

I Want My Court TV

Scene 1:

Eric and Lyle Menendez accused of the shotgun murders of their mother and father. The alibi defence abandoned for the new favourite, the abusive parent gambit. The father, portrayed as a dominant sexual predator, using his power over his sons for his own perverted pleasures. The mother, weak, alcoholic, uncaring, an accomplice by omission in the sexual abuse. The defence attorneys persisting in the tactic despite the trial judge's ruling that the defence was a partial one, incapable of resulting in an acquittal. The realisation that the trial was not a trial in the traditional, mythological sense, but a new kind of trial, a television trial. A trial by media, gavel to gavel coverage on Court TV, nightly bulletins on the networks, complete with the battle of the competing expert commentators. America watched. Two hung juries, one for each defendant. The DA promising new prosecutions. Talk of a plea bargain to avoid the expense and trauma of second trials. Then, the ultimate legal manoeuvre, two TV movies, one over two nights — *Blood Brothers*, and *A Killing in Beverly Hills*. Murder rates because murder rates rise; child abuse is flavour of the month in the world of *Donahue*, *Sally Jesse* and *Oprah*, the syndromisation of America. Diagnosis by talk show.

Jump Cut

The vision of blind justice, a memory of the blind.¹ Now we have the tele-vision of justice. Deconstructive justice, postmodern justice. The Baudrillardian moment:

The conjunction of desire and value, of desire and capital. The conjunction of desire and the law — the ultimate joy and metamorphosis of the law (which is why it is so well received at the moment)²

For this is the moment of the simulacrum, of the death and displacement of the real. In its stead, no longer truth, justice and the American way but simulation, trial by TV mini-series. *Court TV*, the only kind of law that matters any more, *LA Law*, Hollywood Law, Network Law, Cable Law, Satellite Law, Law on the Information Superhighway. Gone are the truths of substance and of process. Now we have Six O'Clock Law. Gone are even the certainties of Legal Realism, now replaced by the certainties of the station break, this trial brought to you by ... The World Cup of Murder.

This is the secret of a discourse that is no longer only ambiguous, as political discourses can be, but that conveys the impossibility of a determinate position of power. And this logic belongs to neither party. It traverses all discourses without their wanting it.³

But there is something missing here. Eric and Lyle are still stars in the news sense, they are famous because they are criminals. What is absent from the story is that star quality which creates the simulacrum, the element which makes us sit up and take notice. What we really need is the conjunction of *Court TV* and *Entertainment Tonight* — celebrity

1 See Derrida, J, *Memoirs of the Blind* (1993).

2 Baudrillard, J, *Simulations* (1983) at 35.

3 Id at 34.

crime — the ultimate in postmodern television. Of course, because this is America, and don't be mistaken, this is America, we are all Americans now, *Ich bin ein Amerikaner*, where there is a will, there is way. Seek and ye shall find. Supply and demand. Yin and Yang.

Scene 2

Lorena Bobbitt — cut off her husband's dick with a kitchen knife. Now this is good TV. Castration, Law, Insanity, Knife-Wielding Crazy Woman. But it still is too tabloid. Down-market. Bad demographics. John Wayne Bobbitt — a cowboy — and she has an accent. Still too much like Eric and Lyle — criminal as celebrity, not yet celebrity crime. Celebrity crime. That is what we need and that is what we get. Stay tuned for the sad, but (almost) true tales of Nancy, Tonya and OJ. Virtual crime, made-for-TV crime.

Scene 3

Nothing we don't already know. The ex-husband, live-in lover, manager, husband, ex-husband — Jeff, he's in jail. The bodyguard, Sean, he's in jail. The assailant, he's in jail. Tonya, the chain smoking, asthmatic, abused wife, possible brains behind the whole thing, she's a made-for-TV movie. The victim, Nancy, she's an almost Disney story come true, silver medal, not quite there in the Hollywood script version, but she's on TV too — Reebok et al. Commercial Law.

Tonya is still mulling over an offer to become a female wrestling superstar in Japan, she'd have to be the villain. It's perfect. Simulated sport. Crossing the lines of the gender stereotype for profit. That's what got her into trouble in the first place. Too tough. Multiple marriages for her mother. Life in the trailer park. Rocky marriage. Too athletic. Too powerful. Too many triple jumps. Not made for TV. She had to be more feminine. Not that any of this is real. That's the whole point here. It's not real but that doesn't matter. She's made for TV. Just like her rival Nancy. None of it is real. This is how it works.

Women skaters tend to be characterised as either athletic or artistic, with artistry equated with a slimmer body type and an acceptably feminine self-presentation. TV editing can subtly naturalize these distinctions. In the '94 Olympics, the Kerrigan-Harding conflict was pushed in skating terms as the contrast between Kerrigan's grace and Harding's "rough edges". During the free skate, Kerrigan's elegance was emphasized by the telecast, in which the number of dissolves (11), greatly outweighed the number of cuts (3), validating the descriptions of her skating as lovely and seamless. In contrast, Harding's performance was telecast with fewer dissolves (7), than cuts (8).⁴

What you see is what you get.

Assault. Conspiracy. Injunctions. The Olympics. Made for TV.

Our fascination with the Nancy/Tonya affair could be played out on TV while we watched the Olympics, the televisual legal drama suspended by an injunction. On the other hand, a more recent and ongoing case allows us to really focus on the TV reality of law in the USA.

4 Feder, A "Female Sexual Climax: The World Figure Skating Championships. A TV Guide", *Village Voice*, 29 March 1994 at 149-50.

Scene 4

OJ Simpson — the first running back in the NFL to rush for 2000 yards (as Roy and HG would say, in “old speak”). Eclipsed the record of Jim Brown. Post-game career as Hertz spokesman, sideline, half-time commentator, part-time actor.

OJ’s record must be understood not only in raw numerical terms but also in this context of the previous record holder. Just as Nancy and Tonya are juxtaposed in terms of grace and power as good girl and bad girl, OJ and Jim Brown are similarly positioned. Brown destroyed opposing players who tried to tackle him. He ran through them and over them. OJ on the other hand was an evader, a runner who could accelerate and decelerate to avoid his opponents.

Now this is important not just in terms of the comparative merits of the inevitable beer-soaked debates about who was the greatest running back of all-time, but of positioning the simulacrum we inhabit in what is called the “OJ Simpson murder case” (even though OJ is not the victim but the accused). Because the simulacrum is of America, OJ is a black man and we cannot begin to understand the meanings which circulate in the televisual world unless and until we understand what that appears to mean. For Jim Brown is also a black man, but he is not OJ Simpson just as OJ Simpson is not Jim Brown. Because OJ is an acceptable black man — he exuded grace and agility, he was a thinking man’s running back. Jim Brown, on the other hand, was a brute, raw, physical strength. Fury unleashed. He was “our” worst nightmare, a strong black man who unashamedly used his power to great effect. Thus, the stories of his sexual conquests and his acts of violence against female partners circulated freely because they told a tale “we” all knew to be true.

On the other hand, OJ was safe. He ran gracefully through airports to catch a plane or a rental car, he was “Juice”, healthy and pure. He had a beautiful blonde wife because he was, after all, an honorary white. Jim Brown appeared in *The Dirty Dozen*, OJ had fun in *The Naked Gun*.

But now it might just turn out that OJ is Jim Brown. He is charged with the brutal murder of his ex-wife. News of his abuse of her during their marriage and of the failures of the police and criminal justice systems to put a stop to the violence have featured daily on the TV news and in the papers. Some print outlets are reported to have darkened the photo of him when he made his appearance in court so that he would look “more black”. OJ’s image has suffered. But again that isn’t what is important. What is important here is that OJ is an image. Whether we think he did it or not, innocent or guilty, OJ is a simulacrum. None of this is real.⁵

OJ is a figment of our imagination and of our technologies, which amounts to the same thing. He is jump cuts and dissolves, televisual images, in the snow and freezing cold against the Patriots, on his way to the record, on the cinema screen, running through airports to and from the Hertz counter. There really wasn’t an airport or a Hertz counter or a 2000 yard season. There was TV and there is TV.

There was OJ, pursued by the LAPD and by the TV news choppers, live and in colour, in our living rooms, uninterrupted, our regular programming is cancelled to bring you OJ. They closed the freeway. We saw it on TV. Imagine that, in America, in Los Angeles,

5 For those who insist on textual reality, see Lieber, J and Steptoe, S, “Fatal Attraction?”, *Sports Illustrated*, 27 June 1994 at 16, and “An America Tragedy”, *Time Australia*, 27 June 1994, Cover Story.

they actually closed the freeway, this must be important.⁶ Then we saw it again and again on TV, the real thing, the chase, the arrest, the arraignment, the preliminary hearing, regular programming suspended, the NBA playoffs, the soaps, gone. In their stead, OJ TV, LA Law. Not a bad thing, we are told. Discussions about the exclusion of the glove, of the rules of search and seizure, become real, are discussed at the dinner table, because it has been on TV.⁷

Now OJ has been bound over for trial. Domestic violence is real because we saw OJ on TV. This is justice now. Great ratings. Instant replays. Expert commentary. Employment for lawyers.

The commentaries of the TV lawyers have rankled some of their colleagues. They complain that lawyers without criminal law background or recent trial experience are weighing in on matters beyond their expertise. Even experienced criminal defence attorneys, they grumble, have made mistakes in their scramble for a sound bite.

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A Superior Court judge arranged his court schedule Thursday so that he could be at the television studio for the opening of the Simpson hearing.⁸

OJ must feel like he is in a dream. After retirement from the NFL, employment as an expert commentator on network TV-instant replays, great ratings. Now the tables are turned. He *is* the instant replay. But it isn't a dream, for OJ or for us. It isn't even real. It's TV and that is all there is.

Slow dissolve. Fade to Black.

Cut. That's a wrap.

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6 See Baudrillard, J, "Los Angeles Freeways" America (1988) at 52 et seq.

7 See Dionne Jr, E J, "If Only the Issues Got This Kind Of Attention", *International Herald Tribune*, 14 July 1994.

8 See Dolan, M, "Simpson Case Creates TV Job Openings for Lawyer's", *Los Angeles Times*, 5 July 1994.