhetorical questions serve:

Many people think of rhetorical questions as questions that are not meant to be answered, possibly because the answers are obvious. But when we look at how these questions are actually used in interaction, they do sometimes get answers. Something these questions all have in common, however, is that they are not asked, and are not understood, as ordinary information-seeking questions but as making some kind of claim, or assertion, an assertion of the opposite polarity to that of the question (p. 2).

All that attend a nightclub for a stand-up performance have a shared understanding of how the performance functions. The audience understands that the performer will be referencing artifacts of familiarity and be doing so within a particular discursive framework. Although all comics use a narrative format to some degree, the style in which punchlines are dispensed can vary; for instance, a comic may use rhetorical questions as a central device for humor.

Stand-up comedian Bill Cosby and Judge Joe Brown both utilize rhetorical questions as a mean of eliciting laughter from the audience. However, just as Judge Judy and Denis Leary embody a stereotyped style of speech via their respective East Coast accents, so too does Judge Joe Brown and Cosby. Both Cosby and Judge Brown utilize a particular style of language that is stereotypical not only of their race but their age as well: AAVE (African American Vernacular English). The particular form of AAVE that Judge Joe Brown and Bill Cosby utilize features the elongation of vowels and a slower stress pattern and cadence. The lengthening of vowels is a feature that is also distinct among older speakers of AAVE often associated with Southern rural areas (Schremp, 1996). The dialect used by both performers is a stereotyped form often associated with traditional African American narratives of a comedic nature (Rahman, 2007) and because it is stereotyped, it becomes legible (Jaffe, 2000). Whether Cosby and Judge Brown are playing up their language within their respective performances is not clear. However, given that Judge Joe Brown is in his 60s and grew up in Mississippi and Bill Cosby is in his 70s and grew up in rural Pennsylvania it is possible that they are authentically presenting themselves.

## **8. Bill Cosby**

A man slumped in a chair wearing a brown 3-piece suit languidly holds a microphone in his left hand. A soft spotlight illuminates his calm disposition as he recounts tales from his childhood and experience with his own children. This man is Bill Cosby. A famous routine of Cosby involves rhetorically questioning the absurdity of illegal drug use among the American youth. The construction of rhetorical questions in

the stand-up routine of Bill Cosby in which he recounts a conversation he once had with a person regarding cocaine is explicit in the following example:

BC: Bill Cosby

8 BC: What is it  
 9 about cocaine  
 10 that makes it  
 11 so wonderful?  
 12 And the guy said  
 13 “well”  
 14 [smacks lips]  
 15 “it”  
 16 “intensifies”  
 17 “your”  
 18 “personality.”  
 19 [Audience laughter]  
 20 And I said yes,  
 21 but what if you’re an asshole?  
 22 [Audience laughter]

In this instance, Cosby provides a narrative of his discussion with a gentleman about cocaine and the answer he received when asking about the appeal of the drug in lines 15-18: *it intensifies your personality*. Although lines 15-18 do not serve as a punchline in a classic sense, the audience clearly acknowledges that this portion of the narrative is gesturing toward a comedic end because of the slight laughter in line 19. The audience may be thinking that intensifying personality may not necessarily be a positive condition for some. Regardless, there is a shared understanding among the audience that reaches fruition in line 21 in which Cosby retorts with a rhetorical question: *but what if you’re an asshole?* Of course, the common knowledge shared here is that if one is an *asshole* and ingests cocaine then he or she will ultimately become a bigger *asshole* than they already were without cocaine. This punchline is formed in a rhetorical question and receives a roar of laughter for 13 seconds. The linguistic tool of choice for Cosby, the rhetorical

question, allows him to create humor by critiquing a contemporary issue such as recreational drug use; Cosby examines contemporary behavior of Americans and ultimately questions it (Koziski, 1984).

### **9. Judge Joe Brown**

A sultry and energetic female voice proclaims his presence: “It’s Joe Time!” And there he sits comfortably nestled in his leather armchair with hands resting upon his stomach and gazing off into the distance with a mischievous grin on his face highlighted by a perfectly groomed moustache and immaculate complexion. The obligatory attire for court justices, a black robe, drapes over his large shoulders nearly covering any hint of clothing with the exception of white shirt cuffs, white collar, and gray tie, which all subtly creep out of the darkness of the robe seeking the light of day. The rosewood bench, behind which Brown is positioned, asserts the possessive nature of a court justice via the gold lettering affixed to the front which reads *Judge Joe Brown* and brings awareness to his authorial status by physically elevating him above the studio audience and litigants who stand before him.

There are several instances in which Judge Joe Brown employs the linguistic tool of rhetorical questions when dealing with litigants. The following case involves Heather Bowers suing Mikayla Thorton for negligence in terms of cleaning their apartment.

Lines 31-42 illustrate the use of rhetorical questions by Judge Joe Brown:

JB: Judge Joe Brown

MT: Mikayla Thorton

31 MT: the main garbage can was full  
32 so I couldn’t dump it

33 JB: why didn't you acquire some garbage bags,  
 34 Teflon,  
 35 and,  
 36 put  
 37 the garbage  
 38 in the trash.  
 39 In the Teflon  
 40 bags.  
 41 take the little tie wrap  
 42 that comes with it.  
 43 Tie it  
 44 around there.  
 45 Is that beyond your capabilities?

In the case of *Bowers v. Thorton*, different judges would respond differently to the testimony of Thorton. Typically, a judge would simply ask why there was garbage on the floor without necessarily assigning any value judgment on the litigant because, as Hobbs (2007) notes, treating a litigant in a hostile fashion is not proper. However, Brown treats this litigant as a comic might treat a heckler by employing the use of rhetorical questions in lines 33-45: *Why didn't you acquire some garbage bags, Teflon, and put the garbage bags in the trash?...Is that beyond your capabilities?...Is that too challenging?*

The audience shares the understanding that Thorton is an able-bodied woman who can, indeed, take out the garbage. Hence, Brown is able to play on this shared understanding by pointing out the behavior of Thorton and asking a rhetorical question that functions as an assertion that corroborates the testimony of Bowers that her roommate, Thorton, was, in fact, negligent because she failed to clean the room. The repeated use of rhetorical questions by Brown are not seeking any kind of information by Thorton; such questions are used in a comedic fashion to illustrate the absurdity of the testimony Thorton is providing and, in so doing, receive a laugh.

Similarly, all that are involved in the process of the court share a common knowledge regarding the legal process, regardless of how detailed it may be. At base, it is understood the judge is ultimately seeking *truth* in order to dispense a ruling. When a discrepancy exists regarding what is true versus false, we trust the ability of the judge to discern such matters. This is typical in any court and, furthermore, this discernment of a judge can be seen as a type of control within the courtroom (Philips, 1998, p. 87). Much like a stand-up comic, if the judge is unable to control the courtroom and comment on his or her immediate surroundings, then the judge loses credibility in the eyes of the audience and litigants; however, the way in which control is maintained is more a matter of judicial style rather than interpreting the law (p. 88). Just as comedians have varying styles in dispensing jokes, judges also have varying styles in dispensing rulings. The style that Judge Joe Brown chooses to identify discrepancies in testimonies and dispense rulings among the litigants is unique within the courtroom setting in that it mirrors the style of an observational, and critical, stand-up comedian, such as Bill Cosby and generally older black men.

### **10. Judge David Young: neurotica**

“Mom, the camera adds ten pounds. [Mom responds] well, how many cameras were they shooting you with?”

- *Ant on being on television*

Patricia Marx (1996), a comic writer whose work has appeared in The New York Times and Saturday Night Live, states:

There are two kinds of...anxiety, according to Freud – and he should know. Realistic anxiety is the rational, intelligible kind...Neurotic

anxiety, which is unfounded, is the funnier kind of anxiety... Angst-driven comedy is too inward to be angry. Instead of lashing out at God, the government, or a romantic partner, these comics blame themselves and just mope (p. 81).

According to Freud, the neurotic anxiety that is typically pointed inward at the self, which Marx discusses in this passage, is typical within the realm of stand-up comedy. Perhaps the most well known stand-up comedian to adopt this anxiety driven style is Woody Allen. Allen has made a career of framing himself as a jumpy and constantly neurotic man who brings attention to his ineptitude at everything he tries, from his inability to physically fight others to his broken marriages. The stand-up comedian must be able to poke fun at his or her own failure and, moreover, make the audience feel comfortable laughing at such a thing (Double, 2005, p. 176). Stand-up comedian Ant and Judge David Young are two performers who display such self-deprecating humor in front of audiences.

It should also be noted that cinematic representations of homosexual speech typically consist of self-deprecating humor (Lay, 2008, p. 54). Moreover, such homosexual speech often centers on coming out narratives and is underlined by a fear of how others will respond to sexuality (Jordan & Deluty, 1998). The idea that self-mockery, anxiety, and homosexuality go hand in hand is important for this discussion because both Ant and Judge David Young openly label themselves as gay performers. An example of how self-deprecation and homosexuality intertwine can be seen in the work of stand-up comedian and talk show host Ellen DeGeneres. When DeGeneres hosted *Saturday Night Live* in 2001, she mentioned her coming out narrative was just a publicity stunt:

It's gonna be wonderful for my career. So, I have to take a moment right now, though, and thank my wonderful husband Jerry. He's been so supportive, staying at home and keeping the house nice, while I'm out gaying it up, fruiting up the town, \$3 billing it, throwing the old wet Frisbee, winking at the pastor. All the things gays do.

DeGenres degrades herself by negating her identity yet the audience laughs because they know she really is gay. While DeGenres may also be critiquing stereotypical ideas that society has about homosexuality, it is done subtly with self-deprecation, which is a safer route than outrightly attacking targets such as comedian Denis Leary may do. In addition, DeGenres explicitly utilizes what may be considered gay slang to enhance her authenticity (Leap, 1996, p. 159). Although the audience might not necessarily know what *\$3 billing it* or *throwing the old wet Frisbee* may mean, it is understood that these terms are affiliated with gay culture as DeGenres makes it clear that these are *all the things gays do*. Finally, DeGenres is also deploying the stereotype of desire, often associated with homosexuality, to elicit laughter from the audience (Baker, 2005). Desire in this context of homosexuality is associated with sexual desire or desire for material items; DeGenres reveals her desire to *fruit up the town* which could gesture towards literally engaging in sexual activity or shopping. The audience understands she is playing up a stereotype of anxiety that is typical of homosexual performers.

Stand-up comedian Ant and Judge David Young use self-deprecating humor not simply to elicit laughter, but to also disclose private matters. It is precisely through this kind of self-mockery that the stand-up becomes recognizable and accessible to the audience. Double (2005) argues that audiences of today desire to have intimacy with the individual stand-up comedian who stands on the stage; audiences want to know something personal about the comic and not simply have a Johnny Carson or Bob Hope,

while considered the best of their era, revealed little about their personal lives (p. 8). The famous and great comedians of the middle of the 20<sup>th</sup> century were able to make audiences laugh by having a set prepared in which they move in quick succession from joke to joke by doling out one-liners. Carson and Hope, in particular, made careers from their concise political jokes; one of the famous Hope jokes stated: *The Democrats have a solution to the unemployment problem. They're all running for the presidency.* While jokes such as these functioned successfully during the era of these comedians, audiences soon wanted to know more about their comedian. It is the personality of the comedian, or in this case the courtroom judge of a reality television series, that provides the viewer a context in which to identify with the performer. Once the audience can identify personally with a performer such as Judge David Young then there is more of a vested interest to continue to tune in and watch them on a daily basis. The personalities of Ant, DeGenres and Judge David Young did garner attention from audiences, as their respective shows all emerged during the middle portion of the 2000s.

## **11. Ant**

A short and thick man paces the stage back and forth with a microphone tightly placed in his right hand. His pink dress shirt is untucked and waves through the air as he moves while his tight black pleather pants sparkle from the stage lights. His faux hawk sits neatly atop his head unwavering and draws attention to his bulging eyes as he tells tales of his own pain. There is an inward anxiety present within the stand-up comedy performance of Ant. For instance, he tells his narrative of coming out to his mother as a homosexual man in the following excerpt:

AN: Ant

1 AN: I came out to them when I was 16.  
 2 I packed all my bags.  
 3 I walked into the kitchen  
 4 and put my luggage on the floor.  
 5 And my mom was by herself in the kitchen.  
 6 And I said, Mom, somebody in the family is gay.  
 7 And I swear to God she said:  
 8 What did you see your father do?  
 9 [Audience Laughter]  
 10 Oh my God! I go, not dad, me.  
 11 And she goes: You're not gay; it's a phase.  
 12 I go why do you think it's a phase?  
 13 I swear to you, she said:  
 14 Honey, gay men have taste.  
 15 If you were gay that luggage would be Gucci.  
 16 [Audience Laughter]

First and foremost, the very topic with which Ant is dealing, coming out, is a narrative that is often laden with anxiety to begin with due to fear of how others will respond (Jordan & Deluty, 1998). Of course, Ant's experience is no exception as he is fearful he will be ousted from his household due to his lifestyle choice, which is why he prefaces his narrative by explaining he packed his luggage.

The initial laugh that Ant receives from the audience is in line 9 in which he is making an attempt to come out to his mother. The linguistic tool that Ant employs is traditionally known in stand-up comedy as *ambiguity* and *misdirection* (Dean, 2013). Although Ant is making an attempt to tell his mother he is gay, he ultimately utilizes the ambiguous pronoun *someone* to reference a gay person in the household. Because he is discussing himself within the narrative it would make sense to assume that his mother is going to understand the subtlety of his remark (the someone being referenced is really Ant). However, this is a form of misdirection in which Ant's mother thinks Ant is

referencing his father as gay. Not only does this form of misdirection receive a laugh from the audience, but Ant's failure to come out to his mother due to his subtle language does as well. It is within this initial joke that Ant conjures up the anxiety-laden performance from the likes of Woody Allen who focuses his stand-up routine on his own failures.

As Ant continues his coming out narrative, the biggest laugh that he receives from the audience is from lines 14-15 in which he references the brand name Gucci. Firstly, the laugh relies on the audience understanding a stereotype about gay men preferring material items associated with high culture. This discourse of desire, whether involving a desire for material items or a sexual desire, has been inextricably linked within the portrayal of gay men on television (Baker, 2005, p. 97). Ant's mother calls his authenticity into question because she feels that an authentic homosexual man would have an expensive and stylish set of luggage. In addition, the deployment of the self-mockery is not done within a one-liner, but within the context of a personal narrative. Ant utilizes what McIlvenny (1993) references as a laugh trap, which is a set up of a joke to punctuate the ending of a narrative that elicits laughter from the audience. Ultimately, the joke is self-degrading in that his attempt to come out of the closet to his mother was unsuccessful.

## **12. Judge David Young and anxiety**

*Judge David Young* is the name of a show that premiered on September 10<sup>th</sup> of 2007 on the Fox Network. The official website for Judge David Young ("Judge David Young") describes the judge:

A one-time law clerk for F. Lee Bailey's law firm in Miami, Judge David Young attended Tulane University, where he was President of the Student Body. He later graduated from the University Of Miami College Of Law. In 1984, he became a Florida assistant state attorney in under Janet Reno, a position he held until 1987. After holding several prestigious legal positions in Miami, in 1993 he was elected as County Court Judge in Miami-Dade County, and he was re-elected twice. Then in 2000 Judge Young was elected as a Circuit Court Judge in Miami-Dade and was re-elected to the bench once more.

In May of 2007, Young retired from his position as a Circuit Court Judge in Florida in order to rule on television in his own reality television program (Bajko, 2007). Judge David Young exposes himself to the audience by incorporating personal anecdotes into the courtroom, often these anecdotes that are of a self-deprecating yet comical nature. While other television judges may expose parts of their identity sparingly, it is Judge David young who truly invites the viewer into his world of anxiety.

Various television spots for David Young have promoted the show by paying particular attention to Young's sexual orientation. For instance, one particular advertisement, featured on the official website for the show states: *Judge David is...compassionate. Judge David is...entertaining. Judge David is...fierce. Judge David Young is justice with a snap.* Another advertisement for the show states: *He knows the law, he knows justice, he knows right from wrong, he knows showtunes.* Why is it that such promotions would use such language as *justice with a snap* or reference Young's knowledge of showtunes? These kinds of promotions are pointing toward a particular feature that makes Young unique among any other judge programs: he is openly gay.

The case of Antigone Hicks v. Fatou Dioume, in which Hicks is suing Dioume over an ill-fitting garment, highlights the anxiety that Judge Young performs within the reality television courtroom:

DY: Jude David Young  
AH: Antigone Hicks  
FD: Fatou Dioume  
BA: Bailiff

1 DY: Miss Hicks.  
2 AH: Yes.  
3 DY: You're suing Miss Dioume for three-hundred and fifty dollars. Am I  
4 correct?  
5 AH: Yes.  
6 DY: And this lawsuit is a result of a dress that you wanted her to make for a  
7 special occasion in your life.  
8 AH: Yes.  
9 DY: Why did you want the dress to be made?  
10 AH: I went to Marsha's fashion and uh, I've been going there for three years.  
11 DY: And you work there ma'am?  
12 FD: Yes, I'm the manager.  
13 DY: You're the manager.  
14 FD: Hmm-hmm.  
15 DY: Okay. Do you know miss hicks?  
16 FD: I haven't met her.  
17 DY: But you know of the situation.  
18 FD: I know the situation, yes.  
19 DY: Okay. So tell me about the situation Miss Hicks. Um, where were you  
20 going that you needed such a wonderful dress?  
21 AH: Well, um, I bought a pair of shoes that cost five-hundred and fifty  
22 dollars.  
23 DY: You did?  
24 AH: Yes.  
25 DY: That's a lot of money for a pair of shoes.  
26 AH: Yea. These are the shoes.  
27 DY: Um, let me see them.  
28 AH: They're Louis Vuitton.  
29 DY: Well take them out of the box. [AH hands shoe to bailiff].  
30 What size do you wear?  
31 AH: Nine.  
32 DY: They're a bit too small for me. Darn! I'd be fierce! How about your size?  
33 [Young addresses the bailiff] Do they fit you?  
34 BA: A little big, but I could work it.  
35 DY: Okay, well maybe she'll let you borrow them.  
36 BA: These are hot.  
37 AH: Thank you.  
38 DY: That's a lot of money for a pair of shoes.  
39 AH: Yes.  
40 DY: They like you in the Louis store when you walk in, don't they?

41 AH: Yes they do.  
 42 DY: They probably say Miss Hicks we're so glad to see you.  
 43 AH: Yes they do.  
 44 DY: They probably give you water, wine or whatever else you want.  
 45 AH: Yes.  
 46 DY: We like that. That's cool. [Singing]: *Hey big spender! Spend a little*  
 47 *time with me!*  
 48 So you walked in. Tell me about the dress you wanted her to make for  
 49 this special occasion.

Judge David Young, like any reality television judge or 'real' judge for that matter, sets up the case at the beginning by explicitly stating what the claim is in lines 1-8: Hicks is suing Dioume over the expenses of a custom made dress. However, the discussion of the case at hand, regarding the dress, brought to the reality television court quickly shifts as Judge David Young asks Hicks why she needed such an expensive dress to which she replies she had purchased expensive shoes in line 21. The focus of Judge Young is no longer on the dress, or the precedence of the case, but rather the shoes as he requests to see the Louis Vuitton shoes in line 29.

In line 32 Judge David Young is holding the shoes and comments: *They're a bit too small for me.* Like in the stand-up comedy of Ant, Judge Young references an expensive material item (the Louis Vuitton shoes) and the stereotypical notion that homosexual men desire such things. In addition, like Ant, Judge Young also displays self-deprecating humor by expressing his failure to properly assert his identity as a homosexual man because he is unable to wear said shoes because his feet are too big. Judge Young laments due to the impossibility of fitting into the shoes: *Darn! I'd be fierce!* However, Judge Young makes an attempt to reestablish his homosexual identity and utilize the stereotypical term *fierce* when self-referencing, which receives a laugh from the audience.

Because Judge David Young has framed himself as a gay man in the beginning of this excerpt by aligning himself with the stereotype that homosexual men desire expensive material items, Judge Young can also set the stage for a follow up joke. Again, this is similar to what Ant did in the previous excerpt when he used a laugh trap. Judge Young has already established his sexual identity in the beginning of the case with his reference to shoes. As such, he can close the excerpt with another humorous aspect, which is singing an older showtune (again, a stereotypical association with gay culture). In lines 46-47, Judge Young sings *Hey big spender. Spend a little time with me*. And this deployment of the showtune receives laughter from the studio audience.

### **13. Judge Cristina Perez: deadpan delivery**

“If I was going to date any Saved by the Bell cast member, it would be Zack Morris....Zack’s the man. A.C. Slater had the crazy curly thing. No!”

Anjelah Johnson – on dating

What makes the comedy of Anjelah Johnson and the humorous performance of justice that Judge Cristina Perez embodies so similar is their use of deadpan humor accentuated by their soft feminine voices. Deadpan humor is certainly nothing new to stand-up comedy and has its roots within American culture. Bercovitch (2002) discusses the use of such humor within the 19<sup>th</sup> century American classic Huckleberry Finn: “No signals are given – no winks or smiles, as in the tall tale; no changes of attitude bearing, or expression....In deadpan, all clues are repressed, strategically concealed in the flow of humor. Thus the narrative centers on the listening or reading audience rather than on the gull in the tale. Or more accurately, *we* are the gulls in the tale; the larger text so to

speak, includes its reader or listeners as the suckers” (p. 91-92). Bercovitch (2002) points to the classic aspect of deadpan humor by discussing the facial expression of the comedian, which is straight; the comedian does not exhibit any emotion within this particular type of comedy. Bluemenfeld (2009) corroborates this definition of deadpan: “subtly understated, dry, but pointed comedy and comic playing or performing, in which a comedian uses an impassive, neutral expression (without showing a change of emotion) when uttering a joke, reacting to something, or doing funny bits of business” (p. 78).

The deadpan delivery within stand-up comedy is a style that has traditionally been, and continues to be, reserved for men. For instance, Stephen Colbert, of the highly successful *Colbert Report*, has been discussed numerous times by scholars due to his satirical presentation of the news that relies on deadpan delivery of jokes (LaMarre, Landreville, & Beam, 2009, p. 217). However, several female comedians have found success by utilizing this deadpan style of humor. For instance, Rita Rudner, who, like Anjelah Johnson and Cristina Perez, embraces a stereotypical feminine performance with her soft-voice and petite stature have been labeled as *sugar sweet* (Kehe, 2012) and King (2008) has noted her gender marked qualities by stating “sexy deadpan is comedian Rita Rudner’s trademark style.” Johnson, herself, has been noted for her stylistic humor as one reviewer pointed out when discussing her role in the film *Our Family Wedding*: “As Izzie, Anjelah’s dry humor not only catches you off guard, but was so very perfect for the tomboy daughter who’s a mechanic and refuses to let a man trap her into marriage” (“Our Family Wedding”).

A component to deadpan humor at times involves explicitly setting up a joke with three parts; utilizing a three point attack within any kind of public speaking situation is

certainly not a new phenomenon. However, despite the fact it may seem somewhat antiquated, using a list of three points in quick succession has been a mainstay within the genre of stand-up comedy. Rutter (1997) has noted of stand-up performances in particular: “When speakers use a list of three, others in the interaction recognise the third clause or part as the completing element of the list. The implication is that performers can once again forecast a point of completion before it is actually reached” (p. 203). So, this technique of listing three points in quick succession is used frequently within stand-up comedy because it helps to ‘forecast’ the punchline. Older jokes frequently use this set up of three: A priest, a rabbi, and an atheist walk into a bar. Alternatively, jokes can use this rule of three in the punchline: I found my perfect woman online: she’s blonde, she’s from Arizona, and her real name is James (Salisbury, 2012). Once the audience recognizes this tripartite pattern in the formation of the joke, there is also a recognition that something humorous is not too far in the distance.

#### **14. Anjelah Johnson**

When Johnson walks onto the stage before an audience, her unassuming 5’3” stature and petite body do not act to intimidate the audience. Her presence is relaxing to the viewer as she stands before the microphone seated atop a microphone stand, which is not much larger than her. Her dainty hands grasp the microphone revealing an immaculate French manicure as she lightly tosses her head to the right and her lengthy brown hair flows to conform to her face perfectly and the audience is greeted with her bright white smile. Johnson’s quiet voice is nearly drowned out by the applause as she begins her set with a simple “Hey. What’s going on everybody?”

Johnson tackles several issues during her stand-up performance entitled *That's How We Do It* recorded at the Verizon Theater in Houston, Texas in 2009. However, she thematically focuses on both familial and romantic relationships during her performance. In the following example, Johnson describes a conversation she had with her mother, in which her mother suggests Johnson date Mario Lopez of *Saved by the Bell* fame:

AJ: Anjelah Johnson

1 AJ: Sometimes she'll send me a text message.  
 2 I'll get a text from my mom.  
 3 'I like Mario Lopez for you.'  
 4 [Audience cheer / laughter]  
 5 I like Mario Lopez for me too.  
 6 [Audience Laughter]  
 7 What do you want me to do with that?  
 8 'Well, why don't you date him?'  
 9 Uh, well, for one I've never met him.  
 10 For two, he's a big TV star.  
 11 I'm on You Tube.  
 12 [Audience laughter]  
 13 And for three, if I was gonna date any  
 14 *Saved by the Bell* cast member it would be Zack Morris.  
 15 Right?  
 16 [Audience cheer]  
 17 Everybody knows he's the hot one.  
 18 I even heard a couple of guys screaming in here.  
 19 Zack's the man.  
 20 AC Slater had the crazy curly thing. No.  
 21 Inappropriate.  
 22 [Audience laughter]  
 23 He can hook up with Jessie Spano.

Deadpan delivery that has become synonymous with so many comedians, as Johnson illustrates. The cadence of speech that Johnson utilizes to tell this anecdote is dry and monotone and continues in one constant volume, pitch, and rhythm. The only times in

which Johnson breaks this usage of language is in lines 3 and 8: *I like Mario Lopez for you* and *Well, why don't you date him?*

Consequently, these instances are ones in which Johnson is verbally giving life to the text messages that her mother has sent her; Johnson uses reported speech in order to perform her mother's voice. When we hear Johnson's mother, she is differentiated from Anjelah Johnson, herself, by using high rise terminal contour, which is a rising intonation in voice that is stereotypically associated with Valley Girl speech in which the end of a sentence rises in pitch, whether it is a declarative statement or otherwise (Lakoff, 1975). However, the rising intonation is a feature also associated with stereotypical Spanish accents, particularly for women (Hill, 1998). It is this sharp contrast between a Spanish accent speaking English versus an American English accent that lends itself to humor. Accents are often used within stand-up comedy to create characters that are humorous and reside outside of the comic herself (Double, 1997, p. 98; Carter, 2010, pg. 61). In order for Johnson to phonologically utilize a voice that can be considered humorous itself she must shift away from her deadpan performance; however, she cannot break her own personality so she sets up another character (her mother) in order to serve this function.

Secondly, Johnson sets up the punchline of the joke by providing three reasons as to why she would not be able to date Mario Lopez, and explicitly using this rule of three. The reasons why Johnson would be unable to date Mario Lopez are explicitly stated numerically in lines 9-14: *Uh, well, for **one** I've never met him. For **two**, he's a big TV star. I'm on You Tube. And for **three**, if I was gonna date any Saved by the Bell cast member it would be Zack Morris.* In line 11 in which Johnson contrasts her YouTube fame with the global fame of Mario Lopez the audience laughs and this acts to set up her

final point in which Johnson sets up Mario Lopez, and his haircut, as the butt of the joke. Mario Lopez is said to have a *crazy curly thing*, which is *inappropriate*, while Zack is *the man*. However, unlike many contemporary stand-up comedians, the style that Johnson utilizes to insult Lopez is not an overly aggressive style. A delivery that was full of emotions, such as anger, would not be a dry or deadpan delivery. This style of deadpan is not overly harsh laden with four letter words.

### **15. Cristina's Court**

The spectator enters a darkened room and sees the silhouette of a woman wrapped in a soft pink morning dress slowly striding across the room. Her dainty hands effortlessly push the large black double doors as she advances inside the walk-in closet. The camera eye invites us to follow the sensuous curves of her body as she removes her pink garment in favor of a thin silk black robe. Her radiant hazel eyes stare off into the distance and her long wavy blonde hair floats gently in a quiet breeze and her immaculate white teeth sparkle as her sultry lips curve to the left revealing a suggestive grin. At the center of the walk-in closet is Judge Cristina Perez proudly massaging her daytime Emmy award in both hands. A disembodied low male voice announces: *This fall, there's one accessory no other daytime television judge will have: her daytime Emmy. Check out the hot new season of the Emmy winner Cristina's Court. If you've got it, flaunt it.* Similarly, within written advertisements for the series, Judge Cristina has been labeled with such short statements as *sex on the bench* or *nothing comes between Cristina and her robe*.

Prior to entering the courtroom of Judge Cristina Perez, the television audience is visually greeted by a close-up shot revealing a profile of Judge Perez, donning a black robe, as she slowly turns to meet the gaze of the camera eye with a smile as a low-toned and soft male voice invites the audience to partake in her performance of justice: *Enter Cristina's Court. Witness a judge who's direct and fair. A judge with a deep passion for the law and ordinary people. Judge Cristina Perez. She takes the law into her own heart.*

The case of Sheri Brown v. Eric Hartley illustrates how Judge Cristina Perez linguistically performs deadpan humor and explicitly addresses gender relations, much like the comedy of Johnson. The following case involves a woman named Sheri Brown who says her former boyfriend, Eric Hartley, refuses to pay back money she loaned him for a scooter:

CP: Judge Cristina Perez  
 SB: Sheri Brown  
 EH: Eric Hartley

1 CP: Okay, so miss Brown, seems like, uh, you were throwing a lot of money  
 2 the defendant's way, until you found out you weren't the only one, correct?  
 3 SB: Yea.  
 4 CP: Correct?  
 5 SB: That's correct.  
 6 CP: And you, Mister Hartley.  
 7 EH: Hi, [how are you doing today judge?]  
 8 CP: [Or should I call you ] Mister Loverboy?  
 9 EH: Whatever you want to call me.  
 10 CP: Proudly state in your statement that you have a list.  
 11 EH: A little bit of a list.  
 12 CP: Of ladies that you have been with and have had sex with.  
 13 EH: Yes, but I don't think that's what this all about today, however –  
 14 CP: No, but I thought it was very interesting. How many?  
 15 EH: It's exceeded to about a hundred and twenty six somewhere.  
 16 CP: Wow! Do you ever sleep? Read a book? Watch TV?  
 [Audience laughter]

- 17 EH: In between. In between. Sure.  
 18 CP: Very busy man. So, tell me Sheri, why are you here?  
 19 EH: That's how I stay in shape. [Audience boos]  
 20 CP: From the beginning, yes.  
 21 SB: From the beginning?  
 22 CP: Yes. Because I understand you have twins with this person. Specimen of  
 23 a man. No?  
 24 EH: Whatever.  
 25 CP: Okay, so tell me.

Like any 'real' judge within a 'real' courtroom, Judge Cristina Perez begins the proceeding by summarizing the case and describing what the argument is. Judge Cristina Perez begins the court proceeding by implicitly stating the precedence of the court case in lines 1-2 by directly addressing the plaintiff Sherri Brown: 'you were throwing a lot of money the defendant's way.' The audience and litigants standing before the bench are to understand that the case of Brown v. Hartley is going to involve a dispute regarding money. Again, stating the case before the litigants is typical behavior for a judge. However, within the course of stating the case, Judge Perez also intertwines external information regarding the case at the close of line 2 in which she adds: "until you [Sherri Brown] found out you weren't the only one, correct?" The addition of this information regarding infidelity on the part of Eric Hartley does not explicitly relate to the case involving a loan dispute. Yet, the inclusion of this information is intended to add an emotional aspect to the case.

Judge Perez quickly turns her attention to defendant Eric Hartley by explicitly labeling him as 'Mister Loverboy' in line 8. Like Anjelah Johnson, the insult is subtle and non-aggressive and maintains the deadpan delivery. In addition, the judge questions him, not about the issue of the loan, but about his past. Judge Perez is obtaining information about the character of Hartley by bringing up something he had mentioned in

his statement prior to the case in lines 10-12: '[You] proudly state in your statement that you have a list...of ladies you have been with and had sex with.' Even when the defendant makes an attempt to shift focus in line 13 by stating his sexual encounters are not related to the case, Perez is adamant about remaining on the target of sex: *I thought it was interesting. How many?* Hartley responds to her inquiry in line 15 stating his list exceeds one hundred women.

Following the answer that Hartley provides, Judge Perez then utilizes a three point structure, like Johnson, in order to set up a joke within the courtroom. Judge Perez asks the defendant a series of rhetorical questions about his behavior in line 16: 1) do you ever sleep? 2) read a book? 3) watch tv? Within these three points, or questions, that Judge Perez uses, she publicly chastises Eric Hartley for proudly taking note of his sexual conquests in the form of a list. In addition, Judge Perez also receives a laugh from the courtroom audience at the expense of Hartley. Hartley, consequently, is a man being framed as a 'bad' citizen by Judge Perez in that he takes advantage of women both physically and financially. And although Perez verbally scolds Hartley she utilizes a stereotypical element of sex to do so. Hence, she is performing the stereotypical ideal of what a Latina women should be. Again, the list of sexual partners that Hartley has constructed does not relate to the case involving an alleged loan.

## **16. Conclusion: the moral dilemma**

All of the reality television courtroom judges dispense their rulings by utilizing a particular style of humor: Judge Judy is aggressive and brash; Judge Joe Brown is sarcastic; Judge David Young is neurotic and self-deprecating, and; Judge Cristina Perez

is monotone and deadpan. Each judge occupies a different niche in the landscape of the daytime reality television courtroom. Despite the unique discursive style that each judge deploys, there is a universal and underlying characteristic of each judge. Each reality television courtroom judge deploys linguistic techniques associated with stand-up comedians and each reality television courtroom judge makes a moral judgment about the respective litigants that stand before them.

Judge Judy tells Sharyn Martino-Napolitano that she needs to calm down and not be so upset about a car; Judge Joe Brown sarcastically asks Mikayla Thorton if she is incapable of taking out the garbage; Judge David Young commends Antigone Hicks for being a productive citizen and applauds her ability to live a lavish lifestyle; Judge Cristina Perez calls Eric Hartley ‘Mister Loverboy’ sarcastically for being a playboy who toys with the affection of women. In all of these instances, the immediate issue of the case (a damaged vehicle, a damaged apartment, a damaged dress, unpaid money) falls to the wayside so the judge may inquire about the identity of the individuals within the television courtroom. These moral judgments that the judges use are done so linguistically through a comedic style of discourse.

The linguistic techniques and moral questions that are raised by reality television courtroom judges leads to the question of what kind protocol within the courtroom emerges as a result of this type of discourse. Judge Judy is, after all, a television personality and, although a former judge, not a practicing judge, in the literal sense. As such, it can be questioned whether or not the protocol found in her courtroom completely different from the protocol found within an actual courtroom. How can justice be defined

given the personalities of contemporary reality television personalities such as Judge Judy or Judge Joe Brown?

### **CHAPTER 3: The Case of Liberalism v. Neoliberalism: Ideologies in real, and reality television, courtrooms**

*Armed with sense and liberty,  
With the heart and mind united,  
in a single perfect sphere.*

*- Neil Peart (Cygnus X-1 Book II: Hemispheres)*

Individuals across America have the shared experience of receiving an official looking white envelope in the mail that reads *request for jury service*. Some may find the fulfillment of this civic duty as a welcome respite from their daily job while others may find it to be an economic hardship while others may simply find it to be little more than a tedious assignment. Regardless of the attitude that one may approach the duty and regardless of the lifestyle one has, there are certain aspects with which one must contend prior to entering the courtroom that act to serve as an equalizer of sorts: all must park in designated courtroom parking; all must pass through metal detectors prior to entering the courtroom; all must sit in a waiting room and are briefed about the jury duty experience; and, all must fill out a series of paperwork. These procedures are set in place to ensure that no one is treated any differently than anyone else. So, before even stepping foot into the actual courtroom one is inundated with the ideals on which America is founded, which is known as liberalism.

The ideologies of liberalism and, more recently, neoliberalism, both promote ways of examining the law and justice. Liberalism posits objectivity as a key factor for guiding legal action while neoliberalism posits self-responsibility as a key factor for guiding legal action. The ideas of liberalism and neoliberalism serve as a foundation for how courtroom protocol is structured and regulated. The central question of this chapter

is how do the ideas of impartiality and self-governance manifest themselves within an actual courtroom setting and within the reality television courtroom setting? Before examining the real, and reality, courtroom it is important to understand the past 200 years under which American law has developed. Examining the origins of liberalism and neoliberalism will contextualize the ideology performed on the current wave of reality television courtroom programming.

### **1. What is liberalism?**

The roots of Legal Liberalism can be located within liberalism, an ideology typically associated with the work of 17<sup>th</sup> century English philosopher John Locke who wrote *Two Treatises of Government* (1689). Within this work, Locke presents the idea of all individual citizens having protection from others under a binding social contract:

And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society to submit to the determination of the majority, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact if he be left free and under no other ties than he was in before in the state of Nature (p. 146; 97).

A social contract is mentioned by Locke, which acts to protect the natural rights of the individual. Locke also makes it clear that individuals must ultimately submit a part of their freedoms to this greater good, usually a government, if one wishes to be a member of a society in which justice can function without chaos. Locke also mentions a previous state of Nature under which ‘every man’ found himself prior to entering such a contract. This state of Nature is often labeled as irrational, while the state of being within a type of government involves rational beings. Legal liberalism is based on the belief that law is a

rational system and objectively dictates the behavior of citizens. Essentially, the paradigm suggests citizens should live under the rule of law, which is impartial and fair, rather than the law of man, which is discriminating and biased.

The idea of liberalism brought forth by Locke was a key component to the foundations of American law and the constitution. As a new and emerging nation, America struggled to solidify and unify itself, and its laws, throughout the 18<sup>th</sup> and 19<sup>th</sup> centuries. As America matured as a nation during the early 20<sup>th</sup> century, several intellectuals addressed the direction the nation was headed and how to better the lives of citizens. Locke's idea of liberalism and the role of government in America became paramount with both proponents and opponents of strong government locked in battle.

Intellectual Herbert Croly (1909) gestured to founding father of America, Alexander Hamilton, and his vision of a strong central government that would ultimately ensure a fair and democratic society, often referenced as positive liberalism (Berlin, 1958). Fellow academic, Walter Lippman (1914), shared the sentiment brought forth by Croly in that a strong central government was necessary to ensure that Americans did not drift from order into chaos. Two American presidents of this era, Woodrow Wilson and Theodore Roosevelt, adhered to this ideology of positive liberalism, which promoted a government that supported domestic programs to oversee such issues as immigration, overcrowding in cities, and economic disparity (Cooper, 1985).

However, individual freedom that did not rely on a strong government became a popular idea as the middle of the 20<sup>th</sup> century grew closer as both intellectuals and presidents began to adhere to an idea of less government involved in the lives of individuals, or negative liberalism (Berlin, 1958). Thurman Arnold (1937) argued that

citizens of America were capable of learning lessons from history and had the ability to choose how they would like to live their lives and control their own lives and finances without the assistance of government. Hence, a strong central government was not seen as necessary to rule the nation and the free market would ultimately act as the great equalizer. During the 1920s and 1930s in America, presidents Warren G. Harding, Calvin Coolidge, and Herbert Hoover supported the free market and smaller government than their predecessors (Walker, 2012, p. 47).

The middle of the century saw a return to the classic ideals of liberalism, or positive liberalism, and a strong central government. Franklin D. Roosevelt placed “The New Deal” into action during the late 1930s and 1940s, which was intended to increase the role of the state by offering Americans various programs to solve the economic and social concerns brought forth by the Great Depression (p. 79). The era in which Lyndon Johnson was in office is often referenced as the peak of liberalism in America. Johnson implemented a program called “The Great Society” which, similar to FDR’s New Deal, offered social and economic programs to Americans during the early 1960s: a period of uncertainty framed by the assassination of John F. Kennedy and increased racial tension (Schulman, 2006). Intellectual Charles Reich (1970) historicized this moment by prophesizing American society was moving away from cowboy individualism to a communal society in which government intervention would be the norm. Such an ideology epitomizes liberalism.

Sandel (1998) provides a working definition of contemporary legal liberalism in which he states:

society, being composed of a plurality of persons, each with his own aims, interests, and conceptions of the good, is best arranged when it is governed by principles that do not themselves presuppose any particular conception of the good; what justifies these regulative principles above all is not that they maximize the social welfare or otherwise promote the good, but rather they conform to the concept of right, a moral category given prior to the good and independent of it (p. 1).

Sandel defines liberalism in terms of a guiding moral compass that points to what is right, or just. In other words, liberalism can be defined as an infrastructure that offers a unifying, and neutral, direction for people to follow despite a large number of individual ideologies. Not only are citizens expected to follow this rational law, but to also assist others who may go astray or are unable to follow the law. Duggan (2003) notes that Liberalism invokes a public that is accountable for ensuring the equality of access among its citizens (p. 8). Essentially, a form of equality is promoted within legal liberalism and all citizens are viewed with neutral lenses before the court and treated as such.

Because liberalism wishes to be neutral and govern the lives of its citizens objectively mobilizing a universal moral right, it attempts to exist as an entity that is free of complexity. The way in which liberalism attempts to maintain a black-and-white division of society is to separate the spheres of the public and private. This separation determines how much power the state has versus how much autonomy the individual has. Classical liberalism defines public as something that is typically linked to governmental agencies, such as the institution of public health, and something that is visible and accessible to all, such as a public meeting; consequently, private is defined as housed in a sphere in which the state has limited control and includes such things as practicing religion or controlling property (Starr, 2007, p. 55).

## 2. The problem with legal liberalism

Of course, this idea brought forth by legal liberalism that promotes complete objectivity on the part of the courts and equality for all despite any variable, such as race, age or gender, is problematic. Streeter (1990) discusses a relatively new movement of legal theory called Critical Legal Studies (CLS) that critiques the traditional ideas of how courtrooms function in accordance with Liberal ideology; he states succinctly of CLS: “the U.S. legal system has failed to produce justice, not because it failed to live up to its own Liberal ideals but in a sense *because* of those ideals” (pp. 45-46). The attempt to separate human qualities from the legal process is impossible according because the neutral inalienable rights given to citizens are, ultimately, socially constructed. CLS states “activities of lawyers and judges are social rituals embedded in social structure, not objective procedures that stand above social reality and power relations” (p. 46). That is to say, those who practice law are always held captive by their respective era. Law, and the practitioners of law, is not the objective entity promoted by legal liberalism, but a subjective entity that is socially constructed.

Streeter (1990) further discusses the problems with this notion that the ideology of liberalism is intended to be objective and, hence, falls outside the constraints of time and social context:

Most forms of legal Liberalism rely on some sense of the permanence and universality of the meaning of words. Legal language and legal expertise are thought valuable precisely because they provide fixed, rigorous meanings unsullied by the political and social winds of the moment. Given a certain set of legal rules and a certain legally defined situation, it is assumed, a properly trained judge or lawyer, within certain boundaries, can use his or her expertise in legal language and reasoning to arrive at, or at least approximate, *the* correct interpretation (p. 46).

Legal Liberalism brings forth the notion that an individual can be trained to objectively discern fixed meanings from the law books without any influence from their particular moment in time. What is perhaps even more problematic, as Streeter notes, is the idea that the verbiage of law chosen to represent unwavering meanings are, in fact, products of their culture. Because language is dynamic, attempting to locate static, universal, and clear meanings is impossible.

Legal Liberalism also brings forth the idea that law governs its citizens with their best interests in mind. Ultimately, this best interest of citizens is a goal, often referenced as a greater good or public interest, that is ultimately subjective because it is always discussed within a given context; the term *public interest* is always constrained within a respective context (p. 47). Regardless of how objective one may try to be, they are incapable of escaping their time, their place, and their own human body. The cultural norms of their time and place will influence those in power (judges), despite any attempt to be nonpartisan. Simply put, the law is not a neutral entity.

Dugan (2003) adds to this conversation by noting that the discursive position of legal liberalism, which promotes objectivity, ultimately acts to conceal human nature as opposed to dealing with it directly:

The master terms and categories of Liberalism are rhetorical; they do not simply *describe* the 'real' world, but rather provide only one way of understanding and organizing collective life. On the one hand, they obscure and mystify many aspects of life under capitalism – hiding stark inequalities of wealth and power and of class, race, gender, and routinely assigned to 'private' life, understood as 'natural,' and bracketed away from consideration in the 'public' life of the state. On the other hand, as the ideas of Liberalism become common sense, they also work to *create* or *remake* institutions and practices according to their precepts (p. 5).

The terms featured in legal liberalism, such as equality, liberty, and freedom, appear to promote fairness for all. However, such terms operate to oppress those who may, in theory, have access to all of the public knowledge afforded them by liberalism but, in reality, do not have such access because of any number of factors, such as socio-economic status.

Warner (2005) adds to this conversation by noting that the very terms *public* and *private*, under which liberalism builds its master narrative, present difficulty in terms of clearly defining what they are: “Often the impression seems to be that public and private are abstract categories for thinking about law, politics, and economics” (p. 23). The terms public and private are not cleanly distributed and they both have connections to ‘messy’ categories such as race or gender and cannot be separated from law, politics, or economics. Upholding this ‘clear’ distinction between state intervention and individual autonomy that liberalism has set out to define has been, and continues to be, problematic.

When dealing with issues concerning what falls into the public versus private realm, the “Supreme Court has been called upon to interpret the provision of the Fourteenth Amendment mandating that ‘No State shall...deny to any person within its jurisdiction the equal protection of the laws’” (Mensch & Freeman, 1988, p. 26). Several landmark cases in the history of America have been brought to the Supreme Court in order to determine if equality is threatened. Such cases as *Plessy v. Ferguson* in 1896, *Brown v. Board of Education* in 1954, *Roe v. Wade* in 1973, and *Bush v. Gore* in 2000 highlight this point. Furthermore, concerns about equality and its place in the public and private realms have continued to be relevant. This was evidenced during March of 2014, in which there was much controversy surrounding the St. Patrick’s Day Parade in Boston,

organized by South Boston Allied War Veterans Council, in which members of the LGBT Veterans for Equality were not allowed to participate. Despite a large amount of public outcry arguing that such exclusion of LGBT members from the parade was unfair and unconstitutional (not being allowed to identify as LGBT in a public arena such as a parade), it was, in fact, legal. In 1995, a “U.S. Supreme Court decision ruled that the council could include or exclude groups at its discretion” (Robelmed, 2014). Since the Allied War Veterans Council is a private group owned and operated by Veterans, not a government group, they are able to make decisions about who is, or is not, allowed to participate. This case provides some insight in regard to how equality and its claim in the public and private realms can be confusing.

### **3. Liberalism to neoliberalism**

The end of the 1960s ushered in a new era for America as Lyndon Johnson left office and, consequently, so did the ideas of liberalism for which he had been a prime subscriber. The election of Richard Nixon during the 1970s saw a dismantling of the Great Society that Johnson had enacted and an increased focus on the free market to solve the worries of society (Bowles, 2005). However, it was the following decade that would ultimately set the foundation for negative liberalism, or what would become known as neoliberalism. In the year 1980, “Ronald Reagan was elected President of the United States, and armed with geniality and personal charisma, set the US on course to revitalize its economy...and liberate the powers of finance both internally and on the world stage” (Harvey, 2005, p. 1). Citizens in America could no longer rely on government-funded programs that were offered in the past, such as Jobs Corps to assist

unskilled workers or Head Start to assist children with starting school (Schulman, 2006). Citizens in America had to participate in the free market, contribute to society, and, ultimately, take responsibility for their own wellbeing.

During the 1990s neoliberalism became popular in America, achieving the status of what Dugan (2003) references as ‘gospel’: “Liberalism’s rhetorical separations of state from economic, civil society, and the family never did describe the real, complex interrelations of forms of collective life” (p. 6). Dugan notes that the rhetoric of neoliberalism promotes less government and more personal responsibility; in other words the onus of success is on the individual rather than the state to provide for him or her. It is also interesting to note that during this shift from liberal to neoliberal ideology during the late 20<sup>th</sup> century, there was also a shift occurring on television. As discussed earlier, the popularity of Judge Wapner suffered a steep decline in the early portion of the 1990s while the popularity of the charismatic figure Judge Judy found celebrity among audiences.

A working definition of neoliberalism is offered by Harvey (2005) in which he labels neoliberalism as a doctrine “that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade” (p. 2). That is to say, the greater good of society is served if individual citizens look after themselves and are able to successfully participate in the free market and not rely on government intervention to assist them. Hence, human agency is viewed as driven by the underlying ideology found in neoliberalism (Heron, 2008, p. 88).

However, neoliberalism does not simply advocate for human agency and self-responsibility; neoliberalism also circulates a discourse that warns of the dangers involved in not actively participating in the free market. Simply, the problems of society, particularly criminal acts, are to be resolved by incarceration instead of examining the unequal distribution of wealth brought about by capitalism. Philomena (2001) states: “The neoliberal state thus has an investment in fueling fear of crime - - persuading the public of imminent danger by overstating the threat, inflating or distorting crime statistics, and creating the false impression that all citizens are equally at risk of victimization.” Thus, there are stories of zero-tolerance policies and victimization of citizens with usage of cutting edge technologies. By producing such narratives involving drama or fear, citizens become aware of the consequences involved with committing crimes.

#### **4. Performing legal liberalism in a ‘real’ court**

When one enters a courtroom there exists physical entities that perform the task of maintaining order among individuals. The American Flag is positioned in front of the courtroom accompanied by the respective state flag. Rows of seats are neatly filed and facing forward at the bench of the judge. The bailiff stands before the rows of seats surveying those individuals who enter the court. All of these artifacts constantly remind the individual that he or she is seated within a courtroom.

However, it is also the language that is used in the courtroom that is intended to promote objectivity. Once all are seated and silenced the bailiff announces the entrance of the judge in order to begin the court proceedings: *All rise. The honorable (Judge’s*

*name) presiding.* Such an utterance is what J.L. Austin (1955) would label as a performative sentence that does not simply make a declaration or describe, but the sentence ultimately creates some form of action (p. 6). Perhaps the most famous example provided by Austin involves a wedding ceremony in which those being married utter “I do” and the person officiating utters the phrase “I now pronounce you.” Those directly involved in the wedding ceremony are not involved in making descriptions regarding the marriage, but they are active participants who are utilizing language that ultimately functions to carry out some action. In addition, the proper circumstances must be met in order for such language to be considered authentic: the person officiating must have some authority invested in him or her by the state and the individuals being married must have proper written documentation for the marriage to be considered legal.

The use of performative language is what brings the courtroom trials to fruition; the action involved is having those in the courtroom stand when the circumstances are appropriate (when the bailiff speaks the utterance). Once the judge enters the courtroom, he or she utters another performative sentence: *You may be seated.* Of course, this utterance creates another action on the part of those in the courtroom, which is to sit. Although such a ritual may seem trite at first, it is intended to establish and uphold the credibility and the authority of the courtroom and, hence, the judge. The few simple sentences are spoken on a daily basis to serve as a reminder to those in the room that they are involved in the legal process.

Prior to making a ruling of the first case, judges will often address those in the room by discussing what are realistic and unrealistic expectations. Because courtroom programs have grown exponentially over the past few years, many citizens have

preconceived notions about what occurs in the courtroom before even setting foot into one. The Honorable Donald E. Shelton (2008) has discussed the influence of television on reality which is a phenomenon labeled the *CSI Effect*. *CSI* (Crime Scene Investigation) is a popular legal program that airs on Columbia Broadcasting System and deals with forensic evidence in the courtroom. Shelton states:

Many laypeople know—or think they know—more about science and technology from what they have learned through the media than from what they learned in school. It is those people who sit on juries. Every week, the ever-evolving scientific and information age comes marching through the courtroom door in the psyche of almost every juror who takes a seat in the box.

Judges such as Shelton must address false ideas concerning the legal process brought about by such programs as *CSI* in order to ensure the court proceedings run smoothly without interference. That is to say, by addressing television, a judge can clearly demarcate the rhetoric of courtroom versus the rhetoric of a television courtroom: television is subjective and fantasy while the courtroom is objective and reality.

It is with reason that television ‘fantasies’ must be addressed in court prior to the start of a trial. A man named Robert Temple stood trial for the murder of his wife in a Florida Courtroom in 2011. Temple decided to represent himself as his own attorney and questioned medical examiner Dr. Jon Thogmartin about the knife wounds found on Temple’s wife, Rosemary: “Would you say that in the majority of these knife wounds that you see metal residue left in the clothing?” Dr. Thogmartin did not understand what Temple was referencing and he clarified: “Like when I’ve seen on *CSI* when there’s a knife wound under a knife wound.” Thogmartin responded: “No. That doesn’t happen. That’s hooley” (Michael, 2011).

Following a brief discussion of televised reality courtrooms versus real courtrooms, the judge will announce the first case to be heard by the court and the participants of the case will step forward to the bench to plead their case. Again, this ritualistic rhetoric of announcing the names of the litigants serves as performative language on the part of the judge in that it maintains control over the courtroom and serves the function of creating order. Each case brought into the courtroom is acknowledged when the judge provides a brief synopsis of said case. Procedural Rule 17 states judges must ensure that during the interaction with litigants, particularly the defendant, they understand the case being brought forth to court and the consequences that may be brought forth as a result of the case, such as a fine (Philips, 1998, p. 44). Within the arena of a small claims courtroom, reiterating the nature of the claim by the judge is standard procedure.

The judge will typically ask record oriented questions to ascertain information from litigants. (pp. 63-64). Some judges believe that inquiries concerning social background are irrelevant to the case at hand; hence, only questions explicitly regarding the case are asked. Within such record oriented style, the judge will hold the floor longer than the litigants. Questions that require a brief answer will be asked. Often a yes/no question will be asked in order to ensure brevity and make certain court time is being used economically. For instance, one case involving a defendant finding a credit card and being charged with petty theft featured the judge asking record oriented style questions: Did you make any efforts at all uh to uh - notify the owner that uh you had his card? All right, and uh there was the name of the bank on the card, was there not? Any address on the card, or any place that a bank or someone that you could uh call about the

uh fact that you had it? (p. 94). All of these questions were answered very quickly and simply by the defendant with a *no*. Again, these types of exchanges are common in an actual courtroom in which the judge holds the floor for a much longer time than the litigant and, by doing so, establishing a power relation with litigants.

Following a series of inquiries from litigants, the judge will finally render a verdict for the case at hand. Much like the opening of the case in which the judge utters the performative sentence hailing litigants to proceed forward to the bench, the closing of the case is also a performative sentence. The words spoken by the judge at the closing of the case are not merely intended to provide a description but to ultimately have real life consequences; these consequences may entail paying a fine or prison time. Or, as in the following example, a judge may order litigants to return to the courtroom on a future date for sentencing: “All right. Uh, sentencing on May the uh...seventeenth. Nine A.M., Division 00000. But do report to the probation department” (p. 186).

The rhetorical tools utilized by the judge are in place to ensure that the courtroom processes run objectively, smoothly and there are no impediments when listening to cases or rendering verdicts. For the most part, the system does run smoothly in that the judge has control over the courtroom and litigants do not speak out of turn. However, this does not mean that there are never instances in which a litigant does challenge the authority of the judge. For instance, Judge John Hurley of Broward County, Florida oversaw the sentencing of Brian Noval in which he was charged aggravated assault and domestic battery (Nevins, 2009). Noval spoke out of turn and referenced the judge as a ‘cock’, which received gasps and laughter from those in attendance, to which Judge Hurley held him in contempt of court for using ‘foul’ language. Noval apologized and sarcastically

asked his attorney if he could ‘take the cock back’; a comment that was received by laughter from the audience in the courtroom. Judge Hurley replied “Sir. I am inclined to hold you in contempt of court again. Would you like to tell me why I should not hold you in contempt of court for the last thing that you just said? Do you have anything to say in mitigation of the second sentence I am about to hand down?” Noval said, “I was just asking my attorney if you could do that.” Judge Hurley concluded, “Alright sir, you have nothing. I am going to sentence you to another sixty days to run consecutive to the prior sixty days.” Judge John Hurley, a mature-straight-white-man, did not return the insult that Noval hurled at him with the colorful verbiage found on reality television programs. Judge Hurley did not raise his voice and spoke calmly and objectively when sentencing Noval to an additional sixty days for utilizing language unsuitable for a courtroom.

Because judges are supposed to utilize rhetoric that is neutral does not mean that judges never show emotion. As Critical Legal Studies suggests, judges are social beings and are influenced by their culture and not an entity free from the constraints of what it means to be a human. For instance, in August of 2010 Judge Judith Eiler, who serves at a county court in Seattle, Washington, made a comment deemed inappropriate to a man who was in court for a traffic violation: “*If you drive like an idiot ‘cause you’re late for work, you’re gonna have to pay for it. You can see your picture on the headlines of the Seattle Times, stupid young man who shouldn’t be driving*” (Cohen, 2010). More recently in May of 2012, Judge William Watkins was serving as a family law judge in Putnam County, West Virginia overseeing a divorce case between Arthur and Lillian Hage. Before the court proceeding officially began, Judge Watkins accused Arthur Hage

as the party responsible for posting a photograph of Watkins' home on a local news website. Apparently, Watkins' home was vandalized shortly after the photograph of his home was published. Watkins begins by saying to Arthur Hage: "*Before we get started....Mr. Hage, if you say one word out of turn you're going to jail. You understand me?*" Later Watkins was reported as screaming at Mr. Hage: "*Shut up! Don't you speak! My wife is disabled! She's there alone! You disgusting piece of shit!*" (Harold, 2012).

However, Judge Eiler and Judge Watkins did not receive an assortment of accolades for their behavior; undoubtedly Judge Judy would receive a spike in the Nielsen ratings for delivering such comments to a litigant. Eiler and Watkins were judges serving in real courtrooms and received real negative consequences for their behavior. Judge Eiler received a five-day suspension without pay and Judge Watkins faces a possible investigation by the State Supreme Court. The reasons why Judge Eiler may have displayed this type of conduct is unclear (perhaps she was hoping for a television producer to recognize her aggressive disposition and provide her with her own courtroom program or perhaps she is simply human and made a moral judgment about the young man). The reason why Judge Watkins was enraged is a bit clearer (he felt his family was personally threatened by the litigant given the circumstances). However, if a judge wishes to utilize certain types of language, such as those found in a reality television courtroom, there must be a context for it.

Humor and snide remarks are allowed in an actual courtroom provided the circumstances are 'correct.' Hobbs (2007) notes: "Although judging is serious business, the occasional humorous opinion is a longstanding tradition among both British and American judges" (p. 50). The use of humor within the court must adhere to the code of

conduct set up by the American Bar Association in which the judge does not attack the litigants through comedy; rather the judge can only humorously attack the claim. Hobbs (2007) states the American Bar Association's Code of Judicial Conduct labels humor as inappropriate if it is at a litigant's expense (p. 53). The humor that is dispensed in the courtroom by the judge must be directed at a particular situation and free from targeting any one individual.

The case of *Fisher v. Lowe* exemplifies the 'proper' use of humor in the court (Hobbs, 2007). The defendant Lowe lost control of his automobile and hit a tree located in front of the plaintiff's home, Fisher. Fisher sued the driver, the owner of the vehicle and the automobile insurance company for 'injuries sustained to the tree'. The Michigan court dismissed the case due to the No-Fault Insurance Act, which limits the types of claims that may be brought before the court. Judge John H. Gillis responded to the case of *Fisher v. Lowe* with a parody of Joyce Kilmer's poem "Trees." The first four lines of Gillis' poem reads: *We thought that we would never see / A suit to compensate a tree / A suite whose claim in tort is prest / Upon a mangled tree's behest* (p. 54). The response of Gillis is humorous because it references what is typically considered a poem for children and reveals the absurdity of the case. In addition, the use of humor by Gillis adheres to the code of conduct by the American Bar Association because he does not attack the litigants. Rather, Gillis uses humor in order to attack the claim. Yet, the use of humor in a 'real' court versus a 'reality television' court differs because the court TV judge treats the litigant as a heckler, much the way a stand-up treats those in the audience who are speaking out of turn and, hence, jokes are made at the litigant's expense. In addition, the reference to literature, such as Joyce Kilmer, assumes the audience is familiar with a

given literary text. However, stand-up comedy has a wider audience and is considered a form of humor that is easily accessible by all.

In a real courtroom there exists far less of the ‘dramatic’ element that one sees on television: the litigants waiting to stand before a judge, or an arbitrator (a lawyer working towards becoming a judge) in many cases, have perused through several forms and filled out all of the necessary paperwork to even enter a case into court; the litigants have waited several months before a date is granted for the case to be heard by an arbitrator or judge; the litigants have most likely sacrificed a day of work in order to have their case heard; the litigants have been waiting hours within the confines of a crowded room to have their case ruled. The California Court website, for instance, acknowledges the arduous process that is involved in going to small claims court: “Small claims court is often a great resource. But a dispute in small claims court is still a court case, in a courthouse, before a judge, and the court process can be long, time consuming, and frustrating. Because of this, it is a good idea for you to think about other ways to resolve your dispute.”

All of the mundane rituals involved in an actual small claims court are conveniently omitted from reality television courtroom broadcasts: “Syndi-court trials that cut out the dry procedural nuances, leave in the juiciest bits, with real people instead of actors, creates an additional level of drama over fictionalized television shows Syndi-courts are much more accessible to a layperson than actual court proceedings because of their elimination of much of the procedure of normal legal proceedings” (Kimball, 2005). Clearly, televised justice is different from the justice experienced within the confines of a local courtroom. So, what does televised justice look like?

## 5. Judge Wapner and legal liberal justice in the 1980s

When examining the performance of justice within the courtroom of Judge Joseph Wapner from the 1980s television series *The People's Court*, there are two central characteristics that will be addressed. Firstly, Judge Joseph Wapner, as well as the litigants standing before him, exudes the stereotypical idea of a judge being a disembodied extension of the law draped within a black robe that all citizens are to obey and, secondly, perpetuating the necessity and importance of a social contract between citizens. These two points associate with liberal philosophy can clearly be seen within the performance of justice given by Judge Joseph A. Wapner.

Two parties enter *The People's Court* and stand before a judge because they were unable to reach an agreement about a given situation and conflict continues to exist. As such, the two parties involved have agreed to allow a 'lone gunman', physically brought to fruition by Judge Wapner, to resolve the dispute in question. The introduction to the program, and the very name of the show, perpetuates the idea of citizens living in a social contract with one another and deferring certain individual freedoms to a single mediator for the sake of social harmony: "Both parties have agreed to dismiss their court cases and have their disputes settled here in our forum: The People's Court".

Kohm (2006) expands on this idea of having Wapner as a seemingly disembodied mediator perform justice in *The People's Court*.

In short, the *People's Court* is a popular cultural embodiment of Weber's (1968) ideal typical form of power, rational legal authority. In heeding the legal or sometimes moral advice of the *People's Court*, viewers consent to the exercise of power because it is prescribed by law. As such, when we obey the ruling of a judge, we "do not owe this obedience to him as an individual, but to the impersonal [legal] order" (Weber, 1968, p. 218).

Kohm points to Weber's idea of rational legal authority which envisions the law as something greater than the individual and working towards a kind of common good that will ultimately benefit all involved. Moreover, it is not necessarily the particular judge that is rendering the verdict, but rather a faceless extension of the objective law. That is to say, the litigants within the forum of *The People's Court* are not obeying Judge Wapner, but obeying the law. In addition, Judge Wapner fits the stereotypical description of what a judge might be imagined as because he is a mature-white-man wearing a black robe and not allowing his emotions to get the better of him and seep into the courtroom.

Secondly, this idea of having a social contract among citizens constructed under the terms of legal liberalism can also be seen within the 1980's *The People's Court*. Judge Wapner (1987) believes legal liberalism is objective and offers equality among citizens. Although Wapner recognizes no system of law is perfect, he believes the justice system in America comes very close to equalizing those who stand before it:

In the twenty years I spend on the bench, I saw overwhelmingly men and women who believed in the sanctity of the law. Before me every day came people from trash collectors to civil servants to corporate titans, and all of them were unified by trust in the law... The glory is that the American law can accommodate the pain of the people before it... and then, far more often than not, render justice (p. 154).

Wapner prefaces his comment by recognizing that he has been placed in a position of authority to preside over the lives of others by being a judge. As such, he promotes this legal liberal ideology in which this greater welfare of the public is the highest priority.

When examining a particular case from *The People's Court* we can see how these issues of authority and equality manifest themselves. For instance, in case #4850, *Carillo v. Haigh*, the plaintiff is suing the defendant for an unreturned rent deposit check.

JW: Judge Wapner  
MC: Mary Carillo  
LH: Laurie Haigh

1 JW: You may be seated. [Cough] I know you've all been sworn. I have read  
2 your complaint ma'am. You claim the defendant owes you for a rent  
3 deposit, babysitting and some damage to your shoes.  
4 MC: Yes.  
5 JW: Alright. What was your relationship- You rent a room from her?  
6 MC: Yes I did. My only relation with her was that I rented a room.  
7 JW: I understand.  
8 MC: Okay.  
9 JW: Alright. How much was this deposit?  
10 MC: Two-hundred dollars.  
11 JW: When did you move in?  
12 MC: Um. I have the rent receipts here.  
13 JW: Just tell me. When did you move in?  
14 MC: Okay it was uh- September. September...4<sup>th</sup>. September the 3<sup>rd</sup>.  
15 JW: When did you move out?  
16 MC: Uh. October the 5<sup>th</sup>.  
17 JW: Did you leave voluntarily or did she ask you to leave?  
18 MC: Well, it was a...she had asked me to leave, in fact she was almost  
19 throwing me out. Uh, out onto the streets when she asked me to leave.  
20 And it was because of a dispute over her younger child. And uh-  
21 JW: How old was her younger child?  
22 MC: Uh, ten months old.  
23 JW: Okay. What was the dispute?  
24 MC: Well, she had asked me to baby sit, and I had kept telling her I am not a  
25 built-in babysitter, but she didn't seem to hear me because she kept asking  
26 me to babysit. And uh-  
27 JW: You kept doing?  
28 MC: Well, I did it. I knew I couldn't stay there but I was trying to keep the  
29 peace until I could get out because of financial reasons. It was- I couldn't  
30 get up and move.  
31 JW: Were you charging her for babysitting?  
32 MC: Uh, well she agreed to pay me, uh, when she worked. And, uh, there were  
33 other times she went out in the evening that she didn't pay me. But, there  
34 were two times she went to school she did not pay me for  
35 [babysitting.]  
36 JW: [How much ] did you charge her?  
37 MC: Five dollars a night.  
38 JW: A night?  
39 MC: Yea, there were two nights.  
40 JW: Alright. [Long pause – Judge Wapner writes on a notepad]  
41 And, uh, what about the damage to your shoes?

- 42 MC: Well, her, when I moved there for some reason she took the cat litter box  
 43 out of the house and let the cats stay in the house. I don't understand that.  
 44 Why she took the cat litter box out, but she did. And uh, one of her cats  
 45 got into my room and used my closet for a litter box and he just, you  
 46 know, most of my shoes were washable, but I had some cloth shoes in  
 47 there that got stained and I had to throw them away. And they were not,  
 48 well, they were five dollars a pair. Two pair.
- 49 JW: Okay. Did you keep her rent deposit [to LH].
- 50 LH: Yes.
- 51 JW: Did you ask her to leave?
- 52 LH: Yes.
- 53 JW: What's the basis for keeping the rent deposit?
- 54 LH: Because I was informed on Saturday evening at a church ice cream social  
 55 that she had locked my infant daughter in her bedroom and left and went  
 56 into the kitchen.
- 57 JW: But that was in September, she didn't move out until October.
- 58 LH: October 5<sup>th</sup>. Because her rent was- I demanded that she leave right then  
 59 because I was very upset. I mean she was screaming and yelling at me  
 60 and calling me names and she  
 61 [physically- ]
- 62 JW: [How do you] know- How do you know she locked your ten month old in  
 63 the closet?
- 64 LH: Because of my daughter.
- 65 JW: Pardon? Your daughter?
- 66 LH: My daughter was there.

Because the producers of *The People's Court* wanted to illustrate the realities that exist within a small claims courtroom, the language used by Wapner follows many of the typical patterns an actual judge would use. The very first words uttered by Judge Wapner illustrates the stereotypical type of power a judge has by controlling the studio audience with the imperative sentence in line 1: *You may be seated*. In addition, Judge Wapner begins the court proceedings by providing a very brief summary of the case in question and, hence following Rule 17. In addition to serving as a procedural rule, the reiteration of the claim between Carillo and Haigh also illustrates the authoritative knowledge that Wapner has of the case and the promise that he will render a just verdict.

Following the set up of the case, Judge Wapner begins his line of questioning to ascertain the ‘facts’ of the case. The particular questions that Judge Wapner asks focus on the circumstances of the case, not the character of the individuals. The performance of justice embodied by Judge Wapner illustrates this idea of acquiring information in an objective manner and working towards the greater welfare of society by resolving a dispute. The focus of the 1980s version of *The People’s Court* would focus on the judge obtaining evidence in a matter-of-fact fashion and rendering a verdict based on rational legal authority. For instance, in the case of *Carillo v. Haigh*, in which the plaintiff was suing the defendant over unreturned rent deposit, Judge Wapner performs the task of acquiring information from the litigants through asking direct and closed questions such as *You rent a room from her? How much was this deposit? When did you move in? When did you move out?* This type of questioning is considered Record Oriented (Philips, 1998, 63-64) questioning because a fixed script is adhered to during the court proceedings.

Moreover, because Wapner is adhering to this strict scripted format typically utilized within a real court, there is minimal linguistic overlap between litigants and judge. This line of questioning also ensures that the focus of the case will remain on the circumstances involved rather than the litigants themselves. That is to say, the race, age, or any other personal characteristics of the litigants is of no interest to Judge Wapner. Ultimately, Judge Wapner rules in favor of the plaintiff after looking through the evidence provided and hearing testimony. The audience is able to gain a glimpse into how a courtroom functions by seeing due process of law at work. In addition, an entertaining, yet educational, narrative of conflict and resolution leaves the audience

feeling satisfied with the justice system. The audience feels Judge Wapner performs justice in a rational manner.

Judge Wapner echoes this sentiment of reason and facts being the ultimate compass when making decisions within the courtroom. However, what can be said of Judge Judy and her peers? Are the same types of narratives being displayed within the courtrooms of contemporary judges as were seen during Judge Wapner's reign during the 1980s? The judge is a person who is seen as having a specialized knowledge in justice and the ability to understand law and, ultimately, enact it. Citizens endow the individual court justice with the power to make decisions to resolve conflict. The producers of *The People's Court* decided to Judge Wapner serve as an arbiter on television because he represented an average, everyday judge that might be seen in any local small claims court. *The People's Court* of the 1980s served to educate citizens and provide insight into how the actual court system functioned.

## **6. Entertaining fissures in court objectivity**

Modern day reality television courtroom programs are not only designed to administer 'justice,' but to simultaneously entertain the audience as well. This point is made evident in a television promotion for several courtroom programs (*The People's Court, Divorce Court, Judge Hatchett and Judge Mathis*) featured on *MyNetwork-TV* (a subsidiary of the Fox network) that explicitly plays upon this contrast of seriousness and humor: "Witness judges that are tough, fair and *funny*." The presiding judge within a reality television forum must not only be familiar with the law, but must also possess a personality, whatever form that may take. The contemporary reality television courtroom

judge must make a conscious effort to announce their individual identity in the court to stand out among a vast sea of competitors. This idea of having a personality and doling out humor within the courtroom space is certainly indicative of the subjectivity of law, which Streeter discusses. During the 1980s Judge Wapner was the only television judge and, as such, did not have such adjectives as ‘funny’ or ‘angry’ affixed to his name during the promotional spots for *The People’s Court*. One would tune into Wapner presumably to gain a glimpse into a real courtroom, and certainly not have the expectation that Wapner was going to belittle a litigant via yelling and name-calling.

However, modern day reality television courtroom judges are not simply subjective because they embody a comical disposition. Regardless of the varying styles of humor executed by the judge, these modern day reality television courtroom judges do have an underlying ideology that is prevalent within each of their respective programs: neoliberalism. Chapter 3 illustrated various moments in the reality television courtroom in which this idea of self-responsibility and proper moral behavior was promoted by the respective judges: Judge Judy tells litigant Sharyn Martino-Napolitano to control her anger, take a deep breath, and ‘find her center’; Judge Joe Brown rhetorically asks litigant Mikayla Thorton why she is incapable of cleaning after herself and taking out the garbage when she is obviously an able bodied woman; Judge David Young commends Antigone Hicks for being successful and having the means to purchase expensive Louis Vuitton shoes by saying ‘We like that, that’s cool!’; Judge Cristina Perez chastises litigant Eric Hartley for being promiscuous and toying with the emotions of women. A particular instance of *Judge Judy* will be examined to further interrogate this idea of neoliberalism and the reality television courtroom.

Kohm (2006) begins this discussion of *Judge Judy* and neoliberalism performed in the modern day reality television courtroom:

Judge Judy represents a shift in the way popular culture imagines the role of law in the lives of ordinary people. This shift accords with neoliberal notions of governance and individual self-responsibility for protection against risk. Conversely, People's Court represents an older, liberal-legal model of law that emphasizes individual rights, public participation in the court process, and due process (p. 704).

Kohm points to a distinction between the televised courtroom of Judge Wapner during the 1980s and contemporary television judges. Again, the type of justice imagined in the court of Wapner is aligned with legal liberalism in which the focus is on the case itself and 'facts' of the case are what is privileged. For instance, in the case of *Carillo v. Haigh* discussed earlier, Wapner was only interested in aspects such as *when* Carillo moved in, *when* Carillo moved out, and *how* much Carillo was paying for rent. Never did Wapner ever question the identities of either litigant. However, if the case of *Carillo v. Haigh* were brought before a contemporary judge such as Judge Judy, Judge Judy would be quick to make assessments about the character of each litigant. For instance, Judge Judy would most likely accuse Haigh of being a horrible and unfit parent because she allowed a woman she hardly knew to baby-sit her 10-month old child.

## **7. Ethical judgments of character and neoliberal justice**

The contemporary reality television courtroom programs overseen by such justices as Judge Judy, offer a model of justice that differs from Judge Wapner. Judge Judy, and other contemporary reality television courtroom programs, produce "neoliberal notions of governance and individual self-responsibility for protection against risk"

(Kohm, 2006). The underlying theme perpetuated by modern day reality courtroom judges is that the litigants who stand before the bench must take responsibility for themselves. Similarly, Ouelette (2004) notes that reality television courtroom programs, such as Judge Judy, act as a moral compass for its viewers; hence, the program constructs the neoliberal citizen in that it illustrates how they should conduct themselves in society via the litigants on television who stand before Judge Judy. The American citizen is to be educated via the reality television courtroom program. Ouelette states that the reality television courtroom sets up a structure in which the government has a reduced role in taking responsibility for its citizens; rather, responsibility is shifted onto the individual and the private sphere of the home (in which the learning device of television is located) and not the public site of the actual courtroom. However, in terms of the reality television courtroom program, citizens of America are not simply learning how to be responsible neoliberal citizens by being shown narratives of what constitutes good or bad moral characteristics. Citizens are also exposed to the idea of justice and the courtroom; reality television courtrooms negate the idea that liberalism promotes: the courtroom is free of emotion and treats all equally. Within contemporary reality television programs, judges behave as recognizable social creatures from their respective eras. Judges on these reality television programs administer justice with emotion and, hence, interrupt the stereotypical sense of objectivity.

One can see a stark difference in how justice was performed during the 1980s and how it is performed in the 21<sup>st</sup> century through Judge Judy in the case of Marcus Hicks vs. Yolanda Edwards (Takietha Edwards is a witness / Defendant's sister) in which Hicks claims Edwards defamed him at work.

JJ: Judge Judy  
 MH: Marcus Hicks  
 YE: Yolanda Edwards  
 TE: Takietha Edwards

1 JJ: It is your claim, Mister Hicks,  
 2 that Miss Edwards has harassed you at the workplace.  
 3 MH: Yes ma'am.  
 4 JJ: You are a married man?  
 5 MH: Yes ma'am.  
 6 JJ: She's defamed you and harassed you  
 7 by claiming and telling coworkers that  
 8 the two of you had a sexual relationship  
 9 MH: Yes ma'am  
 10 [Audience gasps]  
 11 Shhhh!  
 12 MH: uh-  
 13 JJ: That's the nature of your claim.  
 14 MH: Uh-huh. A sexual encounter.  
 15 JJ: Yes. And Miss Edwards says that you did, in fact,  
 16 have a sexual encounter.  
 17 YE: Yeah.  
 18 JJ: She is counterclaiming because she says that  
 19 because of your actions she was forced to go on  
 20 some sort of disability  
 21 YE: Hmm-mmm.  
 22 JJ: She has stress due to your actions in the workplace  
 23 MH: Yes ma'am.

Initially, there seems to be little difference in terms of how a contemporary reality television court proceeding begins. That is to say, the bailiff for Judge Judy, Boyd, would ask those present in the courtroom to rise and announce the litigants of the case being brought forth while Judge Judy would tell those in attendance to be seated. Additionally, Judge Judy begins the case much the same way that Judge Wapner, or a real judge, would by adhering to Procedural Rule 17 and setting up precedence of the case in plain language to the litigants standing before the bench.

However, the case of Hicks v. Edwards shifts from the stereotypical legal liberal deployment of justice as Judge Judy questions witness Takietha Edwards about the case.

95 JJ: Tell me what you know about it.  
 96 TE: Well, I was in the room when it actually began, and-  
 100 JJ: What, what room was that?  
 102 TE: It was the activity room where we work.  
 105 [Audience laughter]  
 106 JJ: Shhh!  
 107 TE: And ^I just want to say this might cost me my job  
 108 but I didn't, because I should have reported it.  
 109 I was a little disgusted by what I actually saw.  
 110 So, I actually walked out of the room and because  
 111 Where I sit, at the receptionist desk, I can actually  
 112 See the whole street from my desk. And I did witness  
 113 Them walk towards her apartment.  
 114 JJ: Towards?  
 115 TE: Hmmm-mmm.  
 116 JJ: And did you see them come back?  
 117 TE: Uh-huh.  
 118 JJ: How much later?  
 119 TE: Oh, I would say about thirty minutes.  
 120 JJ: Doesn't say much for you Mr. Hicks.  
 121 [Audience laughter]

Firstly, the cases brought before Judge Judy and other 21<sup>st</sup> century reality television courtroom justices, often deal with issues involving paternity suits and defamation. Typically, sexual relationships serve as the basis for cases due to the high level of emotion and confrontation such cases bring to the airwaves. The cases brought before Wapner during the 1980s involved issues dealing with money or negligence. Cases of late rent payment or a neighbor's dog getting out and biting someone were often the sources of conflict in The People's Court.

Secondly, Judge Judy, and other contemporary reality television judges, have no qualms about inserting their own personal opinion not only on the case itself but the character of the litigants as well. Of course, modern reality court programs are concerned

with gaining information, as Judge Wapner was, but the focus of attention is not so much with what the litigants did, but rather who they are as citizens. For instance, Judge Judy will ask questions that are aligned with what would be referenced as Procedure Oriented (Philips, 1998, 63-64). In the case of Hicks v. Edwards, the plaintiff claims the defendant harassed and defamed him at work by telling co-workers they had a sexual encounter, which Hicks denies. Judge Judy asks open-ended questions of the litigants such as *What proof do you have that you had a sexual encounter? Why did you take him to your apartment? Why did you if you knew he was a married man?* In addition to asking questions of the defendants, Judge Judy is also very clear about offering her own moral judgment on the situation such as telling the defendant (Edwards) that she should know better than to be involved with a married man. Judge Judy also publicly degrades Mr. Hicks by stating that he is less of a man because the sexual encounter with Mrs. Edwards was brief in its duration (a half hour) in line 120.

Because contemporary reality television courtroom judges are so willing to impart their own personal knowledge into what is stereotypically thought of as the sterile and impersonal courtroom, people often look to such wisdom in order to make an assessment about a case. Podlas (2001) states that jurors who watch reality television courtroom programs will actively seek cues from the judge to determine the credibility of the litigants (p. 558). What kind of facial expression is the judge making while the litigant is speaking? Is the judge silent during the proceeding? What kinds of opinions is the judge dispensing? Despite the fact that the neoliberal courtroom, embodied by Judge Judy and her contemporaries, may call into question the traditional authority of the courts found in liberalism, this does not mean that the legal system no longer holds power.

The fact that reality television courtroom judges have become widely known in the American public within the last decade has provided them with a wide forum in which to impart their own personal sense of justice. Rapping (2003) notes that reality television has provided an arena for courtroom judges to flourish and become synonymous with celebrity. The power that exists in the courtrooms is not about the faceless objectivity of law. The power that exists in the courtrooms is about the personality of the judge and the authority that they have because of their opinions and their wisdom. The aggression and humor dispensed in the courts is not only something people have come to expect, but such discourse is what is used in order to train or condition citizens (Podlas, 2001, p. 557). It is the very nature of the larger than life personalities, and humor that judges use, which gives them authority to judge.

However, it is not just through the reality television courtroom that modern day judges speak on issues of how citizens should behave. Reality television courtroom judges, because of their standing in society, are offered various opportunities to voice their own opinions about the purpose of reality television courtroom programming via daytime talk shows or news networks. And, within such forums, the judges echo the chants of neoliberalism:

I think there is a universal message from what I hear...if I could define it in one word, it's responsibility. People really want their fellow man to accept responsibility for themselves and their actions...It makes us feel good that the good guy is winning: the guy who is acting responsible. And the bad guy is getting at least a tongue lashing (Judge Judy).

You have to be tough and you can't just excuse people for their destructive behavior. They must be held accountable so that they can be inspired to change (Judge Mathis).

For me, true justice is not only resolving the legal claim, which at times is just petty...we really try to resolve the bigger issue...There is a disease going on in America is I didn't do it: the I didn't do it disease. You know, lack of accountability (Judge Cristina Perez).

That's why these shows are so popular because people really want to see in a few minutes...justice. They want to see someone who has it coming to them get it (Judge Marilyn Milian).

The central theme found in the various quotes from the reality television courtroom judges is *personal responsibility*. That is to say, these judges feel there is a need for people today to take responsibility for themselves and, moreover, it is seen as a problem in society today. Unlike the model of justice as fairness in Wapner's court in which people served the common good, the contemporary model of justice focuses on the individual and the importance of the individual taking care of him or herself. The narratives told in reality courtroom television are attempting to educate the audience how to behave properly.

In addition, reality television courtroom judges do not simply perpetuate the neoliberal idea of self-discipline, but they actually embody it themselves. Unlike actual judges, reality television judges have no reservations about revealing their personal life stories to the audience. For instance, Judge Cristina Perez often recounts her own personal narrative of growing up in poverty-stricken areas of the United States of America and being the daughter of parents who emigrated from Columbia. Despite her circumstances, Perez embodies the ideal American Dream in which a person can attend an elite law school and be successful provided they take responsibility for themselves. Perhaps one of the more outspoken reality television judges is Judge Mathis who explicitly states during the introductory theme to his program: *I was raised in the streets.*

*Arrested several times as a kid. But I didn't give up. I went from jail to judge in fifteen years. And that's when I began to make a difference giving back through public service.*

Here Judge Mathis presents a narrative of being raised on the 'mean streets' of Detroit, Michigan in which he was a gang member and continuously in and out of prison. However, despite these circumstances, he was able to become a successful citizen and also help others.

The viewing audience is not only shown cautionary tales of what occurs when one chooses not to behave in accordance with neoliberal ideology, which is ultimately embodied by the litigants standing before the judge, nor is the audience only shown personal narratives of success from the individual reality television courtroom judges themselves, the audience is also provided neoliberal ideology via the narratives told during the commercial 'breaks'. The advertisements shown within these courtroom dramas all tell a narrative that is precisely the same as what the judge is dispensing. Advertisements shown nationally on courtroom shows, such as ones for the trade schools *ITT Technical Institute* or *Everest College*, tell narratives of individuals who were once working at low paying jobs, such as a fast food restaurant, but then enlisted at the trade school and are now 'living a better life.' In addition to these national chains of trade schools there are interspersed local trade schools as well that tell a similar narrative.

The camera zooms in on the face of a man named Jeffrey Fort as he begins to offer his life story to the audience: *Even though in this time of recession, I'm still employed. Uh, this is because ITT Tech helped to mold me into an individual who can adapt to certain work environments. So, my company looks at me as an asset. And that's why I believe that ITT Tech was one of the best investments I ever made in my life.* As his

narrative is spoken a series of moving images of Jeffrey Fort busily working on a computer, assisting his child ride a tricycle, and holding hands with his wife while walking through a green park are presented. The commercial closes with a series of images slowly panning to the left and the right of the screen featuring portraits of individuals wearing blue mortarboards and matching gowns with a disembodied narrator proclaiming “ITT Tech: Education For the Future” followed by a 1-800 number to call.

Another advertisement that regularly airs during the mid-day block of reality television courtroom programs is for *Everest College*. A young black woman faces the camera excitedly waving her hands in the air and hailing the viewing audience, particularly the women of the audience: *Hey ladies! Get up! You have to hold the household down, right? They want you to pay the rent and pay the bills, right? Hello? I had excuses. I had reasons. I had a child young. You are your biggest worry. If you can get up and deal with all of that on a daily basis then why can't you get an education for yourself?* During the entire commercial a black box covering nearly a quarter of the screen features large white text with the website address and 1-800 number for *Everest College*.

Both narratives for *ITT Technical Institute* and *Everest College* feature two individuals who are immersed within circumstances that would hinder the achievement of success (earning money and being self-sufficient). For Jeffrey Fort it is the economic recession that renders employment scarce and for the unnamed young black woman it is having a child young that would limit time to dedicate to higher education. However, despite the life choices one has made or the current economic situation in America, individuals have the opportunity to be successful provided they are disciplined and

responsible. The two aforementioned advertisements for the respective educational institutions embody the master narrative of neoliberalism that is also perpetuated by the reality television courtroom programs.

## **7. Conclusion: what is at stake?**

The Founding Fathers of the United States of America envisioned a type of justice on which to build a newly formed nation. Over 200 years ago, the ideals of legal liberalism, most notably objectivity, were solidified in the Constitution of the United States. It is doubtful that the likes of Alexander Hamilton or Benjamin Franklin could have foreseen the contemporary type of justice perpetuated by reality television courtroom programs. The neoliberal ideology performed by television judges, such as Judge Judy, is an about face from traditional legal liberalism. Judge Judy, and her contemporaries, delivers instructions on how to be a responsible citizen and cautionary tales of not following such instructions.

However, such programs also offer a new meaning to the Speedy Trial Clause of the Sixth Amendment. Reality television courtroom programs are constantly in need of cases from real people in order to be successful in the ratings. Hence, reality television litigants are typically not waiting up to six months to stand before a judge, as they would when waiting for a trial in a real courtroom. Moreover, the average time for a case in the reality television courtroom is between 10 and 15 minutes. The privatized courtroom of, for instance, Judge Judy, navigates quickly through cases giving the impression that justice is, in fact, speedy. Finally, reality television courtroom judges do not simply render a verdict based on the factual evidence presented, but also on the personalities of

the litigants. Judges on television are making moral judgments about litigants and factoring these into their ultimate decision.

Certainly, the argument can be made that *Judge Judy* is grouped together with such programs as *Jerry Springer* or *Here Comes Honey Boo Boo* under the umbrella label of reality television. As such, the televised justice can simply be seen as another form of entertainment that Americans turn to in order to relax and have a laugh. However, the ideals found in the reality television courtroom (modeling citizenship, speedy trials, and moral judgments) are seeping into the real courtroom. American citizens are, at the very least, making comparisons between their courtroom experiences and what is seen on television. This means that the definition of justice and how it operates is being challenged by reality television courtrooms and may perhaps be a sign of things to come.

## CONCLUSION

*A quality of justice. A quantity of light.  
A particle of mercy. Makes the color of right.*

*- Neil Peart (The Color of Right)*

Given the previous discussion concerning the modern era of reality television courtroom programs, such as *Judge Judy*, it is clear that the performance of real conflict found within the courtroom is not a new phenomenon. From Ancient Greeks seated in an open-air theatre viewing *The Oresteia* during 458 B.C., to Americans listening to *Famous Jury Trials* from the comfort of their own living room via radio during the early 20<sup>th</sup> century, audiences have been drawn towards the unfolding drama found within actual courts. The history of the reality television courtroom program as a genre discussed in Chapter 2 contextualizes the current moment in which minority bodies are donning the black robe to render justice. Because the judges are on television, their initial task is to entertain audiences and maintain positive ratings in order to ensure job security. As discussed in Chapter 3, although each reality television courtroom judge has his or her own unique personality, they all entertain audiences by being charismatic and employing some sort of comedic rhetoric in order to dispense rulings. Finally, as Chapter 4 has illustrated, the reality television courtroom judges are not simply intended to capture the attention of audiences through humorous discourse, but to also perform justice, and hence educate the public concerning what protocol of behavior is acceptable, or not acceptable, not only in the confines of a courtroom but in society as a whole. Television judges, via their humorous discourse, moral assessments, and legal rulings, have defined the niceties

of behavioral protocol for American citizens with the foundation of neoliberalism that states all should be productive, take responsibility for themselves, and not rely on others to do so.

The previous chapters have constructed the reality television courtroom judge as one who stems from the relatively recent explosion of reality television programming in which the conflict and drama of the everyday individual takes center stage. Furthermore, the reality television courtroom judge is one who utilizes various linguistic techniques in order to elicit humor and teach citizens how to behave properly. This concluding chapter will raise questions for further research by examining the possible impact such programming may have on the public's view of justice due to the minority status of the judges featured on the reality television courtroom show. In addition, although this project has focused solely on the role of the judge, the litigants and bailiffs are both integral parts of the courtroom and possible questions regarding their function will also be raised in this chapter.

### **1. The impact of reality TV courtroom in America**

Because reality television is a relatively new phenomenon and the idea of privatized arbitration found within contemporary reality television courtroom programming is even newer, it is difficult to say precisely how much of an impact this new style of programming has had on the American public. However, many academic disciplines have long argued that television, as a medium, has certainly had a tremendous impact on American culture (Edgerton, 2013; Baughman, 2007; Spigel, 1992; Comstock, 1989; Newcomb, 1976; Weinberg, 1962; Elliott, 1956). As such, it can certainly be said

that television does matter in American culture and there is some type of effect taking place as a result of these reality television courtroom shows. At a very basic level, people can use popular judge programs as a starting point for a discussion regarding the law or code of conduct. Because reality television courtroom programs inundate daytime and primetime television hours, the average American is at the very least familiar with who someone like Judge Judy is. Furthermore, because of Judge Judy's iconic status there exists public discourses that circulate about her performance of justice ranging from extreme hatred to extreme fanaticism.

The judicial world seems to have a negative view of Judge Judy, and her peers, in general. Judge Joseph A. Wapner, for instance, has spoken openly about his views on the reality television courtroom of Judge Judy. Wapner been critical of the methods Judge Judy employs when performing law: "She is not portraying a judge as I view a judge should act...She's discourteous, and she's abrasive. She's not slightly insulting. She's insulting in capital letters" ("Wapner Judges Judy," 2002). However, it is not only those who are deeply immersed within the judicial system, such as Judge Wapner, who hold a negative opinion of the reality television courtroom personality Judge Judy. One website address is explicitly [www.judgejudyisascam.com](http://www.judgejudyisascam.com) and features a narrative from an individual who appeared on the courtroom program and felt they were treated unfairly and wishing to expose Judge Judy. Another website exhibits hatred for Judge Judy through an online video game entitled "Kill Judge Judy" in which the objective is to break into the courtroom and shoot Judge Judy ("Kill Judge Judy").

Despite the various sources that provide disparaging remarks about Judge Judy, there generally seems to exist a highly positive view of her. The American Bar

Association Journal noted in a poll that Judge Judy ranked 28<sup>th</sup> as the most trustworthy person in America, with Supreme Court Justice Ruth Bader Ginsberg 36<sup>th</sup>, and fellow reality television courtroom personality Judge Joe Brown places at the 39<sup>th</sup> position on the list (Weiss, 2013). The loyal following that Judge Judy has garnered over the years can be seen within various Internet arenas. For instance, website [www.topix.com](http://www.topix.com) features a forum in which people can voice their opinions about Judge Judy. One person illustrates their love for the reality television courtroom justice: *Judge Judy is the smartest Judge there is...just love her!!!!*

The emotionalism that is displayed by the reality television court judge ultimately loosens this idea of a purely objective and authoritative legal liberalism. As discussed, a shift has been marked between how the liberal minded Judge Wapner presented justice during the 1980s to how the neoliberal minded Judge Judy presents justice today. Of course, the very genre of reality television has become the essence of what it means to have personality and adhere to neoliberal ideology. However, there has also been a palpable shift in not only how these reality television personalities present themselves, but how many people, regardless of their position in society, present themselves as well.

More charismatic speakers have replaced the flat affect and staidness of popular and trustworthy figures from the early to middle portion of the 20th century in the 21<sup>st</sup> century. For instance, figures such as President Franklin D. Roosevelt, comedian Bob Hope, Judge William Rehnquist, and Judge Joseph Wapner were all typically stoic and hesitant to reveal parts of their personal life to Americans. Figures that have become popular within the last three decades such as President William J. Clinton, comedian Robin Williams, Judge Antonin Scalia, and Judge Judy have all been emotional

individuals and willing to share their private life with the country. President Clinton is known to have charisma and charm when addressing even the most sensitive of issues; Robin Williams has been forthcoming about his own personal opinions on topics of the day as well as his struggle with bi-polar disorder; Justice Antonin Scalia consistently receives laughter from his jokes during Supreme Court proceedings and has no qualms about revealing his own views and personal life to the American public (Goldman, 2013); and, as discussed in the previous chapters, Judge Judy has become synonymous with entertainment in the past 20 years.

Because this idea of objectivity may have become flexible within the courtroom and the political figures of today have become more transparent does not mean that authority, which was so closely linked to legal liberalism, is a thing of the past. Authority has simply taken on a new identity. The aforementioned figures are not simply popular, but they are viewed as sincere and authentic. There is something about their personality and identity that lends itself to being seen as an authority on any given subject. It is ultimately the celebrity status that allots individuals to comment on the world around them, particularly when discussing the legal realm: “legal authority, while obviously associated with texts and the knowledge held by lawyers as to what a judge will do, is also a function of cultural forces, including celebrities traditionally thought to be outside the law” (Brigham & Meyers, 2005). While a divergence between authority and emotion was seen within the early and mid 20<sup>th</sup> century embodied by a variety of figures, a convergence of the charming celebrity and authoritarian is taking shape within the realm of the reality television courtroom, and possibly beyond.

The beginning of the 21<sup>st</sup> century has seen the celebrity reach a status as not

simply an entertainer, but as an expert on a myriad of topics. Celebrities are positioned in the mass media as having an authority to comment on various aspects of daily life, as evidenced by the growing number of individuals walking a fine line between celebrity and authority with their own television programs. Oprah Winfrey has become a trusted leading expert in virtually every topic imaginable as evidenced by the overwhelming success of the various forms of mass media she produces, such as her television program, magazine, television network, and website. Moreover, the credibility of Oprah has helped launch the celebrity careers of several individuals. When psychology is casually mentioned in a conversation a name like Dr. Phil (Phil McGraw has a PhD in psychology, despite having lost his license to practice due to allegations of inappropriate contact with a patient, and received his own television show after being featured on the Oprah Winfrey show) is much more likely to be accessible than Donald N. Bersoff (current president of the American Psychological Association). If one is interested in losing weight they would most likely seek council from Dr. Oz (Mehmet Oz is an actual doctor who was a professor in the Department of Surgery at Columbia University before being featured on the Oprah Winfrey Show and subsequently receiving his own show) before looking to Dr. Boris Lushniak (current Surgeon General of the United States of America). A reality television courtroom judge is a prime example of this transition from authority to celebrity. Devins (2007) notes that Americans can easily name and discuss the personalities of those on television (he explicitly references characters from the animated series *The Simpsons*) but have difficulty naming one Supreme Court Justice. Undoubtedly, most Americans would most likely know Judge Judy before Samuel Anthony Alito, Supreme Court Justice.

Perhaps someone like Judge Joe Brown is a figure that utilizes humor in order to disrupt America's notions of authority and who can wield such power (Lott, 1995; Hartman, 1997; Brooks, 2006). Indeed, it is as if their authority is not even called into question when they are the subjects of discussion. It is interesting to note that the majority of comments surrounding *Judge Judy*, for instance, featured on the Internet focus on the litigants that stand before her. Furthermore, because these comments bypass mentioning Judge Judy altogether it both draws attention away from her but also assumes her dominance in the courtroom; her authority is rarely called into question through the various blog postings. For instance, a *Judge Judy* forum on [www.Greekchat.com](http://www.Greekchat.com) features a comment regarding the language of a litigant who uttered the word 'conversate': *Conversate is not a word. Stay in school. Stay in school. Take English. lol. Good times.* Comments such as this one target and criticize the litigant and, furthermore, support the idea that Judge Judy's aggressive stance and chastisement of the litigant is justified. If the litigant cannot adhere to the rules of the English language, then certainly he or she is not capable of adhering to the rules of society, and, hence, not a good citizen.

The website [www.televisionwithoutpity.com](http://www.televisionwithoutpity.com) also features a forum in which people can post their views on *Judge Judy*. One person writes:

I don't expect her to rule to the letter of the law, but I find it refreshing that she uses her forum to call people on their stupidity. The squabbles in her courtroom are often ridiculous, petty claims that she knows, regardless of her ruling, will be paid off in the end by producers. She uses cases instead to make a point about people making bad decisions.

This comment recognizes that Judge Judy is, in fact, a reality television show that involves production. Hence, the authentic 'reality' of the show might be limited.

However, the person writing the comment states that Judge Judy is providing a service by

holding people accountable for their actions and ‘calling them on their stupidity.’

Additionally, some comments featured on public Internet forums focus on the aspect of justice.

Another website, [www.Bedbugger.com](http://www.Bedbugger.com), that deals with ridding of bugs in the home, hosts a *Judge Judy* forum in which people can comment on featured cases of the program that deal with housing issues. One person is in a situation similar to a case presented on *Judge Judy* in which a disagreement between a tenant and landlord was presented. However, the person on the forum was unable to see how Judge Judy resolved the case involving bed bugs and an apartment, so he asks those on the forum if they can provide any knowledge on the topic:

I took a course in housing law taught by a lawyer. He said if you sublet your apartment to a tenant, then YOU, not your landlord, become your tenants' "landlord" and you as a landlord have to then fulfill the landlord responsibilities. Would that include bedbug treatment? I don't know.

The individual is asking if his landlord, or the person from whom he sublet the apartment, is responsible for ridding of bedbugs. A person responds to his question by stating: “According to Judge Judy, yes, he was responsible for the bb problems.” This interaction between individuals on the Internet highlights how the authority of Judge Judy may reach beyond the television courtroom, and how the program may not simply be a piece of entertainment, and help to answer real world questions regarding housing laws.

It is not despite her personality that Judge Judy is able to achieve a high status in the eye of the public, but it is precisely because of her personality that she has achieved such accolades. Some audience studies have been conducted regarding how citizens feel a judge should behave during, for instance, their jury duty experience. Even though the

courtroom is seen as a place in which strict rules are enforced, this does not necessarily mean that the public feels as if a judge should have no personality. On the contrary, Podlas (2002) conducted a survey of 241 jurors serving in Manhattan, New York, the District of Columbia, and Hackensack, New Jersey. Those who were frequent viewers of reality television courtroom programs held the belief that judges should be aggressive with the litigants and display the emotion of displeasure at the litigants.

Because this project has focused on the reality television courtroom judge, little has been said of the litigants that stand before the bench. However, the aforementioned examples certainly provide some insight into how litigants may be represented on these reality television courtroom programs and how their identities are circulated and discussed in American culture. Hence, it leaves room for future research regarding the role of the litigants and how they are supposed to feel on such reality courtroom programs.

A follow up question would be are litigants supposed to feel shamed by appearing on such court programs? Forsdyke (2008) references the street justice or ‘street theater’ that was often used in Ancient Greece to deter citizens from disobeying laws; for instance, a woman who was found guilty of being an adulteress was paraded through town riding atop a donkey as a shaming ritual. Similarly, the foundations of justice in America feature these types of shaming rituals woven into the law. Herzog (1998) discusses the deployment of the ‘poor laws’ during the 19<sup>th</sup> century in America, which made attaining government support difficult through strict regulations, that was a method used to educate the public on justice: “One deliberate goal of the poor laws – the old poor laws every bit as much as the harsher new poor laws of 1834 – was to undercut human

dignity and social status” (p. 197). However, the purpose of these laws was not simply to ensure that government funds were not being squandered away and given to able bodied citizens capable of earning wages; rather, there existed an ulterior motive in which the government hoped that the public image of the poor would be regarded with contempt and disgust.

Is a program like *Judge Judy* intended to be a type of street theater in which those who are adulterers (while adultery is not the central focus on court programs, it is often an underlying tension that exists when discussing other matters such as defamation) are broadcast to millions of viewers as a cautionary tale? Perhaps *Judge Judy* functions as a form of poor laws in that the vast majority of those who are on reality television court programs are working class and typically minorities. Perhaps *Judge Judy* is intended to have viewers distance themselves from the litigants on television who utilize such words as ‘conversate’ when addressing the judge. Or, since the reality television courtroom judges have become celebrities and utilize comedic verbiage to address those before them, perhaps it is an honor for litigants to be ridiculed by the judges. Comedian Don Rickles, for instance, has made a career of insulting people and it is thought of as a great privilege to be the target of his jokes. Litigants on reality television programs receive a free flight and hotel room to a large city (Los Angeles or New York) where the shows are taped, the losing litigant has their claim paid by the show, and litigants have the opportunity to be on television. Again, these are questions to be taken up in a different venue.

## **2. Catchphrase: color and culture; language and race**

The stereotypical embodiment of justice is the mature straight white man with little to no sense of humor, represented by the iconic Judge Joseph Wapner of *The People's Court* during the 1980s. Moreover, this performance of justice continues to be prevalent within real courtrooms; one need look no further than their local courtroom to see a mature straight white man donning the black robe behind the bench. However, this representation of justice is absent within the contemporary arena of reality courtroom television and there exists a dissonance between the judge that, in reality, sits on the bench and the judge that sits on the reality television bench. The four particular judges discussed so far (Judge Judy, Judge Joe Brown, Judge David Young, and Judge Perez) are all minorities that dispense rulings with humor and emotion.

Historically, the bodies of minorities and women have been juxtaposed with the bodies of straight white men to create an antagonism of what is normal and valuable versus what is abnormal and worthless in Western culture (Phelan, 1993, p. 5). The straight white man is a representation of what is deemed appropriate in society while the bodies of others represents what is deemed inappropriate. This framing device that juxtaposes bodies with value and bodies without value is of particular importance when discussing reality television courtroom judges. It is only the minority body that is seen wearing a black robe and seated behind the reality television courtroom bench; however, this visibility in mass media cannot be equated with power (p. 6). As mentioned earlier, the number of minorities and women that administer justice in actual courtrooms pales in comparison to the number of straight white men that are in power. The argument could be made that the varying minority identities of reality television judges are allowed to

make an appearance within the public arena of television solely because they serve as little more than a form of entertainment with no real world power.

It may be comical and entertaining to see the bodies of a black man (Judge Joe Brown), or a Jewish woman (Judge Judy), or a Latina (Judge Cristina Perez), or a gay man (Judge David Young) placing their own spin on justice in the reality television courtroom. These figures perform justice differently than Judge Wapner, or a stereotypical real judge, would. The varying identities represented on television not only provide humor within the courtroom, but also a sense of authenticity. That is to say, one might say that each judge is performing justice authentically as a minority would. Hence, it stands to reason that the spectator is being educated not only in law, but also about various cultures. However, what is considered authentic often becomes synonymous with characteristics of a stereotype. For instance, a recent reality television series entitled *The True Adventures of the Real Beverly Hillbillies* chronicled the journey of an actual Appalachian family to California. The family spoke with a thick and seemingly caricatured Southern accent and they were portrayed as possessing little to no knowledge of modern day technology and contemporary social etiquette present within a metropolis such as Los Angeles. When asked about her thoughts on Los Angeles, grandmother of the family, Daisy, said: "I reckon Los Angeles, it'll be right pretty." Pryse (2011) notes this particular reality program creates an environment in which the stereotype of 'hillbilly' is attached to those from Appalachia and, furthermore, justifies the continual perpetuation of this stereotype.

Of course, there are countless examples of minority stereotypes being perpetuated in American culture. For instance, Urciuoli (1996) discusses the use of Spanish in public

spaces: “Foreign languages are justifiable in public places when they are used solely to reinforce the authenticity of a cultural performance. Singing folk songs in Spanish at a street fair is safe because translating the folk songs into English makes them less authentic” (p. 16). So, if one were dining in a public venue, such as a Mexican restaurant, listening to a Mariachi band performing a standard Spanish song, such as ‘la barca’ (the boat), it would be expected that the song would not be in English, but Spanish. It is these kinds of public arenas that allow for entertainment in various dialects because they are seen as authentic and harmless. That is to say, when people are at a Mexican restaurant and Spanish is used, they know the language is contained within the restaurant as a form of entertainment to provide an authentic experience and not as a threat to the power of the English language.

These two examples of the Appalachian family and Spanish are allowed into the public realm precisely because they are stereotyped and, hence, lack power. A stereotyped language and identity does not have the kind of depth that a language of power would (Fiske, 1993, p. 621). The stereotypes of the Appalachian dialect or Spanish are seen as entertaining and limited in terms of what they can do; they may be able to entertain someone on television or at a restaurant, but they are typically not used in places of power, such as an American courtroom. Moreover, such performances are legible and recognizable to a mass audience precisely because of the widely circulated stereotype with which they are associated (Jaffe, 2000). Inevitably, this kind of stereotyping involves some form of language that is thought to be authentic of the particular group of people in question and, hence, universally applicable to all those who may be a part of the depicted group.

The idea of performing a stereotype for the purpose of mass consumption is of particular interest when contemporary reality television judges are taken into account. Sitcoms, spaces in which humor is utilized, on American television have served as a space in which various minority bodies have been showcased throughout history. The 1970s were a time in which characters of various ethnic backgrounds were featured on television; such a sitcom is often referenced as an ‘ethnicon’ and these programs served the function to give a voice to those who were engaged in the throes of the civil rights movement and perhaps were unable to speak in mass media (Hamamoto, 1989). As such, it is no surprise to see the stereotypical embodiments that each of judges discussed in chapter 3 (Judge Judy, Judge Joe Brown, Judge David Young, and Judge Cristina Perez) emerge during the 1970s: the Jewish grandmother, the sarcastic black man, the openly gay man, and the Latino/a. Although the American sitcoms, or ethnicon, of the 1970s were intended to serve as a platform for civil rights and expose the inequalities of race and gender, they ended up becoming comical and perpetuating stereotypes (Gray, 1995).

The archetype of the overbearing Jewish grandmother, that Judge Judy is said to portray, is present on television during the 1970s in the television show *Bridget Loves Bernie* featuring an Irish Catholic woman (Bridgette Fitzgerald) marrying a Jewish man (Bernie Steinberg). Bernie’s mother, Sophie Steinberg, was constantly intruding in the lives of the young couple and making certain they were eating enough and financially stable. Sophie would utter stereotyped phrases in a thick New York Jewish accent to Bridget such as “What? You don’t like gefilte fish?” or “You don’t like my cooking?” Janus (1980) notes that within the realm of comedy a character, such as Sophie, embodies

the trope of the strong Jewish mother who is very emotional, vocally loud, uncultured, and acts to inflict Jewish guilt on others (p. 263).

Although *Bridget Loves Bernie* was a top ten hit for the American Broadcast Company (ABC), it sparked much controversy due to the intermarriage between Bridget and Bernie; orthodox and Hasidic Jews protested and the show because it was reductionist in terms of representing the Jewish lifestyle and, as such, it was canceled after only one season (Weiman, 2012). Of course, this stereotype of the overbearing Jewish mother and grandmother continued to make appearances in the television world. The late 1980s featured the birth of a sitcom on NBC entitled *Seinfeld*, whose main character (Jerry Seinfeld) was a Jewish man living in New York, and it was both a huge critical and commercial success. Although the show did not always explicitly deal with Jerry's Jewishness, it did feature members of Jerry's family, particularly his mother Helen Seinfeld, who was known for her overprotectiveness of Jerry and catchphrase regarding Jerry: "How could anyone not like him?" (Krieger, 2003). The late 1990s featured a program entitled *The Nanny* featuring a Jewish woman from Queens named Fran who is hired to be the nanny of three children of a well-to-do British man living in New York. Fran performed the character with a heavy accent, wearing gaudy clothing, and uttering stereotypical catchphrases associated with Jewish culture such as 'Oy vey.' In 2013 ABC launched an ethnicom about a Jewish family set during the 1980s entitled *The Goldbergs*. The opening credits feature the various members of the family performing tropes of Jewishness. Most notably, mother Beverly Goldberg is shown wearing an oversized cardigan sweater with loud colorful designs calling the family to dinner; when no one responds to her request she proclaims "Fine! I'll eat the way I'll

die: alone!” Again, Beverly is employing the Jewish guilt on her family when they refuse to join her at dinner at a specific time.

All of these stereotypical catchphrases perform tropes associated with Jewish culture and Jewish women, such as being overly emotional, loud, and eliciting guilt from others. Judge Judy, who is known as performing the trope of the overbearing Jewish grandmother, does explicitly employ catchphrases, which has made her a staple in the American lexicon. For instance, Judge Judy will often use crass catchphrases to litigants in order to inform them that she is aware they are lying in her courtroom such as “Don’t pee on my leg and tell me it’s raining”: the name of her bestselling book released in 1996. Additionally, if a litigant is rambling in her court and not making their case quickly enough for her, Judge Judy will point to her watch and exclaim: “It’s almost lunch time!” Both instances are performances of the stereotype of brazenness or uncouthness that is aligned with Jewishness.

The 1970s television show *Good Times* was an ethnicom that aired on CBS and featured a working class black family living in the housing projects of Chicago. Although the show was intended to deal with issues of familial interaction and social inequality, the show quickly became popular because of actor Jimmie Walker who played the eldest child of the family, J.J., on the show. However, the reasons for his launch into stardom were due to his comedic behavior and iconic catchphrase “Dy-no-mite!” Both critics and cast members were not pleased with these depictions of black family life. An example of this criticism came to light when Esther Rollie, who played mother Florida, mentioned that she was upset about the show focusing on the comedic antics of J.J. without providing any substance to the show: “He’s 18 and doesn’t work. He can’t read

and write. He doesn't think...I resent the imagery that says to black kids you can make it by standing on the corner saying 'Dyn-o-mite!'" (Robinson, 1975). Despite the fact that *Good Times* may have initially sought to deal with serious issues regarding social inequality in a comical fashion the program ended up being a vehicle for Jimmie Walker to make audiences laugh via his one word catchphrase.

Other television ethnicoms throughout the decades that have focused on black family life have also dealt with breakout characters and humorous catchphrases developing a life of their own and capturing the attention of audiences. Arnold Jackson of *Different Strokes* became an iconic figure during the 1980s by uttering the words 'what you talkin' bout Willis?'; Steve Urkel of the 1990s show *Family Matters* would ask 'Did I do that?' and receive thunderous laughter; and, when Raven Baxter of the 2000s program *That's So Raven* would find herself in a precarious position the humorous phrase 'Oh, no he didn't!' would leave her mouth. Gray (1995) notes that sitcoms featuring a black family often suffer the same fate that *Good Times*, or any of the aforementioned ethnicoms, did because of the very infrastructure of television: "black representations in commercial network television are situated within the existing material and institutional hierarchies of privilege and power based on class (middle class), race (whiteness), gender (patriarchal), and sexual (heterosexual) differences" (p. 10). Minority identities may be allowed to exist on major networks, but the producers of such programs are typically white with white sensibilities (p. 71). Judge Joe Brown is certainly not an exception to this rule.

Judge Joe Brown may not be a sitcom, or ethnicom, intended to deal with one particular family, but the show does feature a black man dispensing rulings on issues that

impact families. In addition, like the aforementioned programs, there exists repetition in how Judge Joe Brown is introduced during the opening theme: a woman utters the catchphrase “It’s Joe Time!” Although Judge Joe Brown may not necessarily utter a catchphrase per se, but as discussed in Chapter 3, he certainly does utilize humor while dealing with serious issues brought before court.

*Barney Miller* is another ethnicom to enter American television during the 1970s, which took place in a New York City police station and mainly featured banter between the characters that were dealing with various cases, complainants or suspects. This show was particularly poignant for its time because it explicitly featured a regular cast that was ethnically diverse consisting of a Japanese-American, African-American, Polish-American, and Puerto Rican-American. During the middle of the first season the character of Marty Morrison was developed and he became the first openly gay recurring character on television. Marty would often explicitly point out his sexuality on the program; for instance, he once laments that he was not allowed into the police force: “Of course they turned me down. It’s ridiculous. What’s wrong with a gay cop? There are gay robbers” (“Barney Miller”). Despite the desire for the show to feature the first openly gay reoccurring cast member, the show was met with criticism for simplifying gay men as a “purse-carrying, poodle-owning queen that seemed to dominate the TV landscape” (Wlodarz, 2008, p.89).

The television landscape during the 1980s may have featured several programs that did, on occasion, deal with homosexuality. However, there were very few, if any, shows that featured a gay lead character. The early 1980s did feature a television program entitled *Love, Sidney*, which was about an older, single gay man living in New

York. Although the ethnicom was a landmark moment in that it was the first television show in history to feature a lead character that is gay, the performance of Sidney, played by Tony Randall, downplayed his sexual identity to the point in which it was almost non-existent (“Love, Sidney”). During the 1990s the show *Ellen* initially began its run on television featuring a straight, single, young, woman named Ellen Morgan who was navigating the dating scene of Los Angeles. However, during the 4<sup>th</sup> season the character Ellen Morgan came out as gay on the television show; consequently, Ellen DeGeneres, the actress who played Ellen Morgan, also came out as gay during the same year. The sitcom would often deal with Ellen’s anxiety about being mistreated about her sexual identity featuring such catchphrases as “Do you think I should tell them I’m gay?” The 2000s featured several shows that featured gay lead characters. *Will & Grace* was perhaps the most popular of these shows and featured banter between lead character Will often poking fun at Jack about his over the top sexual identity, and his inability to hide it from others, with such comedic catchphrases as “dead people know you’re gay!”

Judge David Young is certainly not one to shy away from the utilization of catchphrases. The opening credits for the reality television courtroom featured a barrage of catchphrases uttered by Young who sat behind the bench addressing litigants before him. One particular phrase used by Young is: “Denial is not a river in Egypt! It does not flow through this courtroom!” Young would often use this catchphrase when addressing a litigant who he felt was being evasive when answering his questions. Additionally, if a litigant is trying to defend what would appear to be an unsupportable opinion, Young would quickly stop the litigant from speaking by saying: “It’s wrong! It’s wrong! It’s

wrong! Did I say it's wrong?" Both catchphrases would function to elicit humor by performing the stereotypically gay 'catty' and feminine language (Leap, 1996).

When discussing the history of the Latino/a in the genre of ethnicoms, *I Love Lucy* is considered to be the first program featuring a lead character that is Latino.

Lucy's husband, Ricky Ricardo, is a Cuban man who often serves as the straight man to the wild antics in which Lucy engages. The close of many of the shows would feature Ricky coming home to find Lucy immersed in a troubling, yet humorous, situation to which he would proclaim in a thick Spanish accent: "Lucy, you got some splainin' to do." The broken English of Ricky is "often regarded by listeners as a marker of lesser education and intelligence" (Bender, 2003, p. 107). The catchphrase of Ricky is often followed by a rant in Spanish, which illustrates a "childish...regresses into emotionality" and embodies the stereotype of a Latino buffoon (Berg, 2002, p. 72).

The 1970s did bring an ethnicom entitled *Chico and the Man* featuring Freddie Prinze playing a young Chicano named Chico who works at a car garage in East Los Angeles. Despite the premise of the show and the potential to produce a show that positively represents Latinos, the show "was popular among Anglo-American viewers but much less so among Latinas / os, who viewed Chico as a kind of clownish stereotype of a young barrio Chicano" (Tatum, 2011, p. 55). The usage of Chico's catchphrase "Looking good!" uttered in a thick Spanish accent, was undoubtedly a reason for the lack of interest from Latinos. The 1980s and 1990s brought a series of short-lived ethnicoms. *AKA Pablo* aired in 1985 and is ranked as # 45 in TV Guide's 50 Worst Shows of All Time ("AKA Pablo") and *The Second Half*, both of which were negatively viewed by audiences, particularly Latinos, and failed to last longer than one season.

It would not be until the 2000s that a program about Latinos would gain long-term popularity in America. *The George Lopez Show* features the main character, George, living in Los Angeles with his family. Such catchphrases in Spanish as ‘ta loca’ which is slang Spanish that roughly translates to ‘this is crazy’ were featured. Despite lasting for six seasons, the show is viewed as a tale about assimilation: “A former assembly line worker, George is promoted to manager of the factory. Suddenly he has no problems. He lives in a beautiful space. His family has no problems other than what typical American middle-class families supposedly go through” (Leistyna & Alper, 2007, p. 61). The narrative that is performed by George Lopez and the cast perpetuates the American dream in which anyone can be successful in this country by adopting the American lifestyle.

Similarly, as discussed in chapter 3, Judge Cristina Perez is always introduced in the opening credits as living the American dream. She was a poor immigrant who traveled to America from Columbia to become a successful lawyer, judge, and eventually television personality. The stereotype that Perez is embodying is very similar to the type that George Lopez does: both have assimilated into American culture and are successful. The catchphrase associated with Perez, which is explicitly stated in the beginning of each episode, is that she is a judge who ‘takes the law into her own heart’ illustrating her compassion for others. This type of passion exhibited by Perez, and reference to the *heart*, has stereotypically been linked to the Latino disposition. Such female performers as singer Jennifer Lopez, who has Puerto Rican roots, have been labeled as being fiery and passionate (Valdivia, 2007, p. 143). As mentioned with Ricky Ricardo earlier, this type of emotionality exhibited by Latino / a performers infantilizes them and is seen as

regressing away from objectivity or logic which are, consequently, what is precisely expected of a judge.

Does this mean that the usage of humor that reality television judges, such as Judge Joe Brown, employ is simply akin to a relic from the days of minstrelsy in which the usage of catchphrases reduce the judges to a caricature of some minority body? Perhaps minorities are given programs as judges on reality television courtrooms to simply provide entertainment and perform the role of a funny judge while the older, straight, white, men in real courtrooms go about their business enacting real laws in the real world. However, as previously discussed in Chapter 4, the ideology from the reality television courtroom does seem into the real courtroom and is something with which real judges must contend. So, maybe there is another reason why only minorities are given reality television courtroom programs.

It is the case with all reality television courtroom judges discussed thus far that they are intended not to simply perform justice, but ultimately model the American Dream and demonstrate how a citizen should behave in America. Perhaps a young Latina woman watching *Cristina's Court* finds reassurance in knowing that she can accomplish anything and be successful. Perhaps a young gay man watching *Judge David Young* finds his show to be an inspiration to achieving goals. The list can go on. In addition, the judges are all using some form of repetition, whether it is a specific linguistic technique or repetition in terms of the kinds of rulings they produce over cases. Such repetition, linguistic or otherwise, from a minority body may be used to instill in viewers the ideals of neoliberalism discussed previously. For instance, Judge David Young repeating his catchphrase "It's wrong!" may function to illustrate how being

unemployed, for instance, is not proper behavior for citizens; citizens should have employment and be productive members of society. When one watches a particular judge on a regular basis, they gain a sense of how the judge will rule. If Judge Judy is hearing a case about money owed and the defendant is unemployed, it is a relatively safe assumption that she will find in favor of the plaintiff. The rulings dispensed by the judges and narratives embodied by them point to the ethos of the American Dream. Of course, the judges alter the classic definition of the American Dream regarding hard work and mobility to one that aligns with neoliberalism in which everyone should be employed and contribute to society with no excuse for laziness.

However, such a stance taken up by the reality television courtroom judges ignores social context, which is interesting since all of the current judges on television are minorities. Many scholars have gestured to the inequalities in America that have emerged as a result of dismantling the welfare state and traditional liberalism. For instance, Lazzarato (2009) has noted that neoliberalism has created an enterprise society in America in which the free market, competition, the individual, and, ultimately, inequality have become dominating factors. The current wave of reality television courtroom judges assert that race does not matter by virtue of ignoring it, which is interesting since the majority of litigants featured on such shows are minorities. However, the judges featured on daytime reality television uphold the ideology that all, regardless of race or socio-economic status, have the opportunity to be successful. Sonia Sotomayor, the first Puerto Rican Supreme Court Justice, is an outspoken advocate for racial tolerance and promotes awareness of how the laws of America and the free market can ostracize minorities. However, a judge like Sotomayor has yet to be featured on a

reality television courtroom program. Perhaps it is the infrastructure of reality television, under which reality television courtrooms are held, that upholds the ideals of neoliberalism in such a natural way that they simply go unquestioned.

### **3. I see the future and it will be**

*Judge Judy* continues to inundate the airwaves in America garnering high Nielsen ratings. Although *Cristina's Court*, *Judge David Young*, and *Judge Joe Brown* have been canceled, all have continued to practice justice within a public forum. Perez returned to the genre in 2012 with a new program entitled *Justice for All with Judge Cristina Perez*, while Young has a radio show on Sirius XM entitled *Justice with a Snap!* Brown makes appearances on various news programs, such as CNBC, commenting on various judicial topics of the day. Moreover, all continue to celebrate their respective minority status. The introduction for *Justice for All* features still photographs of a young Perez in which she provides a narration about growing up as a child of Columbian immigrants, living in poverty, and fighting for the rights of others. In addition, Young states of his program: "My satellite radio show is where Perry Mason meets Ethel Merman, a place where I have the freedom to speak candidly on any issue" (Rothaus, 2009). Perez references her Latino background while Young references the gay icon of Ethel Merman. Additionally, Brown continues to promote his streetwise sense of justice while remaining politically active as a legal advocate in the state of Tennessee and possibly running for district attorney in Shelby County, Tennessee (Coy, 2014).

While many reality television courtroom judges suffer the same fate of *Judge David Young* with a short-lived program, the genre continues to grow. For every

courtroom program that is canceled there is always, at the very least, one new show being produced to take its place. Moreover, as previously discussed, the utilization of stereotypical archetypes has been, and continues to be, deployed in order to dispense justice on television. The four judges closely examined in this work (Judge Judy, Judge Joe Brown, Judge David Young, and Judge Cristina Perez) all perform a stereotypical identity in order to render verdicts: an angry Jewish grandmother, an elderly-laidback black man, an over the top gay man, and a soft-spoken Latina. A myriad of other personalities have been seen on the airwaves as well. Judge Mathis is a black former gang member from the inner city of Detroit who continues to combine his knowledge of the law with his street smarts to his courtroom. Judge Alex is a Cuban immigrant and former police officer that offers his no nonsense brand of justice to his courtroom. *Paternity Court* features Judge Lauren Lake who utilizes her experience as a lawyer, woman, mother and relationship expert to assist the litigants who stand before her that are having issues in relation to parenting or relationships.

The genre of reality television is well established and its subgenre of reality television courtroom programming has also become a permanent fixture on American television. Despite the fact that individual judges may come and go, the idea of having a minority body oversee the cases continues. The stereotypes that narrate the minority body have already been well established via sitcoms, or ethnicoms, of the 20<sup>th</sup> century up until today. With these comically fixed archetypes already set in place by sitcoms, television producers have a set of tools at their disposal to create new courtroom programs when others fail. When new reality television courtroom programs emerge, there is always a minority body seated at the bench. This means that the actual names

and identities of those in the black robe are dispensable and interchangeable so long as they are not a straight white man and have a sense of humor. However, it is not simply the deployment of the humorous discourse that surrounds the minority body that connects sitcoms and reality television courtroom programs.

Sitcoms are enjoyable to viewers because they provide light-hearted entertainment but also because they are predictable and, hence, safe. The classic American sitcom places people with varying personality types together to ensure that they will, predictably, engage in some sort of conflict; this traditional format has also been utilized by classic reality television programs such as *Survivor* or *The Real World* in which people must learn to live together (Gillian, 2004, p 55). Such a formula ensures that some sort of conflict will emerge and the players involved will humorously solve it, somehow, within the given time restrictions. Consequently, the reality television courtroom offers the viewer the traditional three-act play that is inherently found in the courtroom process (presentation of case and facts, deliberation of facts by the judge, and the concluding verdict) presented in a palatable (judges with an entertaining personality who speak plain English) and timely fashion (most cases are under fifteen minutes). A viewer can find comfort when tuning into a courtroom show like *Judge Judy* because there exists a guarantee that the judge will summarize the case, belittle the litigants in a humorous manner, and deliver a quick verdict.

Those who enter the world of reality television courtroom programming must follow this format to ensure success. Of course, as evidenced by the cancellation of shows such as *Judge David Young*, following the format does not guarantee success. Although the satellite radio show that Young now has does not reach the vast numbers

that a reality television courtroom would, such a format does offer him more freedom in terms of what he can say and how he can behave; this is because satellite radio stations such as *Sirius* are subscription based and not as dependent on sponsorship as the Big 4 Networks. Although performing a comedic stereotype of minority status may not win ratings, it is certain that not doing so will not earn a performer his or her own reality television courtroom program.

MTV has already capitalized on the recent growing trend of reality television courtroom programs by producing their own entitled *Guy Court* featuring Donnell Rawlings as the judge. Rawlings is a black stand-up comedian, with no legal background, who is perhaps best known for his work on the *Dave Chappelle Show*. *Guy Court* utilizes a code of conduct (established by another MTV show entitled *Guy Code* which is a weekly program that features a series of rules by which all men should abide, such as not dating a friend's ex-girlfriend) in order to enforce rulings about the behavior between men. For instance, one episode of *Guy Court* features a case in which a plaintiff claims his best friend (the defendant) was in violation of *Guy Code* due to the fact he was dating his ex-girlfriend. All of the cases heard within the courtroom feature real people who are engaged in real conflict with one another. 'Judge' Rawlings hears both sides (the litigants have legal counsel when pleading their cases from 'lawyers' who are really stand-up comedians) and renders a verdict.

In addition, *Guy Court* features a young scantily clad Latina bailiff named Melanie Iglesias who assists with the court proceedings. Of course, this point brings attention to another individual who is part of the mechanism of justice: the bailiff. All of the reality television courtroom programs feature bailiffs who are minorities as well.

Judge Joe Brown features a young Latina bailiff named Sonia Montejano, Judge Judy features an older black man named Petri Hawkins-Byrd, Judge David Young features a young black woman named Tawya Young, and Cristina's Court features a young black man named Bernard Spivey. What kind of relationship does the judge have with their respective bailiff? Moreover, what kind of relationship does the litigant have with the bailiff? Are the bailiffs simply intended to be enforcers of whatever the judge says, or do they have their own specific role? Again, such questions can be taken up in a different venue.

In terms of the physical set for the *Guy Court* courtroom, it is similar to *Judge Judy* and her contemporaries in that it features a bench at the center of the room atop which the judge sits, the bailiff stands at the side of the judge, the litigants stand behind two opposing podiums facing the judge, and there is a live audience. Such a courtroom environment brought forth by *Guy Court* is a manifestation of the sentiments expressed by NBC executives when developing the original *People's Court*. As discussed earlier, the major network wanted to feature the black comedian Nipsey Russell as the judge for the series and make jokes at the expense of the litigants.

Given the structure of the modern day reality television courtroom program, the question remains to be answered regarding the future of justice. As the judges become younger and younger with more comedic flare and utilizing discourse unfamiliar to the stereotypical courtroom will justice become an entity that is laughable? Has 'entertainment' become so closely linked to 'justice' that the two will one day become interchangeable terms? Are citizens of America more apt to entrust the privatized

comedic personality behind the bench, embodied by minority figures, than the public servant found in courtrooms across the country, embodied by the straight white man?

With all the new reality television courtroom programs and the continual search for new talent, there is a desire to fulfill the role that Judge Judy has held for so long and, inevitably, will one day relinquish when she retires. Roach (1996) has referenced this process of trying to locate a replacement individual, or individuals, as *surrogation*.

Americans are faced with the anxiety of substitutions all the time, such as in the workplace when a new boss is hired. Roach says of *surrogation*: “The process requires many trial and at least as many errors. The fit cannot be exact. The intended substitute either cannot fulfill expectations, creating a deficit, or actually exceeds them, creating a surplus” (p. 2). A new boss at the workplace may be worse than the old boss, or may be better than the old boss. However, it is certain that the new boss will not be an exact replica of the old one.

Similarly, when a judicial figure enters the realm of reality television courtroom programs they must have a certain kind of persona to replace whoever has been canceled. As previously discussed, the person behind the television bench must be some type of minority figure and have comedic timing in order to be successful. Of course, no one is going to be exactly like Judge Judy, but they must possess an easily recognizable identity that is stereotyped and follow the template of the program. *Surrogation* occurs within the infrastructure of the reality television courtroom in that stereotypes already firmly set by sitcoms from the past and present are perpetuated. Moreover, because audiences can quickly recognize the simplified personalities of the judges, audiences can also predict how the judge will behave and rule over the litigants. All of the judges may be

employing different linguistic tools and forms of humor, but they all embody the template of neoliberalism in order to render verdicts. Hence, audiences can begin to predict and understand the structure of neoliberal ideology as well and, perhaps, embody them on a daily basis.

Rumors within the television industry concerning plans for upcoming reality television courtroom programs reveal the underlying formula for creating a successful program: a minority body. For instance, reality television star Phaedra Parks, of *The Real Housewives of Atlanta* fame, is reported to be in negotiations regarding a courtroom show. Parks, who earned a Juris Doctrate from the University of Georgia, has created a tentative title for the show, which is *Rich People's Problems*, and the program will feature cases dealing with sums of money larger than those found in small claims court, whose limit is \$5,000 (Atlien, 2013). Radio personality Michael William Lebron is also rumored to be developing a reality television courtroom program as well; Lebron, better known by his radio name Lionel, is known for his high-pitched, yet aggressive, voice and strong opinions regarding government, such as his critical stance on America's involvement in the Middle East and his opposition to strict forms of gun control (Albiniak, 2012). Lebron adopted his name in homage to Al Pacino's character in *Scarecrow*, Francis Lionel 'lion' Delbuchi, and Lebron gained part of his fame for his voice impression of Pacino as Lionel when delivering news on the radio (WPIX). Like Parks, Lionel earned a Juris Doctrate and briefly worked as a trial defense lawyer in Florida, and both Parks and Lionel are minorities (Parks is black and Lionel has said he is of Afro-Puerto Rican and European descent). Despite the fact that both Parks and Lionel

have a background in law, neither one is an actual judge. Perhaps the need to have a real judge in the studio courtroom is of less importance than having a personality.

Are shows like *Guy Court* or the upcoming *Rich People's Problems* simply innocuous television shows attempting to cash in on reality courtroom programs or do they represent a sign of things to come? Several films have already gestured towards a future in which the justice system of America has drastically shifted from the standards of today. While most films of the dystopian genre portray a bleak future in which individuals are heavily regulated by a dictatorial government, some do utilize humor in order to comment on the justice system. Perhaps the justice in America will one day epitomize the film *Idiocracy* (2006) in which an average American man named Joe is placed in suspended animation for a military experiment and awakens in the year 2505 not sure of where he is. While he is able to locate a hospital he is ultimately arrested for not paying his hospital bill.

The narrator of the film offers the audience insight into the judicial process of the year 2505: "He [Joe] would soon discover that in the future, justice was not only blind, but had become rather retarded as well". Joe is taken to a courtroom filled with cigarette smoke in which the hallowed halls are pasted with sponsorship stickers from such places as *Costco* and *Carl's Jr.* (emphasizing the nature of privatized or corporation justice) and an audience of people are hurling insults at him, drinking *Big Gulps*, and using camera phones to capture the trial. A man donning a black robe and a hairstyle reminiscent of the Mayor of Who-ville stands at the bench with a comically exaggerated size gavel and bellows with a thick Southern accent: "I'm fixin' to commensurate this trial, here. We're gonna see if we can't come up with a verdict up in here." This scene is of particular

interest because it mimics a reality television courtroom program from the early 2000s entitled *Texas Justice*, a show that featured a former attorney from Houston named Larry Joe Doherty hearing real cases from real people. Doherty embodied the stereotypical Texan spirit with a thick accent, a strong sense of pride, and an ever-present cowboy hat (Burdette, 2006; Schneider, 2007).

The embodiment of over-the-top stereotypes, such as a Texan archetype, in a real courtroom may be a far-fetched notion. Perhaps America is headed away from such aforementioned spectacles and the average person is, in fact, learning something about the justice system by watching reality television courtroom programs. Perhaps the everyday citizen is engaging critically with the justice they witness on a daily basis. Law scholar Michael Sandel (1998) has noted that perhaps the theories of justice are not as important as the engagement of citizens with the tough questions brought before courts: “A politics of moral engagement is not only a more inspiring ideal than a politics of avoidance. It is also a more promising basis for a just society” (p. 268).

So, perhaps arriving at a theory of justice that involves fairness or some sort of objective truth is not as important as this idea of interaction. Perhaps it is enough for the spectator to interact with justice, even if just from the comfort of a recliner. While expectations of the jury, or laypeople, may be unrealistic, perhaps it is encouraging that citizens are becoming passionate about justice, even if through legal programming. After all, the reality television courtroom justices have all said that the main point of their show is to teach people to behave properly and, ultimately, take responsibility for their actions. So, by watching the continual performances of justice on television one becomes indoctrinated into a system. And, whether citizens of America are familiar with the

intricacies of legal theory, perhaps it is enough that they have a starting point to discuss justice from the widely accessible reality television courtroom programs.

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