

## Conclusion: Cultural Legislation

Differences of opinion about the Vietnam War sent citizens into the streets during the 1960s and the 1970s in protest of national policies, and the protests put pressure on law enforcement and the federal government to control and punish citizens whose demonstrations turned violent or destructive. The war took many Americans beyond our borderlands, as they were drafted to fight on unfamiliar terrain with an enemy that existed across a great cultural and political divide. Other pressing issues of the period underscored the domestic differences that contributed to public strife in the contemporary age, beginning but not ending with opposing attitudes toward the defense of country and the defense of rights. These differences exacerbated a generational divide that was then acted out on the street and in the courtroom. Civil disputes that emerged from race, gender, and class inequities generated crimes that began or ended in legal proceedings. Government hearings challenged individuals on their politics and their mores; legal debates ensued on freedom of speech and expression, diversity rights, and the tension between private and public values and behavior. While none of these issues were new, they were renewed in representation through the development of their documentary theater recreations.

Legal issues in the last three decades of the twentieth century, particularly as they found their way into the public sphere through dramatic documentary representations, proved, both politically and theatrically, varied in perspective and in their methods of examination. Overwhelmingly, the high-profile cases that migrated from the courtroom to the theater focused on national debates, encouraging American audiences to examine their identities, define their social roles, and reassert their allegiances. Although a new century and millennium has not meant the end of these debates, the events of September 11, 2001, have forced Americans to finally, perhaps permanently, and more fully acknowledge its membership in a global world, and to devote increased attention to its relationships with peoples and nations beyond its shores. National security issues have become increasingly focused on global terrorism; the shock and the aftershocks of the September 11, 2001, attacks, as well as subsequent terrorist acts around the globe, have prompted an unprecedented engagement with world politics for Americans, many of whom had little prior knowledge of the geography of the Middle East, let alone its religious, political, and economic complexities before the attacks on the World Trade Center and the Pentagon. For these reasons and others, the documentary theater of the twenty-first century has been focused primarily on international terror, prosecutorial torture, contested territorial boundaries, and other transnational topics.

Anna Deavere Smith's dramatic meditation on illness, suffering, resilience, and the human body, performed in her signature solo style, was an important exception to this trend. Her performance text on death and dying, with its critique of an inadequate American medical system and an unsupportive community structure, ascended the boards during the fall 2009 theater season; *Let Me Down Easy*, in its New York production, was staged by the Public Theater just as the national debate on health care legislation hit Congress and the press. International themes, on the other hand, provided the genesis for a handful of other documentary works: the British play *Guantanamo: Honour Bound to Defend Freedom* (2004) by Victoria Brittain and Gillian Slovo, which premiered at London's Tricycle Theater, examines the life of detainees held at Guantanamo Bay. The London stage has also been the site of origin for other new plays using verbatim materials drawing from the political and, in the first two cases, international arenas: *Stuff Happens* (2004) chronicles the political positions displayed and the debates ensuing over the months leading up to the beginning, in 2003, of the Iraqi war, using real speeches and re-created conversations as well as fictionalized exchanges. *My Name Is Rachel Corrie* (2005) was edited by Alan Rickman and Katharine Viner from journal entries and e-mail messages

composed by the title character, an American killed by an Israeli Army bulldozer in Gaza during a protest over a house razing. The show was produced in London before moving to New York amidst a blaze of angry objections to its perceivably pro-Palestinian politics. *Frost/Nixon* (2006) was assembled by British film director and dramatist Peter Morgan with materials from the videotaped interviews with Richard Nixon that David Frost negotiated and orchestrated, and that aired on US television in 1977.

Smith's solo performance is the only one of these post-9/11 plays composed by an American and originating on an American stage; all of them, however, focus on events from American political history, particularly as that history connects national agendas to global identities and conflicts. And as British playwrights revise and recount US involvement in the Middle East or our nation's attempts to control the spread of global terrorism, the documentary theater has experienced a shift in perspective: no longer the self-narrative of a nation's internal conflicts, this style of theater has developed, in the new century, as part of a transnational dialogue whose multiplicity of meaning is aimed outward to the world. And as the events of 9/11 and its aftermath have cast a bright and often critical spotlight on the United States and its foreign policies, the documentary theater has developed an increasingly global identity and proliferation that has, to some extent, significantly developed the theater of fact and testimony in new directions. As this increasingly international content has developed, so has the documentary form, argue Alison Forsyth and Chris Megson in the introduction to their 2009 volume of essays, *Get Real: Documentary Theatre Past and Present*: "Although the documentary form has always been, and remains, a powerful tool for polemic and advocacy, the ways in which these are instantiated have evolved to include means other than a central controlling narrative voice or dominant point of view, based on a material and invariably textual notion of the document." The chronological approach that I have used to organize this book helps to make visible this evolution, for even though the plays I have focused on are linked by law's structures and themes, it is possible to discern in the documentary trial play the kind of "ongoing diversification" that Forsyth and Megson attribute to the form as a whole, "its inclusion of a more varied range of 'evidence' (including testimony, orature, and anecdote), and its annexation of a batter of reflexive performance techniques" to indicate a "self-conscious acknowledgement of the complexity of 'reality.'"<sup>1</sup>

Legislative debates, judicial inquiries, and political power struggles continue to fuel the genre, even if not all the above examples are, strictly speaking, "trial plays." Two other additions to contemporary documentary

theater, both created on native soil by American playwrights, also reflect an ongoing interest in using this theatrical form to interrogate the legal system and delineate its shortcomings. Although the first one is not a trial play, it bears mention here, for it documents and dramatizes a collection of personal narratives drawn from citizens treated criminally by the criminal justice system. In 2002, a theatrical effort to promote social justice through performance was staged in New York by the Culture Project: *The Exonerated*, by Jessica Blank and Erik Jensen, which emerged from their interviews with former death-row prisoners who'd been falsely convicted of capital crimes and had served years or even decades in prison before exoneration and release. *The Exonerated* played to sold-out houses in New York City for eighteen months before touring the country; its success in New York and other major cities was due in part to the rotating cast of well-known actors who contributed their names and their talents for the cause of justice. Performances of the show have helped groups such as the Innocence Project attract more than \$800,000 in donations to provide legal and economic assistance to individuals depicted in the play and to other falsely convicted death-row inmates. In December 2002, members of the cast staged a private performance of the play for Governor George Ryan of Illinois as part of an effort to influence the governor's position on capital punishment. Before he left office less than one month later, Ryan had commuted the sentences of the state's 167 death row inmates. That same year, the Court TV network honored the creators and actors of *The Exonerated* with its fourth annual Scales of Justice award, established to acknowledge "individuals and organizations that show extraordinary efforts and courage in the fight for justice."<sup>2</sup> A ten-year anniversary production of the show was staged at the Culture Project in New York City in the fall of 2012.

The immense success of *The Exonerated* in performance, particularly its star-studded incarnations, was followed in 2007 by a revival of the first American documentary trial play discussed in this study. Originating as a benefit reading by Tim Robbins's Los Angeles theater company, the Actors' Gang, and directed, as the original production had been, by Gordon Davidson, the revival of *The Trial of the Catonsville Nine* featured Hollywood actors, many of them "prominent antiwar thespians" who "combined offstage passion with onstage skill to create persuasive sketches of the nine Catholic clergy and laity in the dock."<sup>3</sup> Tim Robbins and Martin Sheen read the parts of the Berrigan brothers. Reviewer Bob Vernini noted the connection between past and present, calling the play "a trenchant document that deserves to be back on the boards as often as possible, especially now that the issues it addresses are so relevant and pressing."<sup>4</sup> The positive reception of

this revival helped to reinforce the continued currency of the documentary theater from the past, as new subject matter and the influence of technology determine the form's future.

*Catonsville* and its early foray into fact-based theater recorded the exploits of a group of Catholic dissidents destroying government documents in order to protest a civil authority intent on pursuing what these priests and nuns considered an immoral and violent national agenda. Daniel Berrigan concludes *Catonsville* with his own statement of thanks to the court and to the prosecution for what he considers "the greatest day of our lives," for they had successfully relocated their objections to the war from a Maryland parking lot to a federal court, their attempts to protect draftees from having to serve as "cannon fodder" for what they considered to be an unjust war thus transferred to a national stage.<sup>5</sup> Their court case and its documentary representation were also notable for the particular kind of legal contest that they presented: The question of guilt or innocence did not depend in this case on whether or not the defendants had committed the acts in question. They did not deny doing so. Rather, the defendants claimed that their actions put them above the law, answerable as they were to morality rather than law; if the legal system was supporting immorality, they asserted, it could be and should be violated by moral people. The challenge, then, is to the rule of law itself.

Thirty-five years after *Catonsville*, another conflict that unfolded in the public sphere between religious and secular law would enter the legal sphere before being transformed into documentary theater. The events were transferred to the stage even as the real crisis continued to develop: a criminal, legal, and religious scandal unparalleled in the contemporary age for its scope and for its shocking revelations. Although complaints about the sexual abuse of children by Catholic priests had been registered in parishes and dioceses for decades, it was during the 1990s that increased public scrutiny and the initiation of multiple high-profile lawsuits brought such cases to light. In one of the earliest publicized cases, sixty-eight men and women agreed in December 1992 to a collective financial settlement of more than \$5 million as a result of their lawsuit against former Roman Catholic priest James R. Porter, who they alleged had sexually molested them in the 1960s while he served in parishes near Boston. One year later, twenty-two additional victims testified against Porter in a sentencing hearing after he had been found guilty in a Massachusetts criminal court of dozens of sexual offense charges. He was sentenced to eighteen to twenty years in prison, was consistently denied parole, and died of cancer in a Massachusetts prison in 2005. That the abuse spanned thirty years, during which he

traumatized dozens of children, indicates that his behavior was not only tolerated but shielded from censure for decades, as he and priests like him were shuffled in and out of parishes with brief stints at counseling centers or other hospitals where they were “cared for” and “cured.”<sup>6</sup>

Indeed, many of the civil and criminal cases ultimately brought against the offending priests listed dozens of plaintiffs or witnesses for the prosecution. Moreover, investigative journalism of the highest order, primarily undertaken by the *Boston Globe* and the *New York Times*, contributed extensively to the fact-finding mission involved in the indictment of priests who had committed hundreds of offenses over decades. As a result of domestic and international investigations, some of which continue to today, these abuse cases have been documented in thousands of pages of court transcripts, newspaper articles, and websites.<sup>7</sup> There have been extended legal debates about accessibility to church records, and for the most part these documents have been released into the public sphere. Many of the cases have been argued in open forums as a result of this freedom of information; names, dates, locations of abuse, the string of parishes, all easily charted out by anyone interested in doing so. The church’s excellent record keeping proved to be at odds with the amnesia that many priests and bishops claimed when they found themselves involved in the scandal when their names came up in letters or reports. The existence of extensive documentation, however, also nods to *Catonsville*, in its reminder that the Berrigans and their codefendants chose to “attack” documentation in protest, an act they also seemed to believe would delay the employment of the innocent young men whose draft records had disappeared in the parking lot fire. The nine involved, many of them with or formerly with the Catholic Church, understood the power of documents in determining the fates of accusers and accused, the individuals and the institution.

When the allegations of Porter’s actions went public, the bishop of the Boston archdiocese, Cardinal Bernard Law, who became the public face of the scandal, was called on to defend or explain the church’s response. Cardinal Law would go on to become emblematic of the church’s reaction to the case. The cardinal initially declared Porter’s behavior an aberration, speaking on the record about what he considered to be the media’s overplay of the topic; as the *Boston Globe* and other coverage would reveal, however, Porter was only one of the priests about whom accusations went public and only among the first to be convicted in criminal court. Hundreds were exposed as the victim toll rose into the thousands worldwide, but many accused priests escaped prosecution, some dying before they could be brought to justice, some acquitted or not brought to trial for lack of evidence beyond

the personal testimony of the plaintiffs decades after the abuse took place. Throughout the height of the scandal, Cardinal Law continued to downplay the hundreds of other accusations made against Catholic priests, even as the Porter case proved to be anything but aberration.

Cardinal Law himself would face increased pressure as the years of scrutiny and controversy incensed citizens and legal officials alike and prompted insistent investigation into the past. Evidence came to light that implicated Law in the cover-up of cases involving repeat offenders, including Father John Geoghan, whose case eventually involved some 150 people who put forth allegations of abuse against the priest. Finally, in 2002, Law was compelled by the state court of Massachusetts to undergo direct questioning by the plaintiff lawyers in two civil cases, and the transcripts from these depositions, along with thousands of pages of internal court documents, became public information. The details of the involvement that forced Law into a deposition room eventually led to his resignation in December 2002. According to the *Boston Globe* coverage at the time, Law's resignation came in the wake of a superior court judge's decision to release eleven hundred pages of church documents, including many from the archdiocese's records going back several decades, contradicting Law's sworn testimony that he and his aides were not complicit in returning abusive priests to parish work without first determining that they posed no risk to children.<sup>8</sup>

The cardinal was ordered to be deposed prior to several civil cases going to trial, in part because the judge feared that Law could be transferred to a church position outside the United States (as he eventually was), leaving the country before the cases went to court. Sections from Law's 2002 deposition testimony, as well as selections from the church documents in the public domain, were used by Michael Murphy in the construction of his documentary play *Sin (A Cardinal Deposed)* (*Sin*), which had its New York City premiere in September 2004.<sup>9</sup> The conflict here originates with the separation of church and state, for the Catholic Church abides by its own rule of law, established centuries prior to the formation of the United States and many other nations. Recent measures now require church officials to report child abuse to law enforcement, but prior to these changes in religious legislation, the Catholic clergy and its administration regularly chose not to share information about priestly infractions with secular law enforcement, preferring to handle the cases internally.<sup>10</sup> The church's right to deal with its own offenders had been a mostly uncontested reality that has now been challenged; the silence of the past has given way to the statements and revelations, through very substantial paper documentation, that journalistic and legal forces have brought to public attention. The documents that came

of discussions with victims and the careful reporting done, assembled, and archived by leading newspapers and specific watchdog sites have led to the dissemination of information about the accused and their current status. More victims and citizens have come forward to corroborate one another's stories. More pressure on law enforcement to do its part in pursuing cases has contributed to the amount of testimony available.

*Sin* enacts the church's journey of confronting its own documentation without guilt, and so does the genre of verbatim theater allow for the reinforcement of the ways that history regularly unfolds in the confrontation between memories and documents. Murphy reveals in his introduction that he developed his play by relying on the online availability of unprecedented documentation about the case. BishopAccountability.org contains letters, court documents, church archival texts, and so on, on the scandal as it unfolded worldwide, its many links to the archival texts revealing a facsimile of the original document that increases its usefulness with this additional contextualization. The word "accountability" in the site's title explains the purpose of what is called "a comprehensive archive of the evidence"; it is only in the open revelation of facts that justice can be had for crimes committed, and so the site proposes to publish "every conceivable perspective on the crisis," "every relevant diocesan and Vatican document." The website explains its existence by noting that for true "'bishop accountability' to occur, two things must happen: 1) there must be a full 'account' of the bishops' responsibility for the sexual abuse crisis, both individually and collectively, and 2) bishops who have caused the abuse of children and vulnerable adults must be 'held accountable.'"<sup>11</sup> The "account" of the bishops' responsibility for the crisis has so far come through the witness of survivors, through documents unearthed by law enforcement and the legal system, through depositions taken by lawyers, and through media reports. BishopAccountability.org is dedicated to consolidating and preserving that record, and *Sin* provides a way of performing some of those documents in a procedural documentary drama.

David Cote calls the play an "artful distillation of the public record" through "more than 15,000 church correspondence, witness testimony, and depositions" given by Law.<sup>12</sup> Reviewer Tim Unsworth, reporting on the Chicago production, describes the "bubbling anger" that creates a "compelling two-hour drama that left the small cast exhausted and in tears."<sup>13</sup> The frustration that emerges from Law's "frazzled and obfuscating" persona, with no good answers for the questions he faces, creates some of the exhaustion, no doubt, the tears generated by the recognition of the dozens of victims who will suffer every day of their lives in response to what has

been done to them. The setting is a deposition room rather than a courtroom, but it features elements familiar from the contemporary American documentary trial plays that have preceded *Sin*: a static set, long table and chairs, a water cooler and file cabinets, some of the latter piled with boxes or documents, an American flag in a downstage corner, papers in front of and taken up by the two lawyers throughout the proceeding. Christopher Isherwood called the play “first and foremost a straightforward depiction of a dry legal proceeding,” noting that it was “not a case of documentary material transformed into a work of art by theatrical wizardry, as in Moisés Kaufman’s ‘Gross Indecency: The Three Trials of Oscar Wilde,’ a play similarly derived mostly from verbatim testimony.”<sup>14</sup>

Law, his attorney, and a composite plaintiff attorney are each played by a single actor, and a single plaintiff, Patrick McSorley, is seated behind the deposition table throughout most of the action. Two other actors play twenty additional characters, primarily other victims or members of victims’ families, who appear in a spot set apart from the deposition room. The first, designated Anonymous Mother, reads a letter preserved in the archdiocese’s files and dated 1964, reporting her son’s allegation that a diocesan priest has molested him. There are other letters by plaintiff witnesses that punctuate the action, but *Sin* is composed primarily of the plaintiff’s attorney’s questions for the cardinal and of his defensive testimony as he attempts to justify his actions, or, more accurately, his inactions, rationalizing the decisions made to postpone or completely avoid prosecuting priests accused of multiple counts of sexual abuse against children. As is revealed throughout the dramatized proceeding, however, the cardinal is implicated as a coconspirator in the abuse, having facilitated continued contact with children for priests who were accused of or suspected of abuse but whose actions were not reported to secular authorities.

What *Sin*’s evidence and the testimony reveal is that unfortunately, in most cases, investigation into an accusation may have resulted in no more than some church-sponsored therapy that would facilitate the production of what Law calls a “medical attestation” that was it safe for the accused priest to reassume a parish assignment. Although the offender was often assigned to a different parish, the new assignment usually placed no restrictions on the accused clergy member’s interaction with children.<sup>15</sup> Law acknowledges that child molestation is a mortal sin, but not an unforgivable one, and his attempts to separate himself from the fault and guilt exist primarily of denying knowledge of the abuse cases, claiming that a lack of awareness of the details of the accusations kept him from calling for more strident measures to prevent further criminal activity. A sworn affidavit

from a witness named Jackie Gauvreau reports a confrontation with Law, “face-to-face,” over an accusation against Father Paul Shanley, another priest accused of multiple offenses but whose case floundered in appeals court for years in part because the testimony against Shanley had emerged from therapy designed to draw out repressed memories.<sup>16</sup> The documents available on Shanley are so multiple and so specific that it is hard to imagine any challenge to the case against him; yet the uncertainty surrounding the best way to handle accusations that had been hidden in the past and only come to the surface with therapy reflects a challenge to the judicial power and the resistance that such a plan might work.

The character of Law begins the play with a disavowal of his pending resignation, explaining that the relationship of a priest to the church is a marriage of sorts, and one would not therefore “walk away” from the responsibility to stay and help fix the problems. The deposition begins with the announcement that the action against Law involves “failing to protect the plaintiffs [eighty-seven of them] from sexual abuse by Roman Catholic priests of the Archdiocese of Boston.”<sup>17</sup> The question of Law’s culpability is, in part, a matter of chronology, for he points out that many of the abuse incidents preceded his tenure as archbishop; it is a matter of hierarchy as well, for he explains that his aides were responsible for making some of the decisions, and he denies always being informed about the cases. Another strategy for justifying the church’s methods of dealing with the abuse was to stress that a cardinal has a responsibility to pasture his own flock, and in his testimony about Father John Geoghan, he argues his responsibility to be “pastorally present to a priest who, in his life, did minister well to a number of people,” although he ends that sentence by acknowledging that Geoghan “at the same time, terribly abused children.”<sup>18</sup> In a *New York Times* interview at the time of the production, playwright Murphy notes that Law’s decisions, even bad ones, “were based on precepts that we might all agree with, such as people deserve a second chance, or no one is a hundred percent evil.”<sup>19</sup> The commitment Law claims to his clergy is not wrong in itself, but as attorney for the plaintiff Orson Krieger conducts his questioning, the audience comes to understand that faithfulness to his priests took precedence over ministry to the victims: indeed, he left the latter to his aides. When Law reads aloud, at the plaintiff’s request, from a letter he wrote to Father Geoghan expressing support, McSorley “*will storm out,*” to be retrieved soon after by Krieger.

In *Sin*, the seating arrangement of the deposition room puts all official figures of the proceeding on the same level in that informal space; although civil cases pending compel the cardinal to testify, he is not under arrest and

is never charged with any crimes. There is a reflection of the old in this new picture, as the cardinal's black suit and holy pendant recall the ritual-heavy judicial robes donned in other, earlier documentary trial plays. A member of the clergy is once again in the defensive position, just as the Berrigans and their colleagues had been in *Catonsville*. That other collection of priests, nuns, and former religious were examples of the church establishment fringe, however, some of them dismissed from their duties because of their political activism. The priestly figure being questioned in *Sin*, on the other hand, presides over the most powerful Catholic archdiocese in the United States, and he is being called to explain why he did not actively bring the accused molesters to justice. He is finally being accused of inaction by the victims who have come forward to testify; and those victims have been aided in their pursuit of the guilty priests by investigative journalism and by the therapeutic community. Murphy's performance text notes that Cardinal Law resigned in 2002, but by 2004 the cardinal had been assigned a post at the Vatican with dual citizenship. At the conclusion of *Sin*, the announcement of this new and prestigious position is made just after Law and his attorney depart the stage, having never provided explanation, apology, regret, or anything other than a show of innocence and a mask of confusion about the accused priests and about the indictment of the cardinal and his archdiocese administration.

What follows Law's departure from the stage reminds audience members about the tragedy of such denial, as plaintiff McSorley narrates his version of the events that have brought him to this day of questioning, beginning with the suicide of his father, a loss that left him vulnerable to the priest's advances of friendship. An invitation out for ice cream represented luxury and piety both, the full measure of a priestly relationship. However, the abuse follows and before "I knew it," McSorley claims, "his hands were up my shorts and he was grabbing at me."<sup>20</sup> One line then interjected by Krieger informs us that McSorley died of a drug overdose one year after the proceedings, at age 29. But we hear from the plaintiff once more, as he repeats the words his abuser spoke to him: "let's just—just you and me. No one else has to know about this." (*Curtain*)." The conclusion is marked by its lack of resolution, even though the report of McSorley's suicide suggests the end of worldly pain for him. Although the priest had instructed his victim to keep their activities confidential, insisting on the need for secrecy about the events that had left the boy "shocked, petrified," the legal proceeding, while hardly definitive or satisfying, does provide an opportunity for the victim to release his long-standing shame.<sup>21</sup> *Sin* offers audiences a complex situation for its consideration: a church official not charged with any crime

despite his complicity in denying decades of child abuse cases. He may disavow knowledge of his priests' behavior, but the play suggests the extent to which Law was tried and found guilty in the court of public opinion, thereby offering some measure of community resolution.

The contemporary documentary theater continues to remind its audiences of the political component in drama, and one possible way to develop that component is as it regularly intersects with law. Be it an attempt to heal the scars of civil protest through artistic representation, or to provide solace to a community in the wake of shocking criminal cases, the documentary trial play helps to explicate and demonstrate the legal and the emotional components of each event and the complexities of its situation. The trial, the tribunal, and the government hearing have become one of the most significant public venues and symbols of a group's need for the release of trauma; since World War II ended, they have become increasingly visible as some of the primary political structures that either individuals or groups can employ to bring their own histories forward, particularly those histories that are riddled with injustice and oppression. A unique manifestation of a centuries-old tradition of dramatizing history, documentary theater has adapted many twentieth-century and now twenty-first-century trials, demonstrating the significance of the law in the decisions and revisions of American life and culture.

As courtroom proceedings or rhetorical forms, judicial models in the theater emphasize the important role the trial serves in contemporary art and experience. The trend toward documentation, toward representations of truth, however complex and contested, has developed in film, theater, television, and photography, unabated, to the present day; it has proven influential in shaping commercial and noncommercial world theater in its time. But Peter Weiss also called the documentary theater "an element of public life."<sup>22</sup> The comingling of the real and the representative is necessary, Weiss insists, and the documentary form must always achieve a creative purpose as well: "documentary theatre [that is] intent on being primarily a political platform, and which gives up being an artistic achievement, calls its own validity into question."<sup>23</sup> Martin writes that what makes documentary theater provocative "is the way in which it strategically deploys the appearance of truth, while inventing its own particular truth through elaborate aesthetic devices."<sup>24</sup>

Beginning in 1970, American playwrights and theater companies have built a body of work in the field, as a variety of subject matter has raised and staged the major topics of our age: civil rights and civil disobedience; urban unrest and violence; sexual orientation and sexual harassment. The

frequency with which the resolution for these issues has been attempted in a courtroom, and the facility with which judicial documents can be transformed into theatrical dialogue, has contributed to the development of a significant and coherent subset of the form: the documentary trial play. It provides audiences both information and critical distance through which to view landmark legal cases from contradictory or ambiguous perspectives; if viewers remain unresolved in their feelings, they are nonetheless educated about the case and its complexities. The static meets the course of change as we move from dramatic texts drawn within the space of the criminal court and ruled strictly by the judge, a powerful figure of the law, to an increased emphasis on cultural and civil representatives and institutions affecting if not transforming the rule of law. In 1970, the patriarchal emblem who sits above all and wears a black robe, a costume of authority, reflects the central power of the court, the system, in guiding us as we seek to determine our values, particularly our attitudes about law enforcement, violence, freedom, and peace. The experience of the early contemporary American documentary theater reinforces the post–World War II hierarchy in which white, male, fatherly figures dominate (even visually on stage) and all action and reaction comes about to and through that judge who presides over all.

We see too, that even in dramatizing events from the period that encapsulated the intense rebellion against the hierarchy, it is the dominant and very visible representative of that hierarchy who emerges most powerfully as the theatrical interest point in each work, albeit for very different reasons: the Judge of *Catonsville* strikes just the right balance of reason and empathy, while the portrayal of Judge Hoffman in *Chicago Conspiracy* all too chillingly portrays the judicial force gone wild in a narcissistic frenzy, the suppression of individual personality nowhere in evidence. Despite the outrageousness of the latter, however, the overall visual and structural movement of each play is to recapture the frustration of a world gone mad with war and death, young American men threatened with extinction. Although the priests and the Yippies have their day in court and the opportunity to proclaim their positions, both legal and ideological in some cases, the defendants are found guilty, and each play ends with the declaration of verdict and/or sentence. In reality, few of the latter were borne out, as appeals and other factors mitigated these renderings. More importantly, however, we are left with an impression of the judicial system as one empowered by a linear authority that is comfortable enforcing domestic uprisings through legal means.

In reality and in representation, it seems, the earliest plays of the contemporary documentary theater influence us to take our cues from the

man on the bench. Cultural perceptions about the law, specifically those we carry around with us each day, arise from images of a legal system that allows little space for difference, for multiplicity, for the level of unrest that might naturally arise in a diverse nation. Quickly contained by laws that prohibit or discourage acts of protest, even, in the case of Bobby Seale, the only defendant of color in either play, physically bound and gagged, the citizens are held accountable in criminal court and are found guilty. The changes their actions have wrought are debatable; what is more significant to this discussion, however, is the picture of power we are left with when the documents of the age are put together in theatrical renderings of a system of law. Not yet toppled or at least discomfited, by other wars, the culture wars, to come, the image and voice of the government comes down to us from the height of judicial authority.

Contemporary law and life come together and thus underscore the connections between the individual, the judicial, and the political. This link destabilizes the assumptions of individual identity even while offering audiences an alternative. As Claycomb argues, documentary plays “take the discourse of history- and life-writing, and shift their discursive conceptions of the subject from the single protagonist to the greater community. This radical approach to subject formation not only disrupts the empowered status of the subject’s authority, but also encourages the integration of the audience into the tenuous sense of community created by the theatrical event itself.”<sup>25</sup> The documentary trial play also allows for the predominance of emotion in a situation that mirrors the law but is not the law. It does not have to solve the problems of a legal dispute. Theater plays out the roles that empathy and emotion should and do play in such contested situations, and thereby it contributes to our understanding of the complexities of law even while declining to meet its more rigid demands of keeping society safe and deciding outcomes in the face of danger/death/delinquency.

Dual strains of the documentary trial text set it apart from itself at times: its emphasis on the rationality of law but within the psychological framework of dramatic structure and language. The “stereopsis” of German documentary theater, its “in-depth image of reality,” and what Paget calls “two, distinct, but interlinked, structures of feeling,” one positivist and one skeptical, in his definition of the “documentariness” of a cultural product, are in the contemporary American documentary theater two contradictory representations of fact and feeling, of faith and doubt; they prove crucial in formulating statements and questions about the American legal system.<sup>26</sup> And the legal system proves crucial for examining, if not settling, the major issues of the age.

Elayne Rapping indicts television for supporting and advancing what she argues is the “drift of criminal justice policy” that has occurred since the 1990s and which has shifted “the pendulum toward the public’s major concern with the punishment of ‘wrongdoers.’” Her major theme is, she says, to expose the “criminalization of American life.”<sup>27</sup> She rightly relies on both fictional depictions and on documentary developments of the small screen to show that despite the failure of such enforcement plans as the “war on drugs,” the “popularity of harsh criminal law policy continues to hold sway among American voters and poll participants.”<sup>28</sup> While her theory about the connection between culture and policy is one that suggests the increased rigidity of attitudes about justice and an embrace of a “law-and-order” system, something of the opposite might be suggested if the documentary trial play is also considered as a less pervasive but nonetheless accurate barometer of another direction of cultural perceptions about the law.

Ultimately, the multiple perspectives teach a new series of truths, to be believed or denied. They are often one and the same, as suggested by the conflicting viewpoints that emerge from theater works that reimagine reality. These dramatic pieces further complicate our perceptions of a system that awards unearned privilege for randomly assigned designations such as race, class, and gender. Courtroom narratives that mock, evade, or embrace equality become performance texts that prompt us to think rationally and feel emotionally about the systems that produce them. We thus experience conflicting reactions to a type of theater that recreates history even as it unhinges itself from history, honoring a system of truth telling while calling the truth a provisional circumstance.

The law is the Law. Not so, says the documentary trial play. Law shifts from constant to changing as it attempts to achieve justice for all. In their ubiquity, their uniformity, and their uniqueness, contemporary documentary trial plays pose challenges to the law even as they uphold its authority, in many cases, by recreating the court case details with astonishing faithfulness. Nonetheless unlimited by the historical texts produced in the original proceeding, they are also free to invoke artistic license to uncover additional themes and issues that may unfold when the real events are treated by stage artists, visual or verbal. Spurred on by the drama of the legal arena, the trial transcripts and interviews that have been preserved by government or gathered in dramaturgy can take on additional weight when coupled with theatrical spectacle and enhanced with additional personal testimony, newspaper sensationalism, or technological wizardry.

In “The Judicial Opinion and the Poem,” James Boyd White compares those two kinds of texts in order to establish their similarity and to explore

what we might gain by the comparison. His essay dwells extensively on the significance of composition to our understanding and appreciation for texts. To read a legal text as a composition “made by one mind speaking to another” and as a “text whose author decided what belongs within it, and what will be left out” is to read, he says, “not merely as a reader, but as a writer or composer.” And he goes on to say that as “composers of texts that are addressed to those who will read what we write not as commands or declarations but as composition, and as readers who insist upon reading that way, we create for the moment a world together in which our common circumstances, and with them our common humanity, are confirmed.”<sup>29</sup> The trial play offers audience members and readers this kind of composition, and the documents allow for the creation of such a world, a world of common humanity.

The potential for the development of the documentary theater in general and the trial play in particular is far from exhausted. The search for truth and justice through documentary theater continues into the twenty-first century, complicated by issues of globalization and the impact of international law along with an increased awareness of world politics. Indeed, the playbills of current theater both nationally and internationally suggest that the form has and will continue to develop and continue to present us with ever-changing perceptions of reality. As inequity continues to mark individual and cultural encounters on the world stage, the legal system appears in guises that are at once documentarian and dramatic. Truth edges into the stage spotlight, takes a bow and shows its face briefly before stepping back into the shadow of the past or the present. History and theatricality merge and the contemporary age is remembered and recognized in its transformation into a style of art that revises the very system it replicates and leaves behind a collection of stage symbols that recall the institutions and the crises of the age: books, a gavel, a church’s stained-glass window. The rule of law is challenged when one part of the system sees the incident as a legal point of difference, or when the rule itself is not the best one for resolving the issue of conflict. The legal case is made, but it does not satisfy its constituency; either additional litigation or a more public form of resistance in the form of community violence or representative violence may follow. What also follows is a performance text restricted in its language and therefore in its action, but expansive enough to explore the big issues by taking on the events of history: performance texts that make us think about the legal events that shape our world, but texts that will also make us feel about the events. In a dramatic form that downplays realism and its emotional richness, the community of viewers nonetheless faces searing

moments of confrontation with the words of the past; such confrontation can demonstrate that the documents of history allow us to feel their truths, however incomplete or fragmented these truths may be. As transformed into a very stylized form of theater, their observations about the world reach us in a structured and artistic manner that has retained enough pure reality to remind us to think while we are feeling, to judge while we are suffering, to believe while we are mourning.

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