

## **PLEASE ADJUST YOUR SIGNAL: HOW TELEVISION'S SYNDICATED COURTROOMS BIAS OUR JUROR CITIZENRY**

### INTRODUCTION

The law has long been fictionalized on television. Yet, in the last decade, networks have added the “reality programming” of real trials to their repertoire. As demonstrated by ratings, the most popular reality, “legal” fare is the syndicated television courtroom, i.e., Judge Judy and The People’s Court. It is unknown, however, what impact these shows may have on viewers, especially viewers who may later serve as jurors. Indeed, such shows might net a positive effect, increasing the interest of viewers in jury service or educate them about basic of the justice system. Nonetheless, they might also have a negative effect, diminishing respect for the justice system and perverting understandings of the law.

The instant study investigated the effects of frequent syndi-court viewing on jurors, the very group who might apply its teachings during jury service. Specifically, 241 individuals reporting for jury duty in Manhattan, Washington, D.C., and Bergen County New Jersey responded to questionnaires regarding their syndi-court viewing habits, opinions regarding judicial temperament, activity, and its meaning, and their overall perceptions regarding the justice system. The results demonstrate that frequent viewing of syndi-court is, indeed, positively correlated with views that judges should be active, ask questions during the proceedings, hold opinions regarding the outcome, and make these opinions known. Additionally, frequent viewers showed a strong propensity (not seen in non-viewers) to look for clues to a judge’s opinion and to interpret judicial silence as indicating a clear belief in one of the litigants. Moreover, the prior court experience of viewers/ non-viewers exhibited no discernible effect on these measures.

After outlining the existing literature on the educative effect of televised law on public opinion about the justice system, this paper contemplates the potential impact of syndi-court on such opinions. The underlying empirical study is then introduced, its results reported, and its findings analyzed. Next, the ramifications of findings regarding frequent viewers and non-viewers of syndi-court are analyzed in relation to the public’s respect of the bench, opinions about the function and operation of the legal system, and the mis-education of jurors. Finally, proposals to address the negative ramifications of syndi-court are suggested.

### COURTS ON TELEVISION

Mass public opinion toward the courts is an important aspect of the judicial system.<sup>1</sup> “[O]ne way to promote effective justice. . . [is] to build public respect.”<sup>2</sup> Citizens learn about the justice system

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<sup>1</sup> Hon. Bruce M. Selya, *The Confidence Games: Public Perceptions of the Judiciary*, 30 NEW ENG. L. REV. 909 (1996).

As noted by the late Justice Thurgood Marshall, “a decision contrary to the public sense of justice as it is, operates, so far as it is known, to diminish respect for the courts and for law itself. *Flood v. Kuhn*,

in many ways: Some through the unfortunate experience of being litigants; others as peripheral players (such as clerks, paralegals, investigators). Most individuals, however, have little direct contact with the justice system and its legal rules. Consequently, citizens obtain their knowledge of the law and courts through the media,<sup>3</sup> such as portrayals in film, newspaper coverage and television broadcasts of trials.

Televised court proceedings have been the subject of countless law reviews and bar association reports.<sup>4</sup> Often, these reports consider the ways in which televising an ongoing trial will affect its participants<sup>5</sup> or whether an interested public is entitled to “view” the proceedings.<sup>6</sup> Few have considered the broader influence of televised court proceedings (as opposed to the particular trials) as an educator of the public.<sup>7</sup>

Nevertheless, many opine that televising trials efficiently educates the public by providing a frame of reference<sup>8</sup> for what the court system is, its fairness, and who its arbiters of justice are.<sup>9</sup> Indeed, Justice Harlan stated that “television is capable of performing an educational function by acquainting the

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407 U.S. 258, 293 n.4 (1972) (dissenting). This truth was also quoted by Justice Scalia in the different context of *Payne v. Tennessee*, 501 U.S. 808, 834 (1991).

<sup>2</sup> Hon. Judith S. Kaye, Symposium, *Rethinking Traditional Approaches*, 62 ALBANY L. REV. 1491, 1493 (1999).

<sup>3</sup> Selya, *supra* note 1, at 913; David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System*, 35 ARIZ. L. REV. 785, 786 (1993) (footnotes omitted).

<sup>4</sup> Ralph E. Roberts, Jr., *An Empirical And Normative Analysis Of The Impact Of Televised Courtroom Proceedings*, 51 SMU L. Rev. 621 (1998); Christo Lassiter, *TV or Not TV — That Is The Question*, 86 J. CRIM. L. & CRIMINOLOGY 928, 934 (1996).

<sup>5</sup> This encompasses whether courts are immune from public opinion and the comparative risk of damaging the legitimacy in light of the benefits of televising the proceedings.

<sup>6</sup> This includes the tension between the First Amendment's freedom of the press guarantee and the Sixth and Seventh Amendments's promises of a fair trial. Roberts, *supra* note 4; Charles H. Whitebread, *Selecting Juries in High Profile Criminal Cases*, 2 GREEN BAG 2D 191, 192 (Winter 1999); *see also* *Estes v. Texas*, 381 U.S. 532 (1965).

<sup>7</sup> Lassiter, *supra* note 4, at 934, 958.

<sup>8</sup> Selya, *supra* note 1, at 913.

<sup>9</sup> For instance, in *Richmond Newspapers, Inc. v. Virginia*, 443 U.S. 555, 575 (1980), Chief Justice Burger alluded to the “educative effect” of televised proceedings on the public. These comments, however, speak to the public’s opinion about and faith in the judiciary, rather than to the public’s legal literacy.

public with the judicial process in action,”<sup>10</sup> and last year’s American Bar Association report concluded “that the media can and does impact some people’s knowledge.”<sup>11</sup>

The OJ Simpson trials transformed the theory of the televised trial into reality.<sup>12</sup> Criticisms of that episode notwithstanding,<sup>13</sup> many argued that the post-Simpson era of televised trials would lead to greater public understanding of and respect for the judicial system, legal concepts, and burdens.<sup>14</sup> Despite the popularity and intuitive appeal of these claims (themselves embedded in caselaw), notwithstanding, there is virtually no research on the overall impact of televised trials on public perception of the legal system.<sup>15</sup> A limited number of studies have attempted to quantify the impact of cameras in the courtroom on trial participants,<sup>16</sup> but not the impact of televised court proceedings on the public, generally,<sup>17</sup> let alone their educational impact.<sup>18</sup> Furthermore, a majority of jury research

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<sup>10</sup> Estes v. Texas, 381 U.S. 532, 589 (Harlan, J., concurring).

<sup>11</sup> As reprinted in, Symposium: *American Bar Association Report on Perceptions of the US Justice System*, 62 ALB. L. REV. 1307, 1315 (1999), reprinted report, “Perceptions of the US Justice System,” sponsored by the American Bar Association.

<sup>12</sup> For better or worse, the O.J. Simpson trials reopened the debate concerning the prudence of televising courtroom proceedings. A survey taken by the New York County Lawyers' Association found that ninety-one percent of New York state judges believed that the coverage of the Simpson trial damaged public perception of the judicial system. Deborah Lorber, *Cameras in Court After O.J.: The Debate Continues*, N.Y.L.J., Nov. 16, 1995, at 1.

Initially, hardcore Simpson watchers weaned themselves on the closest substitute, the trials of Court TV. Premiering in 1991 as a cable network, Maria Hart, *You the Jury: Courtroom TV Brings the Courtroom Home*, CHI. TRIB., Aug. 4, 1996, S11, at 5, Court TV includes criminal and civil cases. Alice Hart, *Steven Brill Plans To Bring The O.J. Simpson Trial To The Small Screen*, BALTIMORE SUN, Sep. 25, 1994, at 1J.

<sup>13</sup> See e.g., Editorials, NEW JERSEY LAWYER, March 27, 2000, at 6 (arguing that these trials led to a reduction of public confidence in the legal system); Tim Kishka, *O.J.’s Pandering Lawyers Jeopardize Future of Cameras in the Courtroom*, DETROIT NEWS, October 5, 1995; *Critics Sound Off on O.J. Simpson Trial*, CRAIN COMM. INC. ELECTRONIC MEDIA, 54, Nov. 6, 1995; Charles Lindner, *Put Out The Camera’s Eye in the Courtroom*, L.A. TIMES, Feb. 19, 1995, at M6.

<sup>14</sup> George Anastapio, *The O.J. Simpson Case Revisited*, 28 LOY. U. CH. L.J. 461 (1997).

<sup>15</sup> Roberts, *supra* note 4, at 621-22.

The 6<sup>th</sup> Amendment ensures a jury in certain criminal trials; the 7<sup>th</sup> Amendment ensures a jury in most civil trials.

<sup>16</sup> *Id.* at 634.

<sup>17</sup> Lassiter, *supra* note 4, at 973 (“there has yet to surface a study testing viewers to see if their actual knowledge of the legal system has improved as a result of cameras inside the courtroom”).

compares mock juries to either seated ones or their pools, creating problems of generalization.<sup>19</sup> It has even used mock juries of only four individuals<sup>20</sup> -- a number held unconstitutional by the Supreme Court.<sup>21</sup> Such research has frequently, and rightfully, been criticized:<sup>22</sup> some is not simply useless, but relies on improper precepts to draw conclusions.

### *The Instructional Capability of TV Law*

Assessing the impact of televised law initially requires rejecting views that only pristine versions of justice send messages to the public. Although viewing complete trials may seem to more accurately educate citizens regarding the operation and structure of the legal system, it is not the only mechanism for doing so.<sup>23</sup> Television's symbolic courtroom trial, as Boden has called it,<sup>24</sup> be it fictionalized or dramatized, "reinforces, shapes, and directs" "the public's view of lawyers, courts, and society . . . ."<sup>25</sup> It impacts American consciousness, contributing to a "tendency to see things as black or white, as right

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<sup>18</sup> See David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, and Public Understandings of the Criminal Justice System*, 35 ARIZ. L. REV. 785, 788-91 (1993).

<sup>19</sup> See Diane R. Follingstad, *Systematic Jury Selection: The Quest For A Scientific Approach*, in PSYCHOLOGY, PSYCHIATRY, AND THE LAW: A CLINICAL AND FORENSIC HANDBOOK, 471 (CHARLES PATRICK EWING, ed., 1985).

<sup>20</sup> While researchers may have chosen this number of members in hopes of increasing the number of mock juries (as opposed to mock jurors) that could be studied, thereby increasing the likelihood of statistically significant results, this attempt is not only misguided, but renders the results invalid. No jury in the United States numbers a paltry 4 individuals -- and, if it did, would result in a reversal of any conviction. The 6 member floor is based on beliefs about the group deliberation process.

<sup>21</sup> *Ballew v. Georgia*, 435 U.S. 223, 245-49 (1978) (there exists a "substantial threat to the constitutional guarantees [in] reducing the jury from six to five"); *Williams v. Florida*, 399 U.S. 78 (1970) (6 person jury is constitutional minimum for civil and misdemeanor trials).

<sup>22</sup> Robert J. MacCoun, *Epistemological Dilemmas In The Assessment Of Legal Decision-Making*, 23(6) LAW AND HUMAN BEHAVIOR 723-30 (1999).

<sup>23</sup> "The media is drenched with court news, yet there is little meaningful, systematic coverage designed to educate an already cynical public about the justice system." Kaye, *supra* note 2, at 1492.

<sup>24</sup> Robert F. Boden, *Essay: Conventional Wisdom: The Courtroom Trial in American Popular Culture*, 82 MARQ. REV. 471 (Spring 1999).

<sup>25</sup> *Id.*

or wrong, as guilty or innocent,” thereby retarding the ability to undertake “more subtle analyses or an appreciation of contradiction . . . .”<sup>26</sup>

Courtroom representations include not only television dramas but also syndicated courts, such as Judge Judy and The People’s Court.<sup>27</sup> These provide the public with the most consistent, accessible televised<sup>28</sup> court information available.<sup>29</sup> As USA Today heralded, “Judge Judy overrules daytime chat,” and tops the Nielsen race for all syndicated shows.<sup>30</sup> Where one ratings point equals one million viewing households,<sup>31</sup> these ratings prove that such syndicated courtrooms are regularly seen and

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<sup>26</sup> *Id.* at 473.

<sup>27</sup> As of this writing, there are 11 syndicated courtroom shows airing. Walt Belcher, *New Court Shows, Dab Of Talk, Games Fill TV Docket*, TAMPA TRIBUNE, Sept. 11, 2000, at 1. Even the original, Judge Wapner, is deciding disputes in Animal Planet’s “Animal Court.” The People’s Court helmed by Judge Wapner and bailiff Rusty, hit the airwaves in 1981 and enjoyed a 12 year run. Ruth S. Hochberger, *TV Watch: The People’s Court*, N.Y.L.J., Sept. 17, 1997, at 4.

There is also Judge Julie of the Playboy Channel’s “Sex Court,” where real courtroom testimony is re-enacted and discussed in the nude. Alexander Wohl, *And The Verdict Is In . . .*, 11 THE AMERICAN PROSPECT, Oct. 23, 2000, at 40-41.

<sup>28</sup> 98% of Americans have at least 1 television, and spend 33% of their leisure time watching in a ritual of regularity. Todd Picus, *Demystifying the Least Understood Branch: Opening the Supreme Court to Broadcast Media*, 71 TEX. L. REV. 1053, 1085 n.172 (citation omitted).

<sup>29</sup> Rather than broadcasting a contemporaneous trial scheduled by the state or federal judiciary, the quasi-trials of syndi-court are planned -- the test-tube-conceived, implanted children to those conceived in the backseat of a car. Nonetheless, these proceedings maintain some degree of realism.

Syndi-court is an arbitration venue modeled on small claims court. In some states, small claims courts are even deemed “people’s courts.” DANIEL JOHNSON, A CONSUMER’S GUIDE TO USING AND UNDERSTANDING THE LAW, 15 (1994); DONALD L. CARPER, ET AL., UNDERSTANDING THE LAW, 102 (1990). Small claims courts focus on the judge and the disputants. There are no lawyers. Rather, disputants submit written explanations of their respective positions, and, then, orally present and answer questions of the court (the judge). Formal rules of evidence are downplayed and legal documents are kept to a minimum, *id.* at 103, and these proceedings do not include juries, deliberations, and legal instructions.

Also, disputants in syndi-court are not dreamed up by producers or created in a pitch meeting, but are culled from real cases. To paraphrase one syndi-court tag line, these are real cases with real people. Although this type of court proceeding is seldom seen in the media, it is the most popular forum for the average dispute. Local small claims courts handle landlord-tenant disputes, personal injury/ tort claims, and product claims. *The Role of Small Claims Court*, *Consumer Reports*, Nov. 1979, 666.

<sup>30</sup> USA TODAY, March 25, 1999.

<sup>31</sup> Nielsen Media Research.

embraced by the public.<sup>32</sup> Consequently, such television offerings possess a tremendous impact, as they are actually seen. Moreover, the stories are easily digestible, the conflicts clear, and the resolution swift.<sup>33</sup> Indeed, the Chief Judge of New York's highest Court, Hon. Judith S. Kaye, has posited that knowledge and direct experience with the court system, even if that experience is "sitting in front of a television, watching Judge Judy," "play[s] a huge role in public perceptions of the justice system."<sup>34</sup> Thus, these courts possess a tremendous potential for impacting the collective consciousness regarding the justice system.

### *The Influence and Priming Effect of Syndi-Court*

If it is true that televising a traditional trial sends implicit and explicit messages, thus educating and contributing to the public's perception of courts, law, and justice, then televising the travails explored in syndi-court also does so. Hence, it too, is an educator. Indeed, critics of the lack of media coverage of significant legal developments have stated that this dearth of coverage<sup>35</sup> limits "the public's understanding of law. . . to the ravings of Judge Judy. . . ."<sup>36</sup> Moreover, many individuals are not aware that television brethren are not acting in the role as true judges<sup>37</sup> or that some are not judges at all.<sup>38</sup>

Since television creates a frame of reference to law, it is, perhaps, the greatest present-day messenger of institutionalized law.<sup>39</sup> Consequently, it is relevant to determine the explicit and implicit messages of these syndi-courtrooms, how their messages are received by the audience, and their effect

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<sup>32</sup> Joe Schlosser, *Another Benchmark for 'Judge Judy,'* BROADCASTING & CABLE, Mar. 29, 1999, at 15.

<sup>33</sup> Lisa Scottoline, *Law and Popular Culture*, speech at Nova Southwestern University's Goodwin Alumni Banquet, 24 NOVA LAW REV. 655, 657 (2000).

<sup>34</sup> Kaye, *supra* note 2.

<sup>35</sup> Kate Murphy, Report of Symposium, *The Media's Role on Society's Perception of the Legal System*, 40 S. TEX. L. REV. 991 (1999). One example was The New York Times's burying an article on the Supreme Court's decision on a Palestinian immigrant. *Id.*

<sup>36</sup> *Id.* at 992.

<sup>37</sup> A member of the California Commission on Judicial Performance has reported that "the public regularly submits complaints about Judge Judy and other TV judges," not "undertand[ing] that Judge Judy and most of her cohorts are not present members of any judiciary." Mike Farrel, *If Judge Judy Could Only Be Judged . . .*, BROWARD DAILY BUSINESS REV., July 7, 2000, at B4.

<sup>38</sup> The Presiding "Judge" of The People's Court, Ed Koch, was not a judge at all, but a former mayor, sitting as an ersatz arbitrator. See *Kabia v. Koch*, N.Y.L.J. July 31, 2000 (New York Co. Civ. Ct) at 29.

<sup>39</sup> Audrey Nesbitt Gray, *On Your Doorstep*, 77 MICH. B.J. 454 (1998).

on the public. Do they promote particular opinions regarding the appropriate behavior of the bench and bar? Do they influence viewers who may later become jurors? The obviousness of these queries notwithstanding, there is little research on the impact or priming effect of televised law on the public.<sup>40</sup> Nonetheless, research of this sort is rare: “[R]elatively little empirical research has been devoted to comparing the impact of extralegal factors to the various essential content-oriented (legal) aspects of the trial itself on the decisions of the juries.”

## THE STUDY

### *Problem*

Although data on several variables was obtained, this initial study focused on the effect of the temperament and activity of syndi-judges on pool jurors: Judges are seen as the central figures of the legal system, thus play a critical role in the public’s perception of justice.<sup>41</sup> Indeed, it has been suggested, based on empirical evidence, that a judge can direct a jury to a verdict, even one it feels is unjust, yet, legally correct.<sup>42</sup>

The actions and temperament of television judges may impact the public and potential jurors in three main ways. First, the behavior of a television judge may “diminish the brand,” so to speak, leading to a negative view of the bench, the outcomes (verdicts) with which they are associated, and the justice system, generally. Second, the actual behaviors exhibited by the television bench may imply the appropriate behavior of the true bench and the meaning of particular behaviors. This may prime jurors, becoming an unintentional interpretive guide. Thus, when seated at trial, jurors may look for clues, misinterpret behavior, or weight innocuous behavior. Finally, the television bench may alter the public’s expectations of the justice system regarding what its function should be and when it is operating successfully.

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<sup>40</sup> Ronald J. Matlon, *Factors Affecting Jury Decision-Making*, 12 SOC. ACTION & L. 41, 41-42 (1986).

In fact, “[e]ssential content-oriented aspects of a trial may be described as the established conventions of the court which constitute the substance of the trial, such as opening statements, direct testimony by witnesses, direct and cross-examination from counsel, objections, exhibits, closing arguments, and judge’s instructions.” Ronald J. Matlon, *Factors Affecting Jury Decision-Making*, 12 SOC. ACTION & L. 41, 41-42 (1986).

<sup>41</sup> David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System*, 35 ARIZ. L. REV. 785, 792 (1993).

<sup>42</sup> Kathryn M. Olson, Clark D. Olson, *Judges’ Influence On Trial Outcomes And Jurors’ Experiences Of Justice: Reinscribing Existing Hierarchies Through The Sanctuary Trial*, 22 J. APPLIED COMM. RESEARCH 16 (Feb. 1994).

## *Hypothesis*

This study sought to discover whether there existed any differences between those who did and did not regularly watch syndi-court. This draws on conceptions of George Gerbner's cultivation theory:<sup>43</sup> that watching a great deal of television will be associated with a tendency to hold specific beliefs congruent with the most consistent images and values of that medium.<sup>44</sup> Specifically, a number of opinions regarding the interpretation and expected behavior of judges were investigated along with viewing habits.

Additionally, prior research suggests that people who lack direct experience with the court system (or are potentially least likely to obtain such experience) are most influenced by television portrayals.<sup>45</sup> Here, prior experience would be prior litigation or jury service (i.e., "court service"). Since individuals with prior service would have experienced an actual trial and, presumably, been properly instructed regarding the role of the judge, burdens of proof, and appropriate behavior of trial participants, it was thought that this group may be substantially less inclined to exhibit the characteristics of the frequent viewers. It was, therefore, hypothesized that prior jury service may immunize citizens against misperceptions, negative attitudes about, or the priming effects of the television bench.

## *The Sample*

As one criticism of prior jury studies is the lack of generalizability to actual jurors, this study used the very people who might apply the "teachings" of syndi-court to actual trials, i.e., pool jurors called to service. A total of 241 juror-respondents were obtained from courthouses in Manhattan, the District of Columbia, and Hackensack, New Jersey.

## *Methodology*

While awaiting entrance into the courthouse and during lunch breaks, individuals called for jury duty completed questionnaires.<sup>46</sup> In exchange for their participation, they received the elite pens used

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<sup>43</sup> Although precepts of cultivation theory are borrowed, it is important to note that cultivation, as envisioned by Gerbner, looks at all television images as a whole, a whole constructed by a power elite. See JAMES SHANAHAN AND MICHAEL MORGAN, TELEVISION AND ITS VIEWERS, CULTIVATION THEORY AND RESEARCH (1999) at 3, 5.

<sup>44</sup> Cultivation, thus, speaks to the implications of stable, repetitive, and pervasive images and ideologies that TV, here, syndi-court, provides. *Id.*

<sup>45</sup> Sarah Eschholz, *The Media And Fear Of Crime: A Survey Of The Research*, 9 U. FLA. J.L. & PUB. POL'Y 37, 43 (1997).

<sup>46</sup> Alternatives such as requiring mock juries to view snippets of televised law might disguise or enhance the true effects of real-life viewing. For instance, the temporal proximity and attendant focus inherent in a controlled viewing environment may lead to enhanced attention, and, therefore, skewed

and candy bars. Questionnaires of individuals with obvious language or literacy barriers were discarded as substantially incomplete.

These prospective jurors responded to twenty questions measuring syndi-court viewing habits, expectations and approval of certain judicial behaviors, propensity to and interpretation of judicial behaviors, litigiousness, the overall impression of judges, and prior court experience or jury service. Ultimately, 225 questionnaires were analyzed.<sup>47</sup>

## *Instrument*

### Construction of Questionnaire

To construct the juror questionnaire, characteristics of syndi-courts were first identified to determine whether negative perceptions of these shows and judges were prominent enough to be generalized. Simply, since the syndi-courts were looked at as a group, it was important to ensure that syndi-court has some commonality and consistency among the individual shows.<sup>48</sup> Five (5) syndicated courts, Judge Judy, Judge Joe Brown, Judge Mills Lane, Judge Mathis, and The People's Court, were monitored for 20 hours each, during a four-week period. Data regarding the nature of the dispute, primary issues involved, decision, reasoning if stated by court,<sup>49</sup> and commentary by the court, divided among minutes of the judge speaking (compared to minutes of the litigants speaking), and the nature of the commentary (clarifying, questions, insults, mediatory) was collected. This information was put in grid form.<sup>50</sup>

To ensure that the values distilled were, indeed, those that would be distilled by the average citizen, four (4) sets of 20-25 undergraduate students viewed a sample of cases from the studied shows.

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effects. Furthermore, this scenario is neither how the average person watches television nor the way theorists contemplate citizens forming impressions over time, from a variety of TV law sources.

<sup>47</sup> Sixteen were discarded as substantially incomplete or as demonstrating a significant language barrier.

<sup>48</sup> See Shanahan and Morgan, *supra* note 42, at 2.

Thus cultivation analysis commences with “identifying the most recurrent and stable patterns in television content, emphasizing the consistent images, portrayals, and values . . . .” *Id.* at 23.

<sup>49</sup> Sometimes, as in The People's Court and Judge Joe Brown, legal reasoning would be further explained or disputed by commentary.

<sup>50</sup> From this grid, “values” were distilled. Values reflected the explicit (such as expression of legal rules) and implicit (temperament, consistent bias) legal context. This included both a factual assessment and rating. Thus, whereas the former simply dealt with the recording of facts, the latter interpreted, these facts. It was not the intention to rate the shows as to worth, but to discern their content so as to foretell their impact on public knowledge and perception.

After being exposed to these cases, students responded to questionnaires regarding the judicial expression of certain values and their overall impressions of the case. Values included opinionated, mean, has strong opinions, controlling, active, and demeaning. Only values that were found to be statistically significant at the .05 level were included in the questionnaire.

### Content and Groupings of Questions

Questions on the juror questionnaire reflected the main, negative characteristics of syndi-court and their potential ramifications in light of both psychological theory and decisional law.<sup>51</sup> Questions considered the priming effects of television, thus the extent of syndi-court viewing, inoculation effect of prior jury service, the expected activity and display of judicial opinions, and the potential effects of these on jurors.

## *Results*

### Frequent Viewers v. Non-Viewers

Respondents were identified as frequent viewers [FV] or infrequent/ non-viewers [NV] to discern whether viewing was associated with certain factors contemplated by the questionnaire. A “frequent viewer” tuned into a syndicated courtroom show between two to three times and more than five times per week (and checked the corresponding response on the descriptive scale of viewing). Non-viewers either did not watch such shows at all or did so only once per week (and checked the appropriate response on the corresponding descriptive scale).

Of the 225 juror responses analyzed, 149 were frequent viewers, and 76 infrequent/non-viewers. The most significant findings pertained to whether respondents: (a) believed that judges should be active, hold opinions regarding case outcomes, and voice these outcomes; (b) would look for clues to these opinions; (c) interpreted judicial silence (an oddity on syndi-court) as meaningful; and (d) were affected by prior court experience. Several differences, of both legal and statistical significance, emerged between the FV and NV groups. Significance was tested at the .0005 level of probability.<sup>52</sup>

### Judicial Opinions and Activity

One collection of questions asked respondents whether judges should be active, hold opinions regarding case outcomes, voice these opinions to jurors, and whether jurors would look for cues to and/

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<sup>51</sup> Shanahan, *supra* note 42, at 25-26 (“[C]ultivation analysis test for relationships between the amount of television viewing and the tendency to respond to survey questions in the terms of the dominant repetitive facts, values, and ideologies of the television world”).

<sup>52</sup> While, certainly, this level of statistical significance was not required, it speaks to how clearly significance was established.

or attempt to discern these opinions.<sup>53</sup> Another critical question concerned the effect of silence of judges.

As reported in Table 1, though it appeared that some respondents of both groups envisioned an “active” bench, frequent viewers as compared to non-frequent viewers expressed this belief at the .0005 level of significance. Indeed, frequent viewing was associated with beliefs that judges should have an opinion regarding the verdict (FV =75%, NV =48.6%) and make it “clear or obvious” to the jurors (FV =76.5%, NV =31.58%). The import of this becomes even more significant as it was also found that jurors would affirmatively “look for clues” or “try to figure out” what the judge’s opinion was (FV =74.5%, NV =31.58%).

These statistically significant differences were maintained when questions were considered as a profile of beliefs (i.e., respondents who answered “yes” to all of these queries) regarding whether a judge should have an opinion and make it known (FV = 75%; NV = 26.3%) and have an opinion and make it known and that the juror planned to search for clues to this opinion (FV = 73.8%; NV =13%).

<b>Table 1</b>	<b>Summary of Findings</b>	
	<b>FV</b>	<b>NV</b>
<b>Judicial Opinions &amp; Activity</b>		
judges should have opinion regarding verdict	75%	48.6%
should make opinion “clear”	76.5%	31.58%
jurors will “look for clues” to judge’s opinion	74.5%	31.58%
<b>Aggressive, Investigatory Behavior of Judge</b>		
judge should ask questions during trial	82.5%	38.16%
should “be aggressive with litigants or express displeasure with their testimony”	63.76%	26.32%

#### **Interpretation of Judicial Silence**

<sup>53</sup> Among the questions posed were:

Should a judge have an opinion about the outcome/ verdict in the case?

Should a judge make her/ his opinion about a case clear or obvious to the jury?

Will you look for clues or try to figure out what the judge’s opinion about the case is?

Should a judge frequently ask questions?

Should a judge be aggressive with the litigants OR express her/his displeasure with their testimony or behavior?

judge's silence indicates belief in litigant

73.8%

13%

### Interpretation of Judicial Silence

Perhaps the most disturbing finding was the perceived effect of judicial silence. (This is also reflected in Table 1). In addition to queries regarding judicial opinions, clues thereto, display of, and investigation of, was a question asking whether the judge's silence meant that she favored the plaintiff, favored the defendant, had no opinion, or it would depend on the evidence.

Though caselaw establishes that a judge should neither be the focal nor vocal center of attention at trial, frequent viewers did not subscribe to this view. Rather, a statistically significant portion of frequent viewers (73.8%) attributed clear meaning to judicial silence, i.e., concluding that it meant that the judge strongly favored either the plaintiff or defendant. This was in sharp contrast to non-viewers, where only 13% of non-viewers interpreted silence as something other than indicating no opinion. When considering against the backdrop of frequent viewers's tendency to impute and search for the judge's opinion, this does not merely evince a significant difference, but one that eviscerates legal notions of the meaning of silence (or lack thereof), the neutrality of the bench, and the inviolate principle that the jury, alone, is the fact-finder.

### Aggressiveness of Judges

Statistically significant differences also were seen between the frequent and non-frequent viewers with regard to aggressive and investigatory behavior by the bench. Table 1 reports that 82.5% of frequent viewers (compared to 38.16% NV) believed that judges should ask questions during proceedings and 63.76% (compared to 26.32% NV) believed that a judge should "be aggressive with the litigants or express his/her displeasure with their testimony or behavior." Statistically significant results were again maintained when questions were considered in conjunction with positive responses to whether judges should ask questions (FV = 82.5%; NV = 38.16%) and whether jurors would look for clues (FV = 71.8%; NV = 19.74%).

### Inoculation From Prior Court Service

Responses were also considered in light of prior court experience, to see if prior court experience mediated any effect of frequent viewing of syndi-court. It did not appear, however, that prior court service affected opinions regarding judicial activity or its meaning (with questions alone or in collected profile) as prior court service was not shown to be correlated with any of the variables assessed. Additionally, as shown in Table 2, prior court experience was also not correlated with whether jurors held a negative or positive view of the bench.

## Table 2 Express Negative View of Bench

<u>Experience Level</u>	<u>FV</u>	<u>NV</u>
Prior Court Service or Experience	23%	19%
No Prior Court Service or Experience	77%	80%

## DISCUSSION

The study responses provide strong support that syndi-court cultivates in frequent viewers a view of an aggressive, impatient, and opinionated judiciary. These viewers expect that, when jurors, they will see this behavior and it will signal to them the judge's opinion of the case.

### *The Effect of TV Judges on Public Opinion*

It, thus, appears that "television's symbolic courtroom trial" does shape and direct "the public's view of lawyers, courts, and society. . . ." <sup>54</sup> When the public continually comes into contact with the judicial models presented by syndi-court -- to the exclusion of all other judicial models -- viewers are reasonably likely to see this as typical judge behavior. <sup>55</sup> It, then, becomes the barometer against which all other judicial action is evaluated. This TV behavior, defined by sarcasm, verbosity, opinion, and aggression, will ultimately come to be seen as representative of the whole. This may lead to hostility toward the bench which, in turn, breeds contempt for the judicial system as a whole.

In fact, one writer accused Judge Judy's "disrespectful" demeanor of contributing to bad behavior in society. <sup>56</sup> Even television judges, themselves, have criticized Judge Judy, calling her a "screaming ninny. . . [who calls] the litigant a jackass." <sup>57</sup> As one sitting judge discovered, behavior that would garner applause, if displayed in the television courtroom, renders official sanctioning when occurring in the "real" courtroom. This judge who had repeatedly brow-beaten litigants and once barked, "You are an able-bodied person, OK? There are lots of jobs out there. I suggest you go find one," was censured for improper individual behavior. <sup>58</sup> Indeed, it is questionable whether newly-robed

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<sup>54</sup> Boden, *supra* note 23.

<sup>55</sup> Because there a few competing models (such as regular transmission of complete trials), there is no check and balance to this stream of information.

<sup>56</sup> Editorial, *Will Society's Bad Behavior Just Get Worse and Worse?* LANCASTER NEW ERA, Oct. 17, 2000, at A14.

<sup>57</sup> *Sidebar: The Talk of the Profession Hating Judge Judy*, THE NATIONAL LAW JOURNAL, August 21, 2000, at A6.

<sup>58</sup> Gail Diane Cox, *Judicial Watchdog Agency Wants to Protect Public From TV "Judges,"* FULTON COUNTY DAILY REPORT, June 9, 2000.

Judge Glenda Hatchett's, of "Judge Hatchett," attempts to "make a difference in [] people's lives," such as by requiring teenagers to go to a morgue and crawl into body bags, would be as popular in the real courtroom.<sup>59</sup>

The negative impact of this would be reduced, if the behavior of television judges represented the mean behavior of sitting judges, as it would merely reflect an accurate sampling. Evidence, however, suggests that, to the contrary, television judge behavior represents significant deviations below the mean.

There exist relevant guidelines against which judicial behavior is to be evaluated. Though these guidelines are familiar to the bench and bar, they are likely foreign to the public. The Model Code of Professional Conduct contains three pertinent regulations. Canon 2 of the Code is concerned with the appearance of justice, and recognizes the connection between the public's observation of judges and their perception of the integrity of the judicial system. Thus, it requires judges, at all times, to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary: "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges."<sup>60</sup> Canon 1 requires judges, at all times, to conform with the highest standards "so that the integrity and independence of the judiciary will be preserved."<sup>61</sup> Canon 3 of the Code provides that a judge shall be patient, dignified, and courteous to litigants, and shall perform duties without bias or prejudice.<sup>62</sup> Importantly, with regard to the appearance of impropriety, it is applied to judges both on and off the bench, in their professional activities as well as their personal lives. Judges take this mandate quite seriously. For example, in a recent judicial election, excessively expensive advertising prompted the chief judge of the Mississippi Supreme Court to ask that advertising (including advertising for her) be withdrawn. She believed that the campaign had caused "discussion and concern for the integrity of both judicial elections and the judicial system in [Mississippi]."<sup>63</sup>

Obviously, if these Canons extend beyond the professional life to the personal, they also extend to the public life of television. Although these guidelines seek to contain the actions of the sitting judiciary, as, traditionally, the only representatives of the judiciary were active judges, it must be remembered that the Canon's primary concern is with guarding the public perception of the judiciary.

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<sup>59</sup> Susanne Ault, *Courting Ratings*, Vol. 130 *Broadcasting & Cable*, Oct. 30, 2000, at 25.

<sup>60</sup> Model Code of Judicial Conduct Canon 2 (1990).

<sup>61</sup> *Id.*, Canon 1.

<sup>62</sup> *Id.*, Canon 3.

<sup>63</sup> Mike More, *State Asks National Group About Running Ads For Judges, U.S. Chamber Sues to Continue Advertising*, *THE COMMERCIAL APPEAL*, Oct.24, 2000, at DS1.

Thus, where the public sees judicial behavior, but cannot distinguish this behavior from that of “real” judges, the negative ramifications are, nevertheless, profound.<sup>64</sup>

Furthering the presumption of negative contamination is the increasingly blurred line between the fiction and reality of televised law.<sup>65</sup> Shows like *Power of Attorney*, that invite real legal eagles, such as Christopher Darden and Geoffrey Fieger, to argue cases,<sup>66</sup> and those helmed by television judges who continue to sit imbue fictional courts and judges with the trappings of reality. For example, during the first years of his nationally-syndicated television show, “Judge Joe Brown,” Brown continued to sit in Shelby County, Memphis.<sup>67</sup> Judge Judy and *The People’s Court* Presiding Justice both left the bench to pursue television opportunities. This makes it difficult for the average viewers to recognize the distinction between these and real judges.

### *Inferring Judicial Opinions From Behavior*

The second concern regarding the effect of TV judges on the bench and bar is more particularized. It speaks to the messages that these behaviors may send and how future jurors may later interpret judicial behavior in true courtrooms, during jury service.

It is assumed that jurors enter the courtroom as *tabulae rasae*, blank slates, free of bias. Yet, there exists a human predisposition to interpret new information in the light of past experience. Here, past experience brought into the courtroom is knowledge borne of syndi-court. Indeed, results of the instant study demonstrate that syndi-court inscribes in frequent viewers beliefs that judges should, do, and will disclose opinions regarding the case. These viewers will carry this learned view with them into the courtroom and actualize it during trial.<sup>68</sup> For instance, jurors may unduly focus on the judge and

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<sup>64</sup> Just last year, though 50% of respondents in the recent American Bar Association’s “Perceptions of the US Justice System” survey reported strong confidence in the Supreme Court, a judicial institution that enjoys a unique position among courts, only 1/3 of respondents felt very strong or strong confidence in judges of other venue. As reprinted in, Symposium: American Bar Association Report on Perceptions of the US Justice System, 62 ALB. L. REV. 1307 (1999), reprinted report, “*Perceptions of the US Justice System*,” sponsored by the American Bar Association.

<sup>65</sup> “Whatever the visual mass media touch bear the mark of reality/ fiction confusion.” RICHARD K. SHERWIN, *WHEN LAW GOES POP, THE VANISHING LINE BETWEEN LAW AND POP CULTURE*, 8 (2000).

<sup>66</sup> Debra Lynn Vial, *Move Over, Judge Judy, New Show Stars Ex-Bergen Judge, Top-Gun Lawyers*, RECORD, Nov. 6, 2000, at A01.

<sup>67</sup> Brown’s purported and regular absences from the bench have come under scrutiny by the Tennessee Supreme Court. *In Fx, Uncommon Law, Squibs*, THE NATIONAL LAW JOURNAL, at A23, July 19, 2000.

<sup>68</sup> Hence, they may naturalize the text -- “take the renderings of courtroom trials for granted. . . without critically reflecting on them. The courtroom trial is a motif that delivers ‘meaning’ and ‘meaning’ is received without critical reflection.” Boden, *supra* note 61, at 478.

imbue banal action with profound, yet unintended, meaning. As the results show, these viewers even believe that silence evinces belief in one of the litigants.

This is consistent and may work in synergy with research demonstrating that non-evidentiary information can sensitize jurors to evidence or testimony elicited at trial:<sup>69</sup> jurors who hear repetitive testimony on particular subjects have been shown to be more likely to make judgments in line with that testimony, even when it was merely a hypothetical example.<sup>70</sup> Mediational analysis suggests that such evidence serves as a “cue” for jurors.<sup>71</sup> Indeed, the Supreme Court has recognized that juries are “extremely likely to impregnated by the environing atmosphere.”<sup>72</sup> Furthermore, caselaw has recognized the potential influence of the trial judge on the jury. The judge is likely to be equated with the majesty of the law, itself, and, where a jury is given clues to a judge’s belief regarding the case or parties, even a suggestion of opinion “might throw the scales [of justice] out of balance,” be seized upon by the jury, and eventually prove decisive.<sup>73</sup> Consequently, the power of the judge must “be exercised sparingly, without partiality, bias, or hostility, as excessive interference for the suggestion of an opinion on the part of the trial judge might well prove decisive in the minds of the jury.”<sup>74</sup> Yet, this model of silence and restraint is diametrically opposed to that of syndi-court and the demonstrated beliefs of frequent viewers. Frequent viewers so expect judicial activity and commentary, that the absence of “noise” and action is interpreted as meaningful. Data from the study shows that silence -- what most jurists would think is the epitome of neutrality or lack of bias -- is interpreted as meaningful, specifically, that the court favors one of the litigants. Consequently, viewers apparently assume activity as the norm, and silence only as a sign that someone is believed. This may be due to syndi-court judges being silent only when they are being persuaded by a party, but accusatory when they disbelieve a party.

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<sup>69</sup> See generally, Margaret Bull Kovera, April W. Gresham, Eugene Borgida, Ellen Gray, Pamela C. Regan, *Does Expert Psychological Testimony Inform or Influence Juror Decision Making? A Social Cognitive Analysis*, 82 J. APPLIED PSYCHOLOGY 178, 180 (1997).

This recognizes that some information may have an impact, but it does not assess whether that impact is appropriately educational. In other words, it is possible that information impacts juror decision making in negative ways or biased ways, but does not educate them in non-biased ways. For example, Brekke, N. C. and Borgida, E., *Expert Psychological Testimony In Rape Trials: A Social-Cognitive Analysis*, J. PERSONALITY & SOCIAL PSYCHOLOGY 55, 372-86 (1988), demonstrated that the introduction of “expert” testimony regarding rape had a significant effect on jury decision-making, but they did not gather data investigating whether this testimony educated jurors regarding rape victimization.

<sup>70</sup> Kovera, *id.*, at 188.

<sup>71</sup> *Id.* at 189.

<sup>72</sup> *Turner v. Louisiana*, 379 U.S. 466, 472 (1965), quoting from Holmes dissent in *Frank v. Mangum*, 237 U.S. 309, 349.

<sup>73</sup> *People v. Bell*, 38 N.Y.2d 116, 120 (1975).

<sup>74</sup> *People v. Jamieson*, 47 N.Y.2d 882, 883-84 (1979) (citations omitted).

Moreover, in light of the order of presentation of evidence in both syndi-court and real court, if the court is silent at the commencement of trial, it has been silent throughout the presentation of the plaintiff's or prosecution's case. Thus, by the time that the defense begins, it has already been demonstrated that the court agrees with the prosecution. This may become even more damaging as research -- prior to the advent of the proliferation of syndi-court -- has shown that jurors enter the courtroom with pro-plaintiff/prosecutor bias.<sup>75</sup>

It would seem, then, that the bench should shoulder a burden of being neutrally chatty to prevent misinterpretation of silence. Yet, invoking verbosity and activity may lead to a significant potential for creating actual, apparent bias. Courts have reversed criminal convictions where the running commentary of one judge mimicked that of syndi-court resulted in reversal of the conviction<sup>76</sup> or where it engages in prolonged questioning.<sup>77</sup> Such questioning, even without an inappropriate or obviously disparaging tone, may suggest to the jury that the court doubts the credibility of that particular witness<sup>78</sup> or the merits of a particular issue at trial.<sup>79</sup> Therefore, findings regarding silence disclose a catch-22.

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<sup>75</sup> Diane R. Follingstad, *Systematic Jury Selection: The Quest For A Scientific Approach*, in *PSYCHOLOGY, PSYCHIATRY, AND THE LAW: A CLINICAL AND FORENSIC HANDBOOK*, 471 (CHARLES PATRICK EWING, ed., 1985).

<sup>76</sup> *People v. De Jesus*, 42 N.Y.2d 519, 520 (1977).

That judge remarked:

Let's not be playing any games. . . .

And I don't need any help from you. . . .

Oh, come on. . . .

It is not good enough. . . and you know better

(in response to questioning of an alibi witness). . . .

You had better learn about conduct of a lawyer at trial, and I'm trying -- and I'm tired of trying to teach you.

<sup>77</sup> This may intone overt skepticism about that witness's testimony. *People v. Carter*, 40 N.Y.2d 933, 934 (1976).

<sup>78</sup> Behavior and comments such as these denies the accused his Constitutional right to a fair trial before an unbiased court and an unprejudiced jury. *People v. DeJesus*, 42 N.Y.2d at 523. To ensure this, the verdict must be the result, solely, of the evidence adduced on the witness stand. *Shepard v. Maxwell*, 384 U.S. 333, 350-51 (1966); *Estes v. Texas*, 381 U.S. 532, 540-41 (1965).

<sup>79</sup> *Cf. People v. Moulton*, 43 N.Y.2d 944, 945 (1978).

Nevertheless, the opinion of the court is important only if known or perceived by the jury. Exposure of an opinion, via words or actions, is often easily detectable, and has typically been so in instances where appellate courts have reversed overturned trial verdicts (or conviction) due to the lack of perceived neutrality by the court.

Where an opinion is drawn from silence or inactivity, however, its effect is insidious. In some ways, it is irrelevant whether the judge intended to demonstrate her opinion. Ekman and Freisen for

### *Altering Expectations of the Judicial System*

The pictures of syndicated television courts are worth 1,000 words. These fora provide the public with information regarding the operations of courts that are then integrated into their beliefs.<sup>80</sup> Consequently, syndi-court may alter the public's -- observers, jurors, and litigants -- expectations of the bench.<sup>81</sup> Many individuals are not aware that the television brethren are not acting in the role as true judges<sup>82</sup> or that some are not judges at all.<sup>83</sup> Therefore, after viewing such shows, where the stories are easily digestible, the conflicts clear, and the resolutions swift,<sup>84</sup> "the public is mystified when they see actual court cases taking so long to be decided. The public wonders why judges and lawyers seem to encumber the process with so many unnecessary technicalities" and criticizes them for it.<sup>85</sup> As judges fail to live up to their television personae, disputes drag on for more than 22 minutes, and decisions are not contemporaneous, confidence in the justice system is eroded. For instance, the president of the California Judges Association stated that sitting judges are reported to the commission or that some litigants are disappointed when they win the case but the judge has not humiliated their opponent.<sup>86</sup> Additionally, significant legal nuances are lost, leading to misunderstandings of burdens, presumptions of

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instance, have noted that some individuals who attempt to conceal their true opinions may, nevertheless, "leak" those opinions, exposing them to others. Ekman, Paul and Friesen, William V., *Nonverbal Leakage and Clues To Deception*, 32 PSYCHIATRY 88 (1969).

<sup>80</sup> Leon Robertson, *An Instance of Effective Legal Regulation: Motorcyclist Helmet and Daytime Headlamp Laws*, 10 LAW & SOC'Y REV. 467 (1976).

<sup>81</sup> The explosion of television courtroom programming is changing the public's expectations of the court system. Margarita Bernal, *Guest Opinion*, TUCSON CITIZEN, Oct. 18, 2000, at 19A.

<sup>82</sup> A member of the California Commission on Judicial Performance has reported that "the public regularly submits complaints about Judge Judy and other TV judges," not "undertand[ing] that Judge Judy and most of her cohorts are not present members of any judiciary." Mike Farrel, *If Judge Judy Could Only Be Judged . . .*, BROWARD DAILY BUSINESS REV., July 7, 2000, at B4.

<sup>83</sup> The Presiding "Judge" of The People's Court, Ed Koch, was not a judge at all, but a former Mayor, sitting as an ersatz arbitrator. See *Kabia v. Koch*, N.Y.L.J. July 31, 2000, (New York Co. Civ. Ct) at 29.

<sup>84</sup> Lisa Scottoline, *Law and Popular Culture*, speech at Nova Southwestern University's Goodwin Alumni Banquet, 24 NOVA LAW REV. 655, 657 (2000).

<sup>85</sup> Editorials, NEW JERSEY LAWYER, March 27, 2000, at 6.

<sup>86</sup> Gail Diane Cox, *Judicial Watchdog Agency Wants to Protect Public From TV "Judges,"* FULTON COUNTY DAILY REPORT, June 9, 2000.

guilt, and evidentiary issues,<sup>87</sup> and, more generally, a conclusion that the justice system obfuscates issues, denies justice, and that judges are complicit in this injustice.

## PROPOSALS

Having uncovered a cultivation-type or priming effect of syndi-court on frequent viewers, and, recognizing that, as evinced by ratings, many citizens do, in fact, fall into this category, the effects of syndi-court on jurors must be recognized and corrected for. This is particularly true since there is no evidence that prior court experience, such as jury service or being a witness or litigant, immunizes viewers against the effects of syndi-court.<sup>88</sup>

Of course one ameliorative option would be for syndi-courts and syndi-judges to ensure that these portrayals more accurately reflect the realities of litigation and appropriate judicial behavior. Suffice it to say that this is unlikely. These television offerings could also run disclaimers, such as those seen before violent television episodes (or those “intended for our teen and adult viewers”) warning that these are not real courts, these are not real judges, and these cases have been specially chosen and edited for entertainment value. This also has limited affect, for, while it would publicize the difference, it would not eliminate pre-existing impressions of the TV bench.

Nevertheless, the bench and bar are not hamstrung in their ability to respond to this new information set. Recognizing the potential for improper influence by syndi-court and its salient characteristics, judges should take additional pre-cautions in pre-instructing the jury. For example, when the slate of prospective jurors are first brought into the courtroom, as well as when the preliminary instructions are delivered to the impaneled jury, the court could simply explain to the jury that what they may have seen on syndi-court is incorrect, that judges are not to speak, that the court truly has no opinion, and that jurors are not to assume that it does or to look for clues to one. Although final charges typically instruct that the judge has no opinion, where frequent viewers imbue the inactive behavior of “no opinion” with meaning, such an instruction remains impotent against the syndi-court effect.

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<sup>87</sup> A study by the instant author is presently being conducted regarding whether there exists a positive correlation between frequent viewing and litigiousness, possibly resulting from the popularity of average people “litigating” their cases on syndi-court. At least half of those litigants win, thus, viewers may come to believe that either pro se representation is not very difficult or that pro se representation still ensures a 50% likelihood of success. It may also cause viewers to believe that judges will assist them. See Marie Higgins Williams, *Comment: The Pro Se Criminal Defendant, Standby Counsel, and The Judge: A Proposal For Better-Defined Roles*, 71 U. Col. L. Rev. 789, 816 (2000).

<sup>88</sup> This goes against conventional litigator wisdom that prior service has some effect. Although it has been reported that criminal defense attorneys prefer virgin jurors, and civil defense attorneys experienced jurors, studies on the effect of prior jury service on verdicts have been inconsistent; Lawrence S. Wrightsman, Michael T. Nietzel, William H. Fortune, *Psychology and The Legal System* (1998), at 376, citing to R. C. Dillehay and Michael T. Nietzel, *Prior Jury Service in W. Abbott and J. Batt (Eds.), Handbook of Jury Research* (in press) 1998.

Accordingly, the effect must be addressed head-on and in the context of television's new social construction of law.

In addition to and in conjunction with this, attorneys must also recognize the effect of syndi-court on pool jurors. Attorneys can take the responsibility for addressing this through two complimentary options.<sup>89</sup> The first is to address the issue through either instructive or investigative voir dire.<sup>90</sup> This is much the same as voir diring prospective jurors on any pertinent issue that has been in the news, racial bias, as in *Batson*, or whether one favors police testimony. The second is to ask the court to deliver an appropriate instruction regarding syndi-court or an enhanced instruction that the jury is not to look to the court for an opinion regarding the outcome of the case.

## CONCLUSION

Television's ubiquity and our reliance on it allows it to construct reality.<sup>91</sup> The American Bar Association report suggested "that the media can and does impact some people's knowledge" of the law.<sup>92</sup> This is not limited to media reports of trials and primetime "lawyer" fare. Rather, syndi-court, also, disseminates messages, both implicit and explicit, which audiences receive and decode for meaning.<sup>93</sup> Unfortunately, rather than accurately socializing citizens into the justice system, and

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<sup>89</sup> While some attorneys might wish to highlight the misperceptions drawn from syndi-court or the ways in which the proceedings diverge, others may wish to use such misperceptions to their benefit. This article, however, presumes that attorneys, as officers of the court, would not intend to exploit improper presumptions to their benefit. See generally Wrightsman, *supra* note 85, at 380.

<sup>90</sup> Follingstad, *supra* note 73, at 490-91 (voir dire plays a part in decision-making).

<sup>91</sup> NANCY BONVILLAIN, LANGUAGE, CULTURE, AND COMMUNICATION 386 (1993); Shanahan at 20.

<sup>92</sup> As reprinted in, Symposium: *American Bar Association Report on Perceptions of the US Justice System*, 62 ALB. L. REV. 1307, 1315 (1999), reprinted report, "Perceptions of the US Justice System," sponsored by the American Bar Association.

<sup>93</sup> Sarah Eschholz, *The Media And Fear Of Crime: A Survey Of The Research*, 9 U. FLA. J.L. & PUB. POL'Y 37, 43 (1997); George Gerbner, *Television Violence, Victimization, and Power*, 23 AM. BEHAV. SCIENTIST 705, 715 (1980).

In studying the correlation between television viewing and crime-related anxiety, Gerbner developed a "cultivation hypothesis." The "cultivation hypothesis" predicted that television viewing, regardless of the types of shows chosen, would cultivate an image of a world as a scary place. Thus, people who watched more television would exhibit higher levels of anxiety toward crime. Because this theory was based on the assumption that audiences received media messages homogeneously, it met with great criticism, even by some of its architects. It is now believed, that diverse audiences receive and interpret messages in divergent ways. George Gerber and Larry Gross, *Living With Television: The Violence Profile*, 26 J. COMM. 173, 179, 193 (1976); see also Sarah Eschholz, *id.* at 42-43.

increasing respect for this critical institution, the results of the instant study suggest that while syndi-court teaches citizens about the justice system, the content of its teachings are sometimes flawed or interpreted by viewers in troubling ways. Hence, syndi-court is a “Trojan horse” packed with an army of misperceptions that creates an enduring heuristic for jurors. This has profound and problematic ramifications on trials, verdicts, and the justice system as a whole.

The following tables are referred to and appear in the text

<b>Table 1</b>	<b>Summary of Findings</b>	
	<b>FV</b>	<b>NV</b>
<b>Judicial Opinions &amp; Activity</b>		
judges should have opinion regarding verdict	75%	48.6%
should make opinion “clear”	76.5%	31.58%
jurors will “look for clues” to judge’s opinion	74.5%	31.58%
<b>Aggressive, Investigatory Behavior of Judge</b>		
judge should ask questions during trial	82.5%	38.16%
should “be aggressive with litigants or express displeasure with their testimony”	63.76%	26.32%
<b>Interpretation of Judicial Silence</b>		
judge’s silence indicates belief in litigant	73.8%	13%

**Table 2** Express Negative View of Bench

<b><u>Experience Level</u></b>	<b><u>FV</u></b>	<b><u>NV</u></b>
Prior Court Service or Experience	23%	19%
No Prior Court Service or Experience	77%	80%