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## Legal Shadows: An Examination of Evidence in State v. Zimmerman

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Legal Shadows

An Examination of Evidence in *State v. Zimmerman*

Senior Project Submitted to  
The Division of Social Studies  
of Bard College

by  
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Annandale-on-Hudson, New York

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## Legal Shadows

For too long, objects have been wrongly portrayed as matters-of-fact. This is unfair to them, unfair to science, unfair to objectivity, unfair to experience. They are much more interesting, variegated, uncertain, complicated, far reaching, heterogeneous, risky, historical, local, material, and networky than the pathetic version offered for too long by philosophers. Rocks are not simply there to be kicked at, desks to be thumped at. “Facts are facts are facts”? Yes, but they are also a lot of other things *in addition*.<sup>1</sup>

-Bruno Latour, “From Realpolitik to Dingpolitik”

This project emerged from an interest in the process of entering, questioning, cross-examining, and publicly displaying evidence that began in the fall of 2014 in Thomas Keenan’s “Evidence” class. The course introduced me to works by Soshana Felman, Cornelia Vismann, Bruno Latour, Judith Butler, Keenan, Eyal Weizman and others who theorize about how the public contestation of political and historical problems occurs. Public debates over past historical events or present political crises often need pieces of material reality to which they can attach. Arguments can be more easily had when there is an identifiable thing to argue over, with or around. Public debates concerning *what happened* or *what is happening* need some thing that can re-present or reconstitute the subject of concern. Thusly, pieces of evidence are what allow publics to construct a site that can host the necessary debate. In this way, in regards to public proof, evidence does not constitute a supplementary aspect of argumentation; rather, evidence is the very thing through which past events are reconstructed, debates are had, and narratives are formed and constituted as part of public memory.

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<sup>1</sup> Bruno Latour, "From Realpolitik to Dingpolitik," 2005, in *Making Things Public: Atmospheres of Democracy (catalogue of the show at ZKM)*, by Peter Weibel and Bruno Latour (Cambridge: MIT Press, 2005), 11.



These sites of contestation take many forms. Public debate over political and historical problems can occur in many kinds of spaces, institutional or informal, regimented or chaotic, stationary or itinerant. As Keenan and Weizman articulate:

The forum is not a given space, but is produced through a series entangled performances. Indeed, it does not always exist prior to the presentation of the evidence within it. Forums are gathered precisely *around* disputed things- because they are disputed.<sup>2</sup>

In particular, I am interested in the legal forum and the ways it acts as a site of political and historical contestation. In the case of a legal trial, the forum is preexisting and consolidated into a fixed institutional structure, which, while governed by a regimented set of rules, is also always adapting to accommodate the different kinds of evidence that enter the legal space.<sup>3</sup>

For this reason, I am interested in the idiosyncratic and artificial process through which objects, media, and testimony enter the trial space. Evidence is the basis of how criminal events are constituted into language and decided upon legally. We return to the event through the things of the event, the things that are essentially all that remain of a past occurrence: records, memories, objects, and images. Without these things we are unable to return to, and therefore judge an occurrence in accordance to law, or even in accordance with public or personal sentiment. In this way, narrative construction happens through evidence. Once entered and contested, evidence is the way in which alleged criminal acts are translated into official, archivable, and reciteable narratives that can be used both in the transitive act of judging and catalogued into public consciousness. Legal

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<sup>2</sup> Thomas Keenan and Eyal Weizman, *Mengele's Skull: The Advent of Forensic Aesthetics* (Berlin, Germany: Sternberg Press, 2012), 29.

<sup>3</sup> Keenan and Weizman, *Mengele's Skull: The Advent*, 29.

evidence is how we reimagine and reconstruct history to bring it into a present time and space where it can be contested, adjudicated, and officially remembered.

This paper will look specifically at interactions that include three kinds of evidence: video, testimony, and object. It is important to note that each evidentiary medium comes with its own complex set of rules, theories, and histories of jurisprudence. There are, however, important theoretical structures that apply to legal evidence more broadly. At its foundation, evidence presentation involves the exchange between three entities: an object, a mediator and the forum.<sup>4</sup> Through these three components, arguments are substantiated and dismantled in a legal setting. No piece of evidence can enter the trial without a mediator, who must be a real, live, interpreter, capable of taking an oath and formulating explanations and responses to questions. Objects, images, documents, recordings, and other media cannot enter without this accompanying interpreter or translator. This is because trials occur through the construction of competing narratives that are formulated out of a question and answer examination of evidence. While a given piece of evidence might seemingly be able to make clear its contents without human assistance, without someone there to present, interpret, and speak on behalf of evidence, there would be no way to question or cross-examine the information being presented, which is the foundational mechanism by which trials operate.<sup>5</sup>

Miguel Tamen presents the theory that, because mute, inanimate physical things are unable to speak for themselves, “friends” must gather around the object and speak for

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<sup>4</sup> Keenan and Weizman, *Mengele's Skull: The Advent*, 28-29.

<sup>5</sup> Keenan and Weizman, *Mengele's Skull: The Advent*, 22-30.

it.<sup>6</sup>Physical objects are incapable of themselves articulating some intrinsic intent or interest; however, this is not to say that meaning, guilt, and intention cannot be ascribed to them. In court an object takes on agency regarding the facts in question by way of its interpreters. The interpreter speaks regarding what information an object can be understood to offer or refute. Through the trial's adversarial question and answer structure, meaning is extracted from evidence by way of these mediators. Thus, as Keenan and Weizman point out, "The object and its interpreter constitute a single interlinked rhetorical unit" and, as such, contesting the statement that has been attributed to a piece of evidence can be done by challenging either the authenticity of the object, the way the statement has been ascribed to it, or the legitimacy of the relationship between the object and its mediator.<sup>7</sup> In this way, so-called "objective" evidence is difficult, if not impossible, to come by in the court forum, precisely because legal evidence presentation necessitates that a human subject be present to mediate the information the "objective" thing is believed to offer. In court, nothing can "speak for itself;" no matter how seemingly obvious, evidence must be spoken for to be made legally legible.

\* \* \*

Shoshana Felman has been particularly important in formulating an approach to examining trials and thinking about what occurs through evidence presentation. Felman is interested in the interaction between law and trauma. Traumatic histories are understood by Felman as histories that are "expressionless"<sup>8</sup> insofar as they come from events and experiences that are not fully perceivable or accessible to their victim or collective of

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<sup>6</sup> Miguel Tamen, *Friends of Interpretable Objects* (Cambridge, MA: Harvard University Press, 2004), 79-80.

<sup>7</sup> Keenan and Weizman, *Mengele's Skull: The Advent*, 29.

<sup>8</sup> Term Shoshana Felman borrows from Walter Benjamin in Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002), 13.

victims. The psychological structure of trauma recognizes that traumatic events are often cognitively unassimilated as they occur, which make them particularly difficult to recount, articulate into language, and enter into a legal forum. Felman argues that the relationship between law and trauma became more apparent in the twentieth-century as law increasingly became the instrument societies selected to help cope with the histories left by traumatic events and legacies. Felman writes, “The exercise of legal justice- of justice by trial and by law- has become civilization’s most appropriate and most essential, most ultimately meaningful response to the violence that wounds it.”<sup>9</sup>

While Felman is optimistic about a trial’s ability to provide a stage on which to communicate histories of trauma, she is also acutely aware of the structural limitations of the law in providing an appropriate space for the expression, or understanding, of the traumatic events that it confronts.<sup>10</sup> She writes:

The law- traditionally calling for consciousness and cognition to arbitrate between opposing views, both of which are in principle available to consciousness- finds itself either responding to or unwittingly involved with processes that are unavailable to consciousness or to which consciousness is purposely blind. What has to be heard in court is precisely what cannot be articulated in legal language.<sup>11</sup>

Felman examines the trials of Adolf Eichmann and O.J. Simpson analyzing the moments in which law confronts trauma and tries, and fails, to handle or contain it. For Felman, these moments of legal shortcoming are where it is possible to find some of the most meaningful and historically informative moments of a trial. These moments are often ones in which the law fails to convert trauma into a legally legible, and therefore useable, pieces of information. Felman salvages these instances and allows them to act as

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<sup>9</sup> Felman, *The Juridical Unconscious: Trials*, 3.

<sup>10</sup> *Ibid.*, 14.

<sup>11</sup> *Ibid.*, 4.

entrances to the important subterranean historical and political problems the trial is also addressing. She looks the moments where the law is unable to translate or fully grasp what is occurring to examine both the extralegal meaning, but also the insight these instances potentially provide about the structure and capabilities of law. I am fascinated by Felman's ability to look at these moments not as outright failures, or aggregating proof of an inadequate judicial system, but as places in which a rich analysis of law, history, and trauma are possible. Her delicate, patient approach to legal incomprehensibility is what challenged and inspired me to start this project.

\* \* \*

The legal reconstitution of past events occurs through an artificially constructed trial system. Evidence enters the courtroom through a regimented set of rules. Once entered, it must do its best to behave in accordance with a specific mode of conduct. In this way, the entire trial forum can be understood as one that is designed to keep out certain kinds of knowledge. The process seeks to sanitize pieces of evidence of their unwanted worldly associations and examine them isolated in a specific time and space for the qualities that can help establish facts and build a narrative of the event in question. As Vismann writes:

The law... wants neither to be seduced nor persuaded - be it by verbal or pictorial images. Hence, to safeguard its operationality, it relies on communication conventions, hermeneutic procedures, juridical methods of interpretation and legal commentaries establishing a canon of interpretation.<sup>12</sup>

As Vismann explains, the law puts rhetorical structures firmly in place in order to tame evidence and to limit the other possible "canon(s) of interpretation" that it could potentially offer. This filtering process is necessary in order to look at what remains from

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<sup>12</sup> Cornelia Vismann, "Law and the Image- a Troubled Relationship," *Parallax* 14, no. 4 (2008): 4.

the event and elicit from it only the information relevant to the narratives being constructed and contested. Trials are interested in the life, qualities, specificities, and behaviors of evidence only insofar as it applies to the legal matter at hand. The other, here secondary, elements of a piece of evidence are not only not of interest but risk convoluting or tainting the project of the trial. This is not a flaw of the justice system, but rather is a necessary component for maintaining focus and preventing the legal process from being manipulated or distracted by other issues or agendas. This curation is intended to ensure that the trial legally only takes into consideration the event which it is adjudicating. Thus, the legal setting is interested in a piece of evidence only because of the knowledge the trial believes it contains and can provide, in order to reconstruct a past event and make a legal decision about it. The rest of the evidentiary thing is legally useless and at times problematic.

In this way, trials must be carried out in accordance with a self-consciously artificial belief that evidence contains and can reveal only the information that is wanted and needed in the legal setting. Those present in the courtroom must allow themselves to believe that the knowledge that a given piece of evidence is presumed to contain, through this artificial process, can be isolated and extracted without any interfering, excess or unwanted material. A clear example of this is when the judge instructs the jury to disregard something that has been said by a witness or attorney. All are aware that it is impossible to swipe the legally prohibited remark or event from the minds of each juror, however, all present in the forum are asked to act as though this information can be erased from their perception of the events being presented. The courtroom mandates this

structure, as it is the foundational mechanism through which events are isolated and adjudicated.

\* \* \*

During the presentation of evidence, unwelcome or unintended subject matter inevitably enters the forum. Little bits of the reality that is the messy, convoluted, subjective world in which we live find ways to come into the legal process despite the mechanisms designed to exclude them. As Felman notes, in every historically significant trial, something other than the law is being addressed, knowingly or unknowingly, in legal language.<sup>13</sup> Often, the other-than-law issue that is at stake is not explicitly addressed in the trial, as the forum is not structured to incorporate these extralegal concerns. Evidence entered for a distinct legal purpose, accidentally or intentionally, transmits secondary information. Evidence can, therefore, come to play a secondary political role that it was not explicitly invited to perform, but that has nevertheless, found a way to enter, and often effect, the trial. We can perhaps refer to these secondary roles that evidence inadvertently assumes as a kind of legal shadow. A shadow is produced when something comes between a light source and a surface, such that the obstruction forms an intangible, elusive form where light would otherwise be. In the case of a trial, the obstruction can be that which in some way interferes with, or inadvertently effects, the legal process the trial seeks to perform. The obstructions are those moments in the trial which are irregular or unplanned or which the forum is unable to handle or control. They could be moments of communicative breakdown, unaddressed innuendo, or unconscious admissions of the politics that are at play in the trial. These shadows produce the emergence of a difficult to

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<sup>13</sup> Felman, *The Juridical Unconscious: Trials*, 13.

identify, often disruptive, secondary issue to which the trial relates. Evidence that is entered to provide a particular piece of information or narrative often unavoidably casts an unintentional, and often uninvited, shadow. These shadows are legally intangible thus making them difficult to formally incorporate or make legible within the forum.

Sometimes, the existence of these extralegal forms is apparent enough that the forum is able to use its tools to recognize and immediately eject or in some way address them. Once through the pre-trial filtration, there are in-trial ways to tame or eliminate the things that managed their way in, such as courtroom objections, relevancies, striking things from the record, and sequestering witnesses and juries, are all ways to maintain sterility as the process unfolds. Despite these efforts, however, legal shadows often enter. Having to make a somewhat unconventional entrance, this secondary subject matter might be contorted by its mode of entry and, therefore, not appear recognizable. Or it could be so vaguely shaped that it cannot be effectively recognized, identified, or eliminated. Sometimes the subject matter is allowed, or even quietly asked, to enter because one or the other party wishes to use it to aid the narrative they are in the process of constructing. While the legal shadows that appear can play different roles and be handled by the forum in a multitude of ways, they are always significant insofar as they are indicative of the other-than-law issues that the trial, often unwillingly, is also addressing.

\* \* \*

For this project, I have chosen to focus specifically on the trial of George Zimmerman, the man responsible for the death of Trayvon Martin, an unarmed black teenager who was shot and killed in the housing complex where he was staying on February 26th,



2012.<sup>14</sup> I found *State of Florida v Zimmerman* to be an interesting place in which to examine evidentiary interactions for several reasons. The first reason is partially methodological, in that the entire trial, apart from moments of counsel with the judge, was recorded, televised, and made available to watch in an online news archive.<sup>15</sup> This allowed me to examine the trial as my primary source in a way I found was could not be done with other trials, which, having received less public attention and televised broadcasting, made accessing comprehensive video archives more difficult. The comprehensive accessibility to the Zimmerman case allowed me to work with the trial mediation as a primary source.

The Zimmerman trial is also fitting for this project because of the historical significance and extensive press, viewership, and analysis it has received. The case literally came to trial because not-yet-legal evidence outlining unjust aspects of Martin's death was used to facilitate a call of public outrage, which eventually led to Zimmerman's arrest and trial. The evidence became the things through which people wished to talk about, and bring attention to, an event that embodied a legal, historical, and contemporary problem. In this way, the Zimmerman trial became representative of a larger political crisis, namely, the unjust killing of people of color that is inadequately addressed legally and insufficiently acknowledged publicly. Zimmerman's eventual charges and trial materialized because of public outrage that amassed because Martin's death embodied a social and political crisis. In this way, the subsequent legal action was

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<sup>14</sup> A more detailed description of the event and case can be found in a summary which follows this introduction.

<sup>15</sup> "Video/Blog Archive: George Zimmerman Trial," WFTV Channel 9, last modified July 12, 2013, accessed April 28, 2015, <http://www.wftv.com/news/news/local/george-zimmerman-video-blog-archive/nYHgf/>.

the result of a larger political grievance that, among many things, was demanding that a legal event occur.

Two diametrically opposed sets of interests can be seen to collide in the Zimmerman trial. On the legal side, there was a conscious effort and desire to ensure that the trial only be about the event in question. The forum tirelessly worked to maintain this exclusivity, in order to insure that the trial did not devolve into an open-ended space that would actively try to address larger historical or political legacies. On the public side, however, there was, at least rhetorically, a hope or expectation that the Zimmerman trial could, in some way address, speak to, or maybe even provide some small symbolic victory for the political grievance that effectively brought the trial to fruition. These two sets of needs and expectations can be seen to encounter one another in *State v.*

*Zimmerman*, causing tension both inside and outside of the courtroom. In the Zimmerman trial, a political grievance was consolidated into a legal claim. Martin's death, which was the symptom of a much larger crisis, was effectively reworked and fitted into the format of a legal event. This condensed political grievance, however, can be seen to unfold throughout the trial in ways the forum could not entirely contain or control. For this reason, I found that the Zimmerman trial proved to be an interesting place in which to look for legal shadows and the structures through which they enter.

I approached watching and analyzing *State v. Zimmerman* through a particular mode of inquiry. This is neither a legal analysis of the case nor of the evidence presented in it. I am not concerned about the veracity of the statements made by witnesses, or in the validity of the scientific evidence entered. Further, I do not offer an examination of the legal merit of the prosecution or the defense's case, or make an argument about how

ultimately successful or unsuccessful either side was in constructing or deconstructing their competing narrative. This is also not a comprehensive analysis of all evidence presented in *State v. Zimmerman*. Rather, in the process of watching the trial, I have selected particular moments to closely examine alongside legal theoretical concepts, such as the interaction between law and trauma, the role of particular kinds of media as evidence, and the relationship between a piece of evidence and the interpreters who speak for it. In this way, my mode of reading the trial is one that seeks to learn from a Felmanian approach. I am looking for the subterranean trial moments with the hope that they will offer insight into the larger political elements that the case either avoids, but inadvertently reveals, or subtly invites in order to assist the desired narrative. In this way, whether avoided or invited, these moments offer clues concerning the political and historical issues the trial is also addressing.

\* \* \*

The moments I isolate and discuss are all ones in which, I argue, evidence is either unwittingly or intentionally transformed when it enters the forum to take on a secondary role that speaks to larger political issues at play in the trial. A three-minute piece of surveillance footage entered into evidence on the first day of testimony, by way of the media and its interlocutors, came to dominate a witness testimony, reference criminality and imply an alternative narrative to an otherwise inconsequential aspect of the case. In another moment, the testimony of the prosecution's key witness inadvertently revealed an individual and collective trauma which contributed to a communication breakdown that disrupted the legal process and lead to an encounter with the larger cultural and historical problem of communicating traumatic histories. And lastly, in a

series of both calculated and accidental interactions with a piece of physical evidence, an object was animated and transformed into the agent of the assault in question with the help of a previously existing narrative interpretation. In each of the moments I will examine, political issues that the trial is emblematic of manage, through evidence, to enter, cast their shadow and perform in a legal space that initially attempted to exclude them.

In the presentation and questioning of the surveillance video, testimony and object I examine, an inversion took place. Evidence that was entered for the purpose of, in some way, substantiating Martin's perspective of events, was transformed within the forum into evidence in which Martin was unable to seek recourse. In each case, this transformation occurred in part because of or through the legal shadow which the piece of evidence, unknowingly or unavoidably, cast on the trial. These shadows embody larger social, political, and historical issues that the trial did not explicitly enter into evidence, but which, nonetheless, emerged, performed, and affected the trial in important ways.

While these moments contribute in various way to the narrative that both sides formulate, this paper is not an analysis of in what way these pieces of evidence affected the jury or influenced the final verdict that was reached. While I do believe the instances that I examine, at times, aided the legally victorious narrative, I do not attempt to add these moments to a chain reaction the ended in Zimmerman's acquittal. Rather, I am interested in these moments precisely because of the non-legal, collateral political effect they produce in the trial. That is not to say that these shadows are not legally important. Issues these legal shadows bring out, such as the criminalization of black youth, the racial and criminal connotations of certain images, the traumatization of key witnesses, and the

societal constructions of “reasonable fear,” are in no way legally superfluous or irrelevant to the case being adjudicated. I am, however, interested in the ways in which their legal importance is not dealt with explicitly in the trial, as they are issues that the law either does not wish to address or does not have a mechanism with which to handle directly.

**Event Summary**  
(February 26th, 2012)

On February, 26th 2012, Trayvon Martin, an unarmed black 17-year-old male was shot and killed by George Zimmerman, a 28-year-old male of Peruvian descent who volunteered on a “neighborhood watch” team. Martin was temporarily staying at his father’s fiancée’s home located in the Retreat at Twin Lakes gated housing community in Sanford, Florida. It was a rainy night and Martin walked from the house where he was staying to the local 7-Eleven to purchase snacks. On his walk home, he spoke to a friend on the phone.<sup>16</sup> At 7:09 pm, Zimmerman saw Martin walking through the housing complex and called a police dispatcher from his car. He reported that there had been “some break-ins in my neighborhood” and that there was a presently “real suspicious guy” who “looks like he’s up to no good or he’s on drugs or something.” Zimmerman described Martin to the dispatcher as a black teenager wearing a hoodie who was “just walking around looking about.” The officer told Zimmerman that police were on their way and to let him know if the man “does anything else.” In the call to the police, a car door could be heard opening. The dispatcher asked Zimmerman, “are you following him?” to which Zimmerman responded “Yeah” and the dispatcher said, “Okay, we don’t need you to do that.” Zimmerman and the dispatcher exchanged contact information, agreed on a place where Zimmerman could meet the police when they arrived.<sup>17</sup>

Somewhere between Zimmerman’s phone call at 7:09pm and the police arrival at

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<sup>16</sup> Julia Dahl to CBS News newsgroup, "Trayvon Martin Shooting: A Timeline of Events," July 13, 2013, accessed April 28, 2015, <http://www.cbsnews.com/news/trayvon-martin-shooting-a-timeline-of-events/>.

<sup>17</sup> Florida City of Sanford to Mother Jones newsgroup, "Transcript of George Zimmerman's Call to the Police," March 18, 2012, accessed April 28, 2015, <http://www.motherjones.com/documents/326700-full-transcript-zimmerman>.

7:17pm, a physical dispute occurred between Martin and Zimmerman, the details of which were highly contested and which no one, besides Zimmerman, witnessed.<sup>18</sup>

When the police arrived, Zimmerman was waiting next to the body. He immediately surrendered his weapon and told the officers he had shot Martin. He was handcuffed, taken into “investigative detention,” and questioned at the police headquarters. The police questioned Zimmerman for a few hours, treated and photographed his injuries, took some of his belongings into evidence, and released him the same night on the grounds that there was no evidence to refute his claim of self-defense. Martin’s body was not identified until the next morning, thirteen hours after he was killed, when the police learned that Martin’s father had reported him missing when he did not return home the night before.<sup>19</sup>

### **Reaction to Event** (February 26th-April 11th 2012)

On March 8th, 2012 Tracy Martin and Sybrina Fulton, the parents of Trayvon Martin started a petition on Change.org calling on Angela Corey, Florida’s Fourth District State’s Attorney to investigate and prosecute George Zimmerman for the shooting and killing of their son. In the following days thousands signed the petition and the case began to receive massive media attention.<sup>20</sup> Key evidence surrounding the case was released to the public in the weeks following as attention to the controversy

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<sup>18</sup> Dahl to CBS News newsgroup, "Trayvon Martin Shooting: A Timeline of Events."

<sup>19</sup> Serge Kolvalesski, "Trayvon Martin Case Shadowed by Series of Police Missteps," *The New York Times* (Sanford, FL), May 16, 2012, accessed April 28, 2015, <http://www.nytimes.com/2012/05/17/us/trayvon-martin-case-shadowed-by-police-missteps.html>.

<sup>20</sup> Dahl to CBS News newsgroup, "Trayvon Martin Shooting: A Timeline of Events."

intensified, including Zimmerman's 9-11 call and the statements of Martin's friend with whom he was on the phone in the moments leading up to the confrontation with Zimmerman. The release of this information helped spur and sustain nationwide protests and media attention.<sup>21</sup> On March 19th, the FBI and the Department of Justice began their investigations into the case. Peaceful demonstrations sprung up all over the country demanding that Zimmerman be arrested and tried for the murder of Trayvon Martin. On March 21st, thousands gathered in Union Square, Manhattan with their hoods up for the "Million Hoodies March." By the end of March, over two million people had signed the Change.org petition.<sup>22</sup> On April 11th, over six weeks after the shooting occurred, Zimmerman was charged with second-degree murder and taken into custody.<sup>23</sup>

### **Zimmerman's Charges** (April 11<sup>th</sup>, 2012)

The weeks leading up to Zimmerman's eventual charge of second-degree murder included a series of controversial moves by the state prosecutors looking over the case. The original local state prosecutor, Norm Wolfinger, stepped aside in wake of criticism that the case had been moving too slowly and special prosecutor Angela B. Corey took over. Corey decided to forgo a grand jury review, charged Zimmerman with second-

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<sup>21</sup> Jennifer Preston and Colin Moynihan, "Death of Florida Teen Spurs Outcry and Action," *The New York Times*, March 21, 2012, accessed April 28, 2015, <http://thelede.blogs.nytimes.com/2012/03/21/death-of-florida-teen-spurs-national-outrage-and-action/>.

<sup>22</sup> Julia Dahl to CBS NEWS newsgroup, "Trayvon Martin Shooting: A Timeline of Events," July 12, 2013, accessed May 21, 2014.

<sup>23</sup> Lizette Alvarez and Michael Cooper, "Prosecutor Files Charge of 2nd-Degree Murder in Shooting of Martin," *The New York Times* (Jacksonville, FL), April 11, 2012, accessed April 28, 2015, <http://www.nytimes.com/2012/04/12/us/zimmerman-to-be-charged-in-trayvon-martin-shooting.html>.



degree murder, and assigned Bernie de la Rionda as lead prosecutor.<sup>24</sup> The prosecution later added the lesser charge of manslaughter.

Florida's controversial "Stand Your Ground" law, one of the broadest self-defense protections in the country, was brought into national spotlight following the event. The law has been criticized as essentially legalizing the violence of neighborhood watch vigilantes.<sup>25</sup> In fact, "justifiable homicide" has tripled in Florida since this law was passed in 2005.<sup>26</sup> Because the Stand Your Ground law requires law enforcement officials to provide proof that the suspect did not act in self-defense (thus setting a high bar for arrest and putting the case on a slow track) the Sanford police claimed to be barred from immediately arresting Zimmerman.<sup>27</sup> Most importantly, stand Your Ground differs from ordinary self-defense laws in that it eliminates one's "duty to retreat." Florida law states that a person who is not engaged in unlawful activity, and is in a place where they have the right to be, "has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm."<sup>28</sup> While the case sparked a nationwide debate over the law, it was not the grounds on which Zimmerman defended himself. Zimmerman decided to forego a Stand Your Ground hearing, in which a judge, not a jury, would have decided whether Zimmerman's fear of death or great bodily harm

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<sup>24</sup> Lizette Alvarez and John Schwartz, "Prosecutor in Martin Case Will Alone Determine Its Merits," *The New York Times* (Miami, FL), April 9, 2012, accessed April 28, 2015, <http://www.nytimes.com/2012/04/10/us/grand-jury-review-skipped-in-trayvon-martin-case.html>.

<sup>25</sup> J. David Goodman, "Florida Shooting Focuses Attention on 'Stand Your Ground' Law," *The New York Times*, March 20, 2012, accessed April 28, 2015, <http://thelede.blogs.nytimes.com/2012/03/20/florida-shooting-focuses-attention-on-stand-your-ground-law/>.

<sup>26</sup> Goodman, "Florida Shooting Focuses Attention."

<sup>27</sup> Kolvaeski, "Trayvon Martin Case Shadowed."

<sup>28</sup> Goodman, "Florida Shooting Focuses Attention."

was “reasonable.” Instead he chose a self-defense argument, in which a six-person jury would decide the verdict.<sup>29</sup>

***State of Florida v. George Zimmerman***  
(June 24th-July 13th, 2013)

The trial was controversial from the onset, as the search for a judge and jury proved difficult given the amount of media and public attention the event had received over the previous year. The original judge, Judge Jessica Rechsiedler, recused herself from the proceedings after it surfaced that her husband worked with a CNN legal analyst who had commented publicly on the case. The next judge in the rotation immediately alerted the state of his own conflict of interest. Judge Kenneth R Lester, Jr. then took over the case until he too was recused after defense attorneys challenged his impartiality.<sup>30</sup> Finally, Judge Debra S. Nelson became the fourth and final judge to prevail over the case. Judge Nelson agreed to have an anonymous and sequestered jury, and after the two week search for six jurors, a jury of six women was selected, five of which were white and one Hispanic.<sup>31</sup> Judge Nelson made some important decisions concerning evidence admissibility. She ruled against the defense’s request to enter Martin’s history of marijuana use, suspension from school and past fighting incidents into evidence. Judge Nelson also refused a defense request to allow jurors to travel to the scene of the crime and ruled that some of Martin’s texts and other social media activity would not be

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<sup>29</sup> Patricia J. Williams, "The Monsterization of Trayvon Martin," *The Nation*, July 31, 2013, accessed April 27, 2015, <http://www.thenation.com/article/175547/monsterization-trayvon-martin>.

<sup>30</sup> Preston and Moynihan, "Death of Florida."

<sup>31</sup> Cara Buckley, "6 Female Jurors Are Selected for Zimmerman Trial," *The New York Times* (Sanford, FL), June 20, 2013, accessed April 28, 2015, [http://www.nytimes.com/2013/06/21/us/6-female-jurors-are-selected-for-zimmerman-trial.html?\\_r=0](http://www.nytimes.com/2013/06/21/us/6-female-jurors-are-selected-for-zimmerman-trial.html?_r=0).

permitted in the defense's opening statements.<sup>32</sup> The defense also requested that the prosecution not be able to use the words and phrases "vigilante," "wannabe cop," "racially profiled," and "confronted Trayvon Martin" in their opening statements. Judge Nelson rejected this defense request, however, maintained that "profiled" was acceptable but that the prosecution would not be able to use the phrase "racially profiled."<sup>33</sup> The prosecution also attempted to enter into evidence two audio experts who would argue that voice recognition analysis could prove that it was Martin's streaming voice in the back of a neighbor's 9-11 call. Judge Nelson ultimately ruled against audio experts coming in to testify either on the prosecution or the defense's behalf concerning the phone call.<sup>34</sup>

The charge of second-degree murder in the state of Florida required the prosecution to prove the existence of some "hatred," "spite" or "evil intent." Thus, the law requires that the prosecution prove beyond reasonable doubt that Zimmerman had a "depraved mind," or "intentional disregard for human life" when he shot and killed Martin. The prosecution added the lesser charge of manslaughter, which the jury was also given the opportunity to consider in their deliberations. Manslaughter involved proving that Zimmerman effectively put himself in the situation that led to Martin's death and acted with a "reckless disregard for human life."<sup>35</sup> The narrative of the state's case rested on depicting Zimmerman as a "wannabe cop" or "vigilante" who, after being instructed by police not to pursue Martin, followed and initiated a physical dispute with the

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<sup>32</sup> Associated Press, "Judge Limits Texts, Photos in Trayvon Martin Case," *The Florida Times Union* (Jacksonville, FL), June 28, 2013, accessed April 28, 2015. <http://jacksonville.com/news/florida/2013-05-28/story/judge-limits-texts-photos-trayvon-martin-case>.

<sup>33</sup> *NPR News*, "Prosecution Can't Use Race As A Factor In Zimmerman Case," June 21, 2013, written by Greg Allen, accessed April 28, 2015, <http://www.npr.org/templates/story/story.php?storyId=194330380>.

<sup>34</sup> Associated Press, "Zimmerman Trial Judge: Prosecution Audio Experts Cannot Testify," *The Guardian*, June 21, 2013, accessed April 28, 2015, <http://www.theguardian.com/world/2013/jun/22/george-zimmerman-trayvon-martin-phone-calls>.

<sup>35</sup> Williams, "The Monsterization of Trayvon."

innocent, unarmed, teenager that resulted in his death. After the trial, the prosecution was widely criticized. From the start, the prosecution was said to have “overreached” in their charge of second-degree murder, a charge many felt they did not have sufficient evidence to prove. The state’s strategy was also criticized for only raising questions about Zimmerman’s story but for essentially never positing their own alternative explanation or narrative of the events.<sup>36</sup> Further, many pointed out that the state failed at critical moments to challenge or object when the defense made problematic insinuations concerning Martin’s intent or overall character.<sup>37</sup> Most notably, the prosecution visibly avoided the issue of racial profiling and did not actively include as part of their narrative. When the trial was over, prosecuting attorney Angela Corey stated explicitly, “This case has never been about race,” a rhetorical position which resonated in the way the state attempted to frame and argue the case.<sup>38</sup>

The narrative constructed by the defense depicted Zimmerman as a concerned and compassionate neighbor who was attacked by a violent, drug-doing, teen who was up to no good in the housing complex that night. In Zimmerman’s statements to the police he claimed that Martin had knocked him the ground, straddled him, punched him in the face and repeatedly slammed his head into the concrete. Zimmerman also claimed that Martin at one point reached for Zimmerman’s firearm and that Martin was positioned on top of him when he fired one shot into his chest. Thus, the defense used the physical evidence and neighbor testimonies in an effort to substantiate this narrative. In Florida, using lethal force is justifiable in a self-defense case if the person is understood to have “reasonably

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<sup>36</sup> Lisa Bloom, "Zimmerman Prosecutors Duck the Race Issue," *The New York Times*, July 15, 2013, accessed April 28, 2015, <http://www.nytimes.com/2013/07/16/opinion/zimmerman-prosecutors-duck-the-race-issue.html>.

<sup>37</sup> Williams, "The Monsterization of Trayvon."

<sup>38</sup> Bloom, "Zimmerman Prosecutors Duck the Race."

feared imminent death or great bodily harm” at the time. Importantly, Florida is one of the only states that allows for juries as small as six to decide serious criminal cases. Statistically, six person juries have shown to be more likely to side with the prosecution.<sup>39</sup> In this way, it was perhaps significant that the defense’s case sought, not only to defend their client, but also to strongly suggest and argue that Martin had criminal and violent tendencies and intentions that night. While legally they only needed to prove that Zimmerman “reasonably” feared for his life at the time when he fired his weapon in self-defense, their case ultimately embarked on much larger indictment of Martin.

The trial had a few central disputes that dominated the trial. One was concerning the grounds on which Zimmerman perceived Martin as a suspicious and potentially dangerous character. To substantiate the idea that Zimmerman profiled Martin, the prosecution focused on Zimmerman’s call to the police, Zimmerman’s past behavior as a “neighborhood watch volunteer,” and Rachel Jeantel’s testimony, the woman who was on the phone with Martin when Zimmerman began following and eventually confronted him. Another key fact being contested was who started the physical dispute, in which Jeantel’s testimony again became key. Physical evidence and the testimonies of various neighbors who saw parts of the altercation from afar were used to contest who had the upper hand in the fight at the time Zimmerman shot Martin. Zimmerman did not testify in the trial, however, his version of events was heard in court through his numerous police statements, including a reenactment video of the event which was filmed by the Sanford police department and entered into evidence in the trial. Physical evidence, medical examiner reports, and photographs of Zimmerman after the fight were also used to dispute how severe Zimmerman’s injuries were, and if they aligned with his account of

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<sup>39</sup> Williams, “The Monsterization of Trayvon.”

the fight. Lastly, there was a great deal of dispute concerning who could be heard screaming for help in the background of one of the neighbor's calls to the police. As audio experts were deemed inadmissible to testify regarding the phone call, members of Martin and Zimmerman's families testified as to whether or not they recognized the screaming voice as their son's.<sup>40 41</sup>

### **Acquittal** (July 13th, 2013)

On July 13th, 2013, the six-woman jury acquitted Zimmerman of all charges after almost seventeen hours of deliberation. Law enforcement was on high alert, as violence had been widely anticipated in the event of Zimmerman's acquittal. The reaction, however, was mostly peaceful. Demonstrations emerged all over the country and the NAACP called on Justice department to continue their investigation. President Obama made a national address and controversially stated, "If I had a son, he'd look like Trayvon."<sup>42</sup> He called for calm, stating:

I know this case has elicited strong passions. And in the wake of the verdict, I know those passions may be running even higher. But we are a nation of laws, and a jury has spoken. I now ask every American to respect the call for calm reflection from two parents who lost their young son.<sup>43</sup>

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<sup>40</sup> Amy Padnani and Troy Griggs, "The Zimmerman Trial Day-By-Day," *The New York Times*, July 11, 2013, accessed April 28, 2015, <http://www.nytimes.com/interactive/2013/07/12/us/zimmerman-highlights.html>.

<sup>41</sup> "Key Disputes in the Zimmerman Trial," *The New York Times*, July 8, 2013, accessed April 28, 2015, <http://www.nytimes.com/interactive/2013/07/05/us/zimmerman-trial.html>.

<sup>42</sup> Tom Cohen to CNN newsgroup, "Obama: Trayvon Martin Could Have Been Me," July 15, 2013, accessed April 28, 2015, <http://www.cnn.com/2013/07/19/politics/obama-zimmerman/>.

<sup>43</sup> Cohen to CNN newsgroup, "Obama: Trayvon Martin Could Have Been Me."

Following the decision, some of the jurors anonymously spoke with the media. Juror B37 told Anderson Cooper on CNN that in deliberations initially the jury was divided evenly between an innocent and guilty verdict (two for second-degree murder and one for manslaughter). Juror B37 also claimed that race did not come up at all in their deliberations, and that the event, “pretty much happened the way George said it happened.”<sup>44</sup> Following B37’s comments, four other jurors anonymously issued a brief statement to the media saying that Juror B37’s statements were not representative of their views.<sup>45</sup> Weeks later, Juror B29, the only non-white juror of Puerto Rican descent, revealed herself as “Maddy” and appeared on “Good Morning America.” She stated controversially that she felt Zimmerman “got away with murder,” and that she was “the juror who was going to give them a hung jury.”<sup>46</sup> In February 2015 the Justice Department, who had begun their investigation shortly after Martin’s death, ended their civil rights investigation into the case and decided not to pursue federal charges, which effectively closed the case.<sup>47</sup>

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<sup>44</sup> Lizette Alvaraz, "Zimmerman Juror Discusses How Verdict Was Reached," *The New York Times*, July 15, 2013, accessed April 28, 2015, <http://www.nytimes.com/2013/07/16/us/zimmerman-juror-discusses-how-verdict-was-reached.html>.

<sup>45</sup> Anonymous post to CBS News newsgroup, "4 Zimmerman Trial Jurors Distance Themselves From Juror B37," July 17, 2013, accessed April 28, 2015, <http://www.cbsnews.com/news/4-zimmerman-trial-jurors-distance-themselves-from-juror-b37/>.

<sup>46</sup> Alyssa Newcomb to ABC News newsgroup, "George Zimmerman Juror Says 'In Our Hearts, We Felt He Was Guilty,'" July 25, 2013, accessed April 28, 2015, <http://abcnews.go.com/US/george-zimmerman-juror-murder/story?id=19770659>.

<sup>47</sup> Lizette Alvarez, "U.S. Won't File Charges in Trayvon Martin Killing," *The New York Times* (Miami, FL), February 24, 2015, accessed April 28, 2015, <http://www.nytimes.com/2015/02/25/us/justice-dept-wont-charge-george-zimmerman-in-trayvon-martin-killing.html>.

## Chapter 1.

### How to Make Something Out of Nothing



Surveillance footage, Sanford, Florida, 7-Eleven, February 26<sup>th</sup>, 2012, still from “Day 10: Zimmerman Trial Testimony Part One.”





### How to Make Something Out of Nothing

On the trial's first day of testimony the prosecution's second witness was Andrew Gaugh, the cashier at the Sanford 7-Eleven on the evening of February 26th, when Trayvon Martin came in at 6:22pm to purchase snacks. To accompany Gaugh's testimony, the prosecution introduced the surveillance footage from the store that evening. This surveillance video was the only pre-mortem imagery of Martin that exists from the evening he was killed. The 7-Eleven footage and the testimony were related to the event being contested only insofar as they preceded it. The convenience store errand supplied a partial explanation for Martin being out that evening and the video provided a starting time for his walk home that helped establish a timeline of the events leading up to his death. These elements of the narrative could have easily been established in other ways, however, in an effort to show that nothing out of the ordinary occurred when Martin was in the store, the prosecution began their case by showing the jury the surveillance footage.<sup>48</sup>

The surveillance footage did not make its public debut in the case. The video, as it was some of the only immediately available imagery from the highly contested evening, was widely circulated online and in the news prior to the trial. For those outraged about Martin's death and the lack of immediate legal repercussions, the items that Martin purchased in the store, an Arizona drink product and a bag of Skittles, were used as

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<sup>48</sup> All content from this testimony found in "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 10: Zimmerman Trial Testimony Part One," <http://www.wftv.com/videos/news/day-10-zimmerman-trial-testimony-part-1/v49Yn/>.

symbols of his innocence.<sup>49</sup> They became a way of pointing out that Martin was not armed but rather was carrying things to eat and drink, items that in no way resembled a weapon. His trip to the 7-Eleven that night was used by some both in and out of court to substantiate the narrative that Martin was an innocent seventeen-year-old on a snack run on the night he was shot and killed.

Gaugh was questioned briefly about the transaction with Martin by prosecuting attorney John Guy. Guy inquired about how Martin paid for the items and about the nature of their interaction. He then projected a still from the surveillance footage depicting a blurry color image of a well-lit convenience store. A hooded figure stands with his back to the camera on the right side of the frame and an unattended cash register is on his left. The camera was positioned at the front door, providing a high and wide-angle view through to the back wall of the store. Guy asked Gaugh to “describe for the members of the jury where the cash register is on the screen” and proceeded to circle this area with a yellow digital semi-circle.<sup>50</sup> The image was now marked by Guy’s annotation, which emphasized the unattended cash register directly to the left of a hooded figure. To the figure’s right are aisles which appear as vague colored blurs of stocked shelves and refrigerators. The ceiling is white with strips of fluorescent lights extending the length of the store. On the top right of the frame there is white type labeling the image “Door

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<sup>49</sup>Kim Severson, "For Skittles, Death Brings Both Profit and Risk," *The New York Times*, March 28, 2012, accessed April 28, 2015, [http://www.nytimes.com/2012/03/29/us/skittles-sales-up-after-trayvon-martin-shooting.html?\\_r=0](http://www.nytimes.com/2012/03/29/us/skittles-sales-up-after-trayvon-martin-shooting.html?_r=0).

<sup>50</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 10: Zimmerman Trial Testimony Part One,” <http://www.wftv.com/videos/news/day-10-zimmerman-trial-testimony-part-1/v49Yn/>.

Frame Cam - 7-11- 34 153” and on the bottom left there is the 24-hour clock time stamp captured at “18:22:09 - 05.”<sup>51</sup>

When Guy played the video, the yellow digital circle annotating the empty register disappeared, white noise of the silent digital footage started to hum, and the seconds on the digital clock at the bottom of the frame began to count the time. In the video, the figure, previously paused in mid-stride, precedes to a cooler in the far right aisle along the wall, opens the cooler door and removes an item. The hooded figure closes the cooler door and begins to walk towards the front of the store. Another figure approaches the front of the store. The hooded figure walks down an aisle adjacent to the register and disappears on the far right-hand side of the frame for a moment.

Gaugh, who has now entered the frame from the back of the store, orients himself in front of the register. When the hooded figure reappears on the right he walks directly to the register where the cashier is standing. He puts his things down on the counter, and reaches into his pockets. The cashier takes the items and begins to ring them up. The hooded figure reaches deep into his pockets, pulls out something, and hands it to the cashier. The figure then again reaches and fumbles in his pockets for a moment and looks briefly behind him. The cashier puts the money in the register, bags the items, and hands them to the hooded figure and both turn away and walk from the register. The figure almost exits the frame before he turns around, walks straight through the store, and reaches down and appears to pick something up off the ground near the coolers. He then turns around and walks to the bottom right corner of the frame and exits the store.

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<sup>51</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 10: Zimmerman Trial Testimony Part One," <http://www.wftv.com/videos/news/day-10-zimmerman-trial-testimony-part-1/v49Yn/>.

Nothing out of the ordinary actually occurs in the video. There is no claim made by either side that a criminal act occurred while Martin was in the 7-Eleven, and there was no action made by Martin or Gaugh in the video that indicated that Martin caused any disturbance in the store that night. In other words, no apparent fact was being entered or contested through this piece of evidence. The video is completely banal and uneventful. In it, nothing noteworthy actually occurs. As Patricia Williams pointed out in her critique of the prosecution, Gaugh's testimony was "of so little relevance, it seemed only posited to reassure us that he didn't rob the place."<sup>52</sup> However, in the prosecution's attempt to show that the events of that evening did not begin with any criminal or suspicious acts, much emerged in this show of nothingness. The video comes to dominate the cashier's testimony and act as the primary witness of events. This, however, proved to be problematic because visual elements of the footage, such as the frame, aesthetic qualities and visual associations, unavoidably implied criminality, even though entered to exemplify innocence. The shadow cast by the video's mediatic qualities and references helped transform the piece of evidence into far more than a show of nothingness. What should have been an inconsequential moment in the prosecution's narrative construction, was transformed into an ample visual space in which to imply a criminal depiction of Martin and an alternative narrative of the events leading up to his death.

**“Do you remember any of this?”**

Gaugh entered the courtroom in a slightly oversized dress shirt with a fresh buzz cut. Through his questioning, prosecuting attorney Guy established that he was twenty-years-old, a customer account representative at Rentacenter, and that in February 2012 he

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<sup>52</sup> Williams, "The Monsterization of Trayvon," 3.

was employed at the Rhinehart Road 7-Eleven in Sanford, Florida. Guy projected an aerial photograph of this portion of Sanford and asked Gaugh to confirm that it accurately depicted the location of the 7-Eleven where he was previously employed. Gaugh verified that he was working alone from 4:00pm to 10:00pm the night of February 26th, and that this particular 7-Eleven was equipped with indoor surveillance cameras. Guy asked Gaugh if he had ever seen the footage from that evening.

**GUY:** Specifically have you viewed footage from that evening of a young man who purchased an Arizona drink product and a bag of Skittles candies?

**GAUGH:** Yes.

**GUY:** Were you working the register for that particular purchase?

**GAUGH:** Yes, Sir.

**GUY:** Did the young man pay for those items with cash, or credit, or what?

**GAUGH:** Uh, cash.

**GUY:** Do you recall any conversation that you would have had with that customer?

**GAUGH:** No, Sir.

**GUY:** Was there anything about the customer that caused you any concern?

**GAUGH:** Nope.

**GUY:** Did you know the young man who purchased the Arizona drink product and Skittles?

**GAUGH:** No.

**GUY:** To your knowledge had you ever seen him before?

**GAUGH:** No.<sup>53</sup>

Guy then projected the still image of surveillance footage and asked Gaugh to verify that the front door was located at the front of the frame and that “the customer that bought the skittles and the Arizona drink product” was the “gentleman walking through the store right now.” Gaugh confirmed this, and was then asked if the time was reflected in the lower left corner of the frame. Gaugh, perhaps unaccustomed to military time, did not understand the question and initially answered that the numbers in the corner of the frame did not reflect the time. When Guy rephrased the question asking, “the 18:22:09, is that

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<sup>53</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 10: Zimmerman Trial Testimony Part One,” <http://www.wftv.com/videos/news/day-10-zimmerman-trial-testimony-part-1/v49Yn/>.

not the military time?” Gaugh apologized for his mistake and answered in the affirmative.<sup>54</sup>

As Gaugh entered the frame in the running video, Guy asked him to confirm that it was he that was walking behind the register. When the video ended, Guy asked “Mr. Gaugh it appeared that the gentleman who made the purchase picked up something off the floor before he left the store, do you have any idea what that was?” “No, Sir” Gaugh answered. “Do you have any idea if he actually picked something up?” Guy asked, “No, Sir” Gaugh answered. Guy then projected a still frame of each of the camera angles available in the store, and asked Gaugh to confirm their location. Gaugh obliged and his direct examination ended.

O’Mara began his cross-examination by playing a different camera angle of the transaction between Martin and Gaugh. When the video ended, O’Mara, who said initially that he would like to have all four angles shown in full, decided to end the projection and began his questioning.

**O’MARA:** I note that in the beginning when the person who we now know to be Trayvon Martin came in the store that you were towards the back of the store, was there any reason for that?

**GAUGH:** Yes, Sir.

**O’MARA:** What was that?

**GAUGH:** I was doing the temperature checks on all the coolers.

**O’MARA:** Okay, and then um, you came up to the register we’ll talk about that in a minute, and then after Mr. Martin, Trayvon Martin went back towards the back of the store I noticed you went back around the counter and seemed to be either watching him or having a conversation with him, do you recall that?

**GAUGH:** No, Sir.

**O’MARA:** You don’t recall why you would have done that?

**GAUGH:** I usually go to the back room after I take care of customers.

**O’MARA:** In the video you seem to not go to the back room you seem to come right around the counter and stop where he was by that front cooler, you don’t recall any reason for that?

**GAUGH:** No, sir.

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<sup>54</sup> *ibid.*

**O'MARA:** Okay, um, when Mr. Martin came up to the counter, did you have any concern over the time it took him to get the right change, get money out of his pocket?

**GAUGH:** No.

**O'MARA:** Do you remember any of this?

**GAUGH:** No, Sir.

**O'MARA:** So when you say, when you mention a moment ago that that was Trayvon Martin who purchased the Skittles and the Arizona fruit juice, you don't remember this event at all, do you?

**GAUGH:** No, Sir.

**O'MARA:** So you're just sort of answering because you look on the video and if we tell you that that was Trayvon Martin and that that was the transaction, you would concur with that but you don't remember anything, right?

**GAUGH:** No, Sir.<sup>55</sup>

O'Mara then asked Judge Nelson if he could approach the witness. He asked Gaugh to stand up and step out of the witness box and state out loud what kind of shoes he was wearing. "Regular heels" Gaugh looked at his feet and confirmed. "How tall are you?" O'Mara asked to which Gaugh responded "five ten." O'Mara lifted his chin and sized himself up next to Gaugh. As he began to walk away, he asked, "Presumably you were 5'10" a year ago as well, right?" Gaugh verified this fact and his cross-examination ended.<sup>56</sup> This portion of the testimony went unexplained, and Gaugh's height was not mentioned again. O'Mara presumably used the witness' physical presence in the courtroom as an opportunity to make a visual comparison between Martin and Gaugh. This physical comparison, however, was entirely irrelevant to the video or to the events in question. The moment can be read as one in which the defense used the witness to visually substantiate a narrative of events which *could have* or *might have* occurred within the surveillance video.

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<sup>55</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 10: Zimmerman Trial Testimony Part One," <http://www.wftv.com/videos/news/day-10-zimmerman-trial-testimony-part-1/v49Yn/>.

<sup>56</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 10: Zimmerman Trial Testimony Part One," <http://www.wftv.com/videos/news/day-10-zimmerman-trial-testimony-part-1/v49Yn/>.



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From Guy's initial questions, it was clear that Gaugh was brought in by the prosecution to verify that this surveillance footage indeed came from this particular Sanford 7-Eleven on the evening on February 26<sup>th</sup>, 2012. Gaugh was able to confirm that he was employed there at this time, that he worked the evening shift that day, and that it was he in the video being presented. From Guy's questions concerning the various camera angles, it was also apparent that Gaugh's testimony served to orient the jury concerning the video they were about to watch. Gaugh, having worked in this particular 7-Eleven, was familiar with the store's layout and was able to confirm that the various camera angles were consistent with those he knew to exist in the store. Further, Gaugh was able to give some information about his own behavior in the video, not from memory but from knowledge of how he himself typically behaved while at work. In his cross-examination he told O'Mara that his return towards the back of the store was consistent with the actions he typically performed while at work. Gaugh's testimony, thus, verified the authenticity of the video, oriented the viewer, and provided a brief and partial explanation for the actions of one of the video's characters.

Gaugh was, however, not there just to verify and orient the video but also as a witness to the events the video presents. The footage can be understood as an illustration of his testimony regarding his financial transaction with Martin. As a witness to the events, however, Gaugh's testimony was not particularly informative, in part because he admittedly did not at all remember the interaction. The information he did summon about the event seemed to come only from having watched the video. The lack of detail, memory or emotion in his testimony indicated that this interaction was not particularly

memorable, and, thus, likely one of Gaugh's many daily, forgettable, ordinary, non-criminal and non-threatening encounters with a paying customer. The fact that the witness did not remember the event was in itself testimony to the uneventful nature of the encounter, presumably what the prosecution was attempting exemplify.

In this way, Gaugh's testimony, in theory, served dual evidentiary functions. He was both the presenter and the validator of the video footage, as well as a witness to the events being discussed. In court, because no piece of evidence can enter without an interpreter, it was necessary that Gaugh be there so that there was a way to question or contest the information being presented. Since moving images were introduced into U.S. courts in the 1920s, the medium has had a complex jurisprudence which has experimented with various forms of testimonial accompaniment.<sup>57</sup> Traditionally, moving images have fallen into one of two evidentiary categories, being presented as either an illustration of witness testimony or as proof of fact. Moving image which functions as an illustration of a witness testimony needs the witness there to confirm that the images accurately represent the events as they experienced them. However, moving images that either side wishes to function as proof of fact need a witness who can attest to the authenticity and unmanipulated nature of the images being presented.<sup>58</sup> In Gaugh's testimony the surveillance video functions both as an illustration of his testimony and as proof of fact, authenticated by Gaugh's ability to vouch for the images' authenticity and accuracy. In this way, the piece of evidence is there so that the video and the witness could together offer proof that Martin was in the 7-Eleven that night and nothing out of

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<sup>57</sup> Louis-George Schwartz, *Mechanical Witness: A History of Motion Picture Evidence in U.S. Courts* (New York, NY: Oxford University Press, 2009), 24-39.

<sup>58</sup> Schwartz, *Mechanical Witness: A History*, 47.

the ordinary occurred. In actuality, however, the video came to dominate this process and act as the primary witness of events. The witness himself referenced it to narrate what occurred. Thusly, the video effectively abandoned its interpreter and began to act independently.

The process by which the video became the main narrator of events was aided by questions asked by defense. In his cross-examination O'Mara pointed out that Gaugh did not remember the events to which he was testifying. O'Mara asked him blankly "Do you remember any of this?" to which Gaugh responded that he did not. Prior to being asked directly whether he remembered the event, however, Gaugh provided information concerning the event, such as his response that Martin did not cause him any concern in general, or in the moment when he looked for change in his pocket. These statements were discredited by Gaugh's confession that he did not remember the event. O'Mara then asked, "So you're just sort of answering because you look on the video and if we tell you that that was Trayvon Martin and that that was the transaction, you would concur with that but you don't remember anything, right?" to which Gaugh responded, "Yes, Sir." Through this exchange O'Mara was able to show that Gaugh was merely agreeing with what he was being told occurred that night. Through this series of questions, O'Mara was able to impeach Gaugh as a witness of these events and effectively neutralize this portion of his testimony. O'Mara did not, however, discredit Gaugh's ability to authenticate the surveillance footage. In effect, Gaugh's testimony-as-witness was impeached, but his testimony-as- authenticator of the surveillance footage remained intact. In this way, Gaugh's testimony served only to heighten the authority of the video. Not only did he verify its truthfulness, Gaugh himself treated the video as an authoritative witness insofar

as he referenced it to narrate the events of that evening and inform his testimony-as-witness.

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Cornelia Vismann in her essay “‘Rejouer les crimes’ Theatre vs. Video” theorizes about how the introduction of new media such as video competes with the mediating dynamics of a courtroom. She posits that the job of the trial is to put a deed into words in order to repair and re-institute the violated institution of the law. The goal of the trial, as summarized by Vismann, is to “dramatize, and hence discursify, the violation within an instituted legal frame.”<sup>59</sup> Theatre, thus, becomes the medium through which this task is accomplished. The deed is reenacted in words on a stage in an effort to find the truth of what occurred. Vismann points out that this process of reenactment is traditionally performed through legal modes of representation, such as witness testimony, which she describes as “translations of restored images.”<sup>60</sup> In other words, traditionally this reenactment occurs as recollections become images, so that “the person on the witness stand adds, so to speak, only the subtitles (in first person) to the interior film of a deed.”<sup>61</sup>

This theatrical-legal process is, however, interrupted by the emergence of video evidence. Vismann theorizes that film and video destabilize the conversion of recollection into image. The video now competes with the theatrical narrative. Memory is effectively replaced by video, which is perceived as a perfect replay of events. Vismann goes so far as to say that video “assumes the functional place of the script for the theater-

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<sup>59</sup> Cornelia Vismann, “‘Rejouer les crimes’ Theatre vs. Video,” *Cordozo Studies in Law and Literature* 11, no. 2 (Winter 1999): 166.

<sup>60</sup> Vismann, “‘Rejouer les crimes’ Theatre vs. Video,” 173.

<sup>61</sup> *Ibid.*, 173.

play of justice.”<sup>62</sup> Video thus runs the risk of dominating the narrative-making project and inhibiting other modes of legal representation from effectively performing.

This domination of video occurred in Gaugh’s testimony. His testimony authenticated the video and heightened its importance and ability to narrate his interaction with Martin that evening. Because Gaugh was unable to remember, the video became the primary narrator of the events that occurred in the 7-Eleven that night. Despite Gaugh’s words, the jury was effectively left with the video as the only and ultimate authority and of what occurred. The information which his testimony did deliver, information which is arguably helpful in maintaining the idea that Martin did not have criminal intentions, was trumped by the video’s superior ability to remember the (non)event. The visual reference packed video takes on more weight in narrating the events than the cashier’s testimony because it was presented as the memory which Gaugh himself can not summon. Gaugh’s testimony, which lacked detail and conviction, thus, gave the defense a space in which to imply events that *could have* occurred in this space. Events that the defense suggests Gaugh either did not remember or did not himself witness at the time. In this way, Gaugh’s nonremembrance was used to inject some uncertainty over what occurred. While the video should have attested to the fact that Martin’s visit to the 7-Eleven did not include any unusual, eventful or problematic occurrences, the ontological aspects of the surveillance footage, its visual associations and its handling in court allowed for ample space in which an alternative narrative was suggested. The narrative surrounding Martin’s behavior at the 7-Eleven was, as Vismann fears, dominated by the video footage to such an extent that Gaugh’s testimony faded into irrelevance and the image and its many references took over.

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<sup>62</sup> *ibid*,175.

## Objective Aesthetics

Ontological aspects of surveillance footage further aided the authority of the video's version of events. The 24-hour time stamp in the bottom left corner, as well as the top left frame label adds a certain authenticity to the image. This little white text that is barely legible contributes in important ways to the way the video is viewed. The ticking time stamp adds a "real time" quality, giving the viewer an acute sense of time passing and a sense that they are experiencing the video uncut from the initial temporal way in which it was captured. While the age of digital images brought about increased suspicion of photography's referential quality, due to the known sophistication of digital editing and altering capabilities, this technological doubt has not carried over to digital surveillance footage. As Thomas Levin remarks:

When one sees what one takes to be a surveillance image, one does not usually ask if it is 'real' (this is simply assumed) but instead attempts to establish whether 'the real' that is being captured by the camera is being recorded or is simply a closed-circuit "real time" feed. This is precisely what gives these sorts of images their semiotic appeal.<sup>63</sup>

Levin argues that with surveillance footage, the pre-digital authority of moving images has been reformulated to derive from the idea of the "real-time" surveillant video. The video thus gains "temporal indexicality"<sup>64</sup> as it is perceived as un-manipulated and uninterrupted from its original time of capture. This authority is maintained by the timestamp on the outer edge of the frame. The idea that the viewer can see continuous time tick-by re-enforces the indexical quality of the image.

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<sup>63</sup> Thomas Levin, "Rhetoric of the Temporal Index: Surveillant Narration and the Cinema of 'Real Time,'" 2002, in *CTRL SPACE: Rhetorics of Surveillance from Bentham to Big Brother*, ed. Thomas Y. Levin, Ursula Frohne, and Peter Weibel (Cambridge, MA: MIT Press, 2002), 585.

<sup>64</sup> Levin, "Rhetoric of the Temporal," in *CTRL SPACE: Rhetorics of Surveillance*, 592.

The blurry and pixelated quality is also part of a visual vocabulary of surveillance footage. The visual cue reminds the viewer that they are looking at “raw” unedited footage. Levin describes this quality as a “formal signature”<sup>65</sup> of surveillant images. The pixilation, blurriness and data labeling serve as reminders that image is one which is produced through digital processes which are presumed to have very little human interference. The computational look of the video lends the image a sense that it was acquired through un-interfered, purely technical means. Further, the blurriness of the image makes it appear raw and untouched. In the trial, the jury was also shown all of the various camera angles so they could see that the videos are not partial to one view, but rather take in multiple views of the scene. This further contributes the notion of “surveillant perspectivism,”<sup>66</sup> giving the viewer the sense that there exist multiple accounts of this one event and that the footage, thus, has a multi-perspective understanding of the situation. All of these elements of the footage add to an *aesthetic of objectivity*, which ultimately heighten the visual authority of surveillance video.

While this aesthetic appears to emerge naturally from the low quality digital way in which the footage was captured, in reality, often this look is actually produced with the intended effect of making the video appear more “real” and thus more credible. As Kelly Gates points out, often a considerable amount of post-production work is required to transform surveillance footage into video evidence because in its raw, unedited state it is often unusable and indecipherable.<sup>67</sup> This production is often intended to add or enhance qualities that make the image appear more “objective,” such as timestamps,

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<sup>65</sup> Ibid., 582

<sup>66</sup> Levin, "Rhetoric of the Temporal," in *CTRL SPACE: Rhetorics of Surveillance*, 593.

<sup>67</sup> Kelly Gates, "The Cultural Labor of Surveillance: Video Forensics, Computational Objectivity, and The Production of Visual Evidence," *Social Semiotics* 23, no. 2 (2013): 249.

perimeter labeling and blurring or enhancing parts of the image. While it is unknown whether this particular video was edited in post-production, it is clear that it achieves a certain degree of aesthetic objectivity by way of these formal characteristics which contribute to its indexical quality as a piece of evidence.

This aesthetic of objectivity is layered on top of a visual media that already has a powerful ability to function indexically. While law and images have a long and complicated history of interaction<sup>68</sup>, the contemporary understanding of photo and video in the courtroom is that image evidence possesses an intrinsic legitimacy as a truth-telling device due to ontological aspects of the medium. The digital or chemical processes through which the image is captured are understood as ones that are free of human and therefore subjective interventions. While the image might sometimes be framed and captured by a person, the actual rendering of the visual information is a purely technical process. Further, images derive evidential authority from their contemporaneity with the event in question. Part of what makes images so important is the information and legitimacy they possess through “having-been-there”<sup>69</sup> and bearing witness to the event. Once images have been deemed authentic, unmanipulated, or unchanged from what was originally captured by the camera, there is a legal tendency to accept that the image carries some objective weight. As Piyal Haldar describes, the image is credited with a “rational capacity to describe the world; it is taken to be a medium of direct transparency to the object of its description.”<sup>70</sup>

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<sup>68</sup> Addressed in works such as Louis-George Schwartz, *Mechanical Witness: A History of Motion Picture Evidence in U.S. Courts*, Jennifer Mnookin, “The Law of Truth: Photographic Evidence and the Power Analogy,” Piyal Haldar, “Law and Evidentiary Image” and Cornelia Vismann “Law and the Image- A Troubled Relationship”

<sup>69</sup> Roland Barthes, *Camera Lucida: Reflections on Photography* (New York, NY: Hill and Wang, 1980), 12.

<sup>70</sup> Piyal Haldar, "Law and the Evidential Image," *Law, Culture and the Humanities* 4 (2008): 144.



The legal faith in video comes from an embrace of a heliocentric understanding of truth that is organized around sight. Within this understanding “seeing is believing” because there is a seemingly direct link between what we see and our consciousness and understanding of the world around us. In this way, as film theorist Louis-George Schwartz points out, a piece of motion picture evidence becomes like a form of vision with the capacity to transform those who see it into witnesses of what it shows.<sup>71</sup> The problems raised by this easily indexical quality came up in early American case law when determining the admissible uses of film in court. As Schwartz argues, “Once motion pictures are constituted as an index of the real, they can also function to suggest a fact rather than showing that fact directly.”<sup>72</sup> Their perceived reliability and ability to depict a specific time and place has been seen to be capable of making or substantiating compelling arguments of events that the images do not explicitly depict. Cases have argued that videos which allude to events, or which show only parts of events in question, take a particularly potent evidentiary quality capable of convincing audiences of things they do not actually depict.<sup>73</sup> As Schwartz summarizes, “The long standing habit of associating the photographic image with the truth allows such images to be used convincingly in arguments for what it does not show.”<sup>74</sup>

This potential becomes particularly problematic in the case of surveillance footage. The 7-Eleven footage used in the trial gained evidentiary authority from both its existence as video and its temporal and aesthetic indexical qualities. Thus, while little occurs in the video, comments which suggest actions that *might have* or *could have*

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<sup>71</sup> Schwartz, *Mechanical Witness: A History*, 49.

<sup>72</sup> *Ibid.*, 84.

<sup>73</sup> See *United States of America v. Guerrero*.

<sup>74</sup> Schwartz, *Mechanical Witness: A History*, 85

occurred in the footage (Martin's rummaging through his pockets, Martin picking something off the floor) are suggestions made through a piece of evidence which has been deemed "reliable." In this way, the suggestions made both by the image and by the questioning of the image can be understood as *reliable suggestions* insofar as they were made by a seemingly trustworthy primary witness, that is, surveillance video.

### **Frame**

A sense of objectivity is also achieved by the surveillance footage's supposed *acheiropoietic*<sup>75</sup> quality. The objective quality of images taken by human subjects is thrown into doubt by the idea that the author's decisions might have biased the frame and composition of the image. All photographers or videographers select and emphasize certain things and exclude others. However, in the case of surveillance footage, there is no cameraman in the traditional sense. Rather, the "author" is the technical gaze of a security apparatus. The frame does not shift or change, but instead remains constant. All who enter the frame are treated with the same unaffected gaze. In this sense, the frame of the video is often understood to be un-manipulated by any kind of authorial decisions. The footage is perceived to have been captured by an uninterested, automated third party.

The common frame of surveillance footage is, however, installed and maintained with some authorial role. While there is no traditional author, surveillance cameras are always placed, maintained and monitored for and by some entity. Security cameras are most often installed and used for the explicit purpose of visually monitoring a given area. While we typically associate these cameras as existing to help enforce law, they can be understood more broadly to be tools that are used with the intention of encouraging a

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<sup>75</sup> Term borrowed from Patristic theology, meaning 'made without hands'. Haldar uses it to describe objects supposedly free any moral intervention by product of pure scientific provenance.

particular kind of behavioral conduct in a given space. The rise of surveillance as a technological tool to encourage or discourage certain kinds of behavior came about by way of changes in state organization in the second half of the nineteenth century. Western states increasingly began expressing and asserting power through regulatory and supervisory mechanisms as opposed to a corporal and coercive techniques.<sup>76</sup> Michel Foucault termed this a “microphysics of power,” that governed through “subtle, calculated, technological subjection.”<sup>77</sup> For Foucault, within this modern form of governance, surveillance played a key role. The idea behind surveillance is not only that images can potentially capture criminal or unwanted behavior, but that they can actually deter these acts because people internalize the notion that they are being watched and consequently self-monitor their actions accordingly. While surveillance is often understood as a tool authored and utilized by the state, in practice, it can have many forms of authorship. Surveillance cameras installed in private properties by private companies are not necessarily state authored, but exist for a purpose of enforcing some kind of desired behavioral conduct. The unconventional author of any surveillance footage is, thus, a often faceless party who has some interest in monitoring behavior in a particular space. While these authors often lack individual agency that actively adjusts the frame or focus to change what does and does not enter their view, their constant gaze and unchanging frame is one which has been authored by their intent to monitor and enforce behavior.

Judith Butler’s 2007 essay “Torture and the Ethics of Photography” theorizes about the role of the ‘frame’ in determining a particular field of visibility and

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<sup>76</sup> John Tagg, *The Disciplinary Frame: Photographic Truths and the Capture of Meaning* (Minneapolis: University of Minnesota Press, 2009), 60-75.

<sup>77</sup> Tagg, *The Disciplinary Frame: Photographic*, 71.

recognizability. Frame for Butler is a metaphysical structure that delineates what can be seen and not seen in the “field of perceptible reality.”<sup>78</sup> This often-forcible frame is established, mandated and maintained by broader social and political norms. For Butler, the frame allows us to build a partial interpretation of an image. In the case of the Abu Ghraib photographs which Butler discusses, the frame is established and mandated by the state and thus expounds a particular interpretation. In this sense, Butler complicates the idea that images are open texts that alone lack narrative coherence and explanatory power. For Butler, an image’s existence in an established frame of seeing can establish it as in compliance with a particular social and political mode. Butler asserts, “we do not have to have a caption or a narrative at work to understand that a political background is being explicitly formulated and renewed through the frame.”<sup>79</sup> Butler, thus, offers an analysis in which photographs that comply with a particular frame have an inherent and relatively unchanging interpretation associated with them. In Butler’s argument, the state is the entity that forcibly frames images to determine what constitutes a recognizable representation of war. This argument, however, can also be extended to apply to images with other non-state enforced frames. The frame is a particular circumstance of creation from which the image can never be entirely removed.

The behavior enforcing interpretation built into surveillance footage is inseparable from ontological aspects of the technology itself. Security cameras are installed explicitly for the purpose of deterring and capturing crime. While in this case the cameras are mechanisms installed and used by a private company, they are at the same time tools of the state used to deter crime and enforce law. The cameras and the footage they produce

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<sup>78</sup> Judith Butler, "Torture and the Ethics of Photography," *Environment and Planning D: Society and Space* 25 (April 2007): 951.

<sup>79</sup> Butler, "Torture and the Ethics," 952.

exist for and because of criminal behavior. While the footage is, like any image evidence, up for interpretation, examination and scrutiny, it can perhaps not easily escape the connotations of frame through which it is obtained. In the case of the surveillance footage presented in the trial, this frame has problematic implications. The camera's frame is constructed or authored by its intent to capture a criminal act in the event that it is to occur. Thus, the review of such footage is typically done to look for or prove criminal behavior. This authorial origin of surveillance footage can not be wholly avoided when it is presented in a court. The frame, one which is always *looking for crime*, instructs the viewer to do the same.

### **“Security Genre”**

The law enforcement frame of authorship that is stickily attached to surveillance footage is further adhered to the image by way of visual associations. Surveillance footage constitutes a kind of image that we are accustomed to seeing in conjunction with criminal behavior. As Katherine Biber writes, “When we look at the surveillance images, we already know what we are looking for. We have already seen it, repeatedly, in newspapers, on television, in our victim's-eye view of the world. It is familiar to us because it is genre and we are its audience.”<sup>80</sup> In this way, surveillance footage becomes part of what Biber calls the “security genre.” It is something that is typically viewed to exhibit or attempt to prove criminal behavior has occurred. Rarely is this kind of footage used to exemplify innocence. Because of the way in which we are accustomed to viewing this frame, whether it be in court, on the news or in entertainment genres, there is a common visual association between surveillance videos and alleged criminal acts.

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<sup>80</sup> Katherine Biber, *Captive Images: Race, Crime, Photography* (New York, NY: Routledge, 2007), 20.

This idea of the security genre is related to what is often referred to as the “rogue’s gallery effect,” which refers to situations in which eyewitness identification is believed to be made biased by the influence of seeing people depicted in criminally suggestive photographs prior to their identification of suspected perpetrators.<sup>81</sup> Examples of images typically considered “criminally suggestive” include mug shots, photographs in prison uniforms or environments, and photographs on “Wanted” boards in law enforcement environments. Courts have some procedural safeguards to try to prevent the rogue’s gallery effect from occurring. Under the Federal Rules of Evidence, evidence can be deemed inadmissible if it is considered to be more prejudicial than it is probative.<sup>82</sup> What is and is not considered prejudicial, however, is highly contested and difficult to navigate legally and can vary significantly depending on judicial discretion.

Though surveillance footage arguably does not refer to crime as directly and explicitly as, say, a mug shot or a photograph on a “Wanted” board, its criminally suggestive character is deeply entrenched in the cultural coding through which we are conditioned to view these kinds of images. As Shawn Michelle Smith, Susan Sontag, Butler and others have discussed, the way we view photographs is affected significantly by our visual conditioning. Smith notes, “What is seen and not seen in photographs depends of the cultural filters through which they are viewed, and on the repertoire of images that have shaped looking. Viewers always see photographs through other

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<sup>81</sup> Biber, *Captive Images: Race, Crime*, 19-25.

<sup>82</sup> The rule reads, “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” As found in Schwartz, *Mechanical Witness: A History*, 81.

images.”<sup>83</sup> In this way, the frequent appearance of surveillance footage and photographs in the context of criminal investigations or trials has created and shaped the cultural filters through which we view these images. Through the frame and aesthetic of surveillance video we commonly view bank robberies, convenience store hold-ups, department store shoplifting, train station muggings and other criminal acts. The familiar sight of those acts in this unique and otherwise seldom-viewed frame impacts the way these videos are viewed and what the things that occur within them appear to depict.

This learned way of seeing surveillance video can potentially manipulate the otherwise mundane and unsuspecting acts which occur within this frame. The visual cues of surveillant images, such as a high-angle camera perspective, blurry or pixelated quality, and data labeling, are part of a surveillant vocabulary that associates them to other images that operate using this same visual language. These visual hooks to other images become problematic when what is most frequently depicted in these other images is criminal behavior. Through these similarities in visual vocabulary, surveillant images always to some degree reference suspicion and criminality. Even in the context of the trial, where the video was introduced into evidence to show the absence of a criminal event, the visual vocabulary unavoidably suggests one. This mode of viewing images that belong to the security genre can affect the audience's ability to accurately discern the things which occur within the video, shifting that which appears to align with the type of content to which the viewer is habituated.

### **Deserted Frame**

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<sup>83</sup> Shawn Michelle Smith, "The Evidence of Lynching Photographs," in *Lynching Photographs*, by Shawn Michelle Smith and Dora Apel (Berkeley, CA: University of California Press, 2007), 15.

Mark O'Mara began his cross-examination by showing a different camera angle of Martin and Gaugh's interaction. He pulled up a frame that looked from the middle of the store at the counter and the store's front wall. It was apparent that the video began to play because the hum of white noise became audible and the timestamp in the left corner began to add time. The frame remains empty for fifteen seconds until the hooded figure enters from the top left corner and then disappears into the bottom left corner. The frame is then personless for another forty seconds until the cashier approaches the register from the bottom right and positions himself at the register. The hooded figure then walks to the register, puts down his items and reaches into his pocket and exchanges money with the cashier. Both the cashier and Martin leave the area around the counter and another ten seconds of empty frame pass. Unlike the other video which Guy had played, where little also occurs but Martin and Gaugh are at least present in the frame, in this video literally nothing happens for much of its duration. Viewers are left watching an empty surveillance frame with no visible human behavior for over a minute.

This period of time which the jury spent watching the surveillance footage of a empty convenience store counter was a particularly salient visual moment. While little occurs in any of the surveillance footage shown in the trial, much of this particular video is literally empty and action-less. The personless image is sustained on the screen for what feels like an extended period of time. It is clear to the viewer that it is running footage and not a frozen image. In this way, the viewer is hyper-aware that time is passing. However, the image remains unchanged. The counter and all of the items on it are still and the image is without any visible human interference. Due to Martin's brief flashing appearance at the beginning of the video, the viewer knows that he has entered



the store. Thus, the empty frame asks one to imagine what is taking place outside of the frame. What is Martin doing while we watch this empty unattended cash register? The emptiness invokes a feeling of anticipation. The viewer is left asking if something is either about to occur or has just occurred within the frame, or if something of interest is occurring outside of the limits of this frame.

Walter Benjamin remarks that personless images have an inherent political and evidentiary nature. In theorizing about Eugène Atget's late nineteenth-century photographs of empty Paris streets, Benjamin articulates:

It has justly been said that he photographed them like scenes of crimes. A crime scene, too, is deserted; it is photographed for the purpose of establishing evidence. With Atget, photographic records begin to be evidence in the historical trial. This constitutes their hidden political significance.<sup>84</sup>

For Benjamin, human presence in photographs is what connects them to their vestigial “cult value.” Cult value (which is opposed to exhibition value) relates to Benjamin's idea of the aura. The “auratic object” produced by media such as painting or sculpture, necessitate that the art observer come to the art and exist in its immediate presence, in its “aura.” For Benjamin, media such as photography and film liberate art from this auratic or cult value. This liberation allows the works to take on meaning that is not governed by one singular object and that does not necessarily derive its authority from tradition or history. Exhibition value especially reveals itself as the human being withdraws from the photograph. Benjamin theorizes that personless photographs necessitate a certain kind of reading. Without a human subject, the viewer is left to examine and look for the image's “hidden political significance.” Personless photos, thus, leave the viewer entirely

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<sup>84</sup> Walter Benjamin et al., *The Work of Art in the Age of Its Technological Reproducibility, and Other Writings on Media* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2008), 27.

unattached to an auratic idea from which to derive meaning. These kinds of images, Benjamin argues, “demand a specific kind of reception. Free-floating contemplation is no longer appropriate to them. They unsettle the viewer; he feels challenged to find a particular way to approach them.”<sup>85</sup>

The same can be said of way the viewer must approach the personless footage of the deserted 7-Eleven counter. The footage is unsettling because the viewer feels as though they are waiting for a person to enter the frame and lend the image some more apparent meaning. The viewer is asked to imagine what might have already or could potentially occur in this space. Just as Benjamin said of Atget’s Paris photos, the emptiness gives the sense that you are looking at the scene of a crime. The playing of this extra minute of empty footage was perhaps intended to help assimilate the viewer to frame and camera angle, or maybe was just there out of technical convenience. The position in which it places the viewer and the way it alludes to a crime scene was, though perhaps unintentional, still powerfully referential.

This time spent watching the deserted frame evokes a sense of uncertainty. The viewer knows there is an actor in and around the space but does not know what he is doing. The knowledge of this actor can be understood abstractly, in the way the Benjamin theorizes, in that personless photo always in some way references human presence through its absence. Or it can be understood concretely, in that the viewer has seen Martin enter the store and is aware that he exists somewhere in that space. In the trial, this sense of visual uncertainty was then coupled with a verbal uncertainty that was aided by both the defense and the prosecution’s questions to the cashier. Guy asked if there was “*anything* about the customer that caused you *any* concern?” O’Mara asked if there was

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<sup>85</sup> Benjamin, *The Work of Art in the Age of Its Technological*, 27.

“any reason” for his Gaugh’s particular style of movement, or if he had “*any* concern over the time it took him to get the right change.” His testimony ended with the question “Do you remember *any* of this?” All of these “any” questions invite the possibility that there were a number of possible answers, events or feelings that Gaugh might have had to offer concerning the event. “Any” in these questions evokes a sense of total uncertainty, as it is entirely vague and could elicit a number of possible responses. The empty frame seems to visually ask a similar “any” question. Is anyone watching Martin? Did any act or gesture occur outside the frame? Are we missing anything?

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The use of the surveillance footage as evidence allowed a series of criminal references and suggestions regarding Martin’s behavior or intentions the night of his death to enter the trial. Much of the suggestive material of these images was beyond the control of either adversarial side. As evidence, the footage was inseparable from the ontological aspects of surveillant images. The video’s aesthetic qualities and ostensibly reliable relationship to “real” unedited time heightened the video’s authority as a piece of evidence capable of accurately remembering and depicting events. Further, the video’s frame, established by a surveillant author seeking to deter or capture criminal acts, powerfully reminded viewers why it was they were looking at this footage. This frame further acted in cooperation with the video’s aesthetic similarity to other surveillance tapes in which criminal acts occur, thus, making reference to these events and to the typical mode in which viewers look at these videos. Thus, unavoidably powerful and suggestive elements of the footage were granted entrance by way of the supposedly reliable medium in which they are presented.

Questions asked by both the prosecution and the defense furthered the suggestive reading of the video. The prosecution entered the video and questioned Gaugh only for the purpose of proving Martin was innocent of any crime or malice in the 7-Eleven that evening. The fact that the prosecution ventured to point out the absence of an event and felt it necessary to clarify that nothing occurred was telling and suggestive in and of itself, as there was no formal legal or argumentative accusation that prompted the display. Guy asked Gaugh, “Was there anything about the customer that caused you any concern?” This was a comment intended to paint Martin as nonthreatening but which also unnecessarily injected the idea of a potentially “concerned” cashier in the viewer’s mind. Guy also asked if Gaugh knew what Martin picked up off the ground, a comment that only drew attention and uncertainty as to what the hooded figure was up to.

Zimmerman’s defense did not miss the opportunity to employ the ontological elements of the evidence or emphasize the unintentional hints left by the prosecution to help construct an alternative narrative of events. O’Mara asked Gaugh, “when Mr. Martin came up to the counter, did you have any concern over the time it took him to get the right change, get money out of his pocket?” The question, which Gaugh had seemingly already answered in his direct questioning, functioned only to bring attention to this moment in the footage and to subtly instruct viewers to imagine what Martin *could have* been looking for in his pockets or *could have* potentially pulled out of them. Gaugh’s cross-examination ended with O’Mara’s allusive question and demonstration regarding the witness’ height. This portion of his cross-examination, which went without explanation, served only to make reference to Martin’s height, and to direct the jury to imagine a physical altercation between the clerk and Martin that never occurred. The

defense effectively seized the opportunity to use the reliable and powerfully referential surveillance video to further imply an alternative narrative of events.

This moment, which effectively began the trial, set up a particular understanding of the events leading up to Martin's death. The narrative of Zimmerman's case relied on the idea that Martin appeared to have some criminal intent that night, and that thus, Zimmerman's instinct to pursue him in order to keep the neighborhood safe from crime was a justified one. While the video was meant to in some way dismantle this narrative, it effectively did the opposite. Through its entrance and performance in the court forum, the video was transformed from exculpatory to inculpatory evidence. What was read by many as proof of Martin's innocence, was effectively presented and reconstructed in court to be proof that he was guilty of *something* that night, and that thus, his killing was justified. At the heart of this inversion is a social and political tension concerning what is perceived by some as representing innocence and precarity and what others understand as being associated with criminality and guilt. Through this instance of visual inversion, this tension can be noticed in a small but significant inaugural moment of the trial.

## Chapter 2.

### Lost in Trauma



Rachel Jeantel and defense attorney Don West, *State v. Zimmerman*, June 28<sup>th</sup>, 2013, image courtesy of *Salon*.



### Lost in Trauma

Rachel Jeantel, the prosecution's star witness, was a nineteen-year-old girl who had known Trayvon Martin since elementary school. On the night Martin was killed, Jeantel and Martin spoke on the phone while Martin was on his way back from 7-Eleven, right up until the beginning moments of Martin and Zimmerman's confrontation. Jeantel's testimony was a key component of the prosecution's case because she was the only person who heard Martin's account of his initial interactions with Zimmerman in the housing complex that evening. Of the prosecution's thirty-eight witnesses, Jeantel was the only person truly testifying on behalf of Martin's perspective of the events. While neighbors who caught a glimpse or heard the confrontation offered testimony concerning the nature of the altercation, Jeantel was the only witness who spoke about the interaction with Zimmerman leading up to the physical dispute from Martin's perspective based on what he told her was unfolding over the phone. She was, thus, the communicator of Martin's final words. Information regarding who initiated the physical altercation could have either substantiated or potentially dismantled Zimmerman's self defense case; Jeantel's testimony was, therefore, crucial. Impeaching Jeantel as a witness was, in effect, a way of silencing Martin's account of events. Jeantel's testimony spanned two days and mainstream media and legal analysis concluded that she was a problematic witness for the prosecution's case.<sup>86</sup>

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<sup>86</sup> Patrik Jonsson, "Trayvon Martin case: How Rachel Jeantel Went From Star Witness to 'Train Wreck,'" *The Christian Science Monitor*, June 29, 2013, accessed April 28, 2015, <http://www.csmonitor.com/USA/Justice/2013/0629/Trayvon-Martin-case-How-Rachel-Jeantel-went-from-star-witness-to-train-wreck-video>.



The basic components of Jeantel's account of the events are as follows. She and Martin had been texting and speaking on the phone on and off all day on February 26th. That night they spoke on the phone as Martin walked from the 7-Eleven to the house where he was staying. Martin was waiting for the rain to ease and spoke with Jeantel from under the shelter of the housing community's clubhouse. According to Jeantel, as he continued home, Martin told her that a "creepy-ass cracker" was watching him from his car. He told Jeantel moments later that the man was now following him, and Jeantel suggested he run the rest of the way home. Based off of Martin's breathing and the background noise on the phone, it sounded to Jeantel that Martin had begun to run. They lost connection for a moment, but when Martin called back he told Jeantel he was still being followed but that he was almost back at the house where he was staying. Moments later the verbal confrontation between Martin and Zimmerman began. Jeantel remembered hearing Martin ask Zimmerman "why are you following me?" and that Zimmerman responded, "What are you doing around here?" She then heard a thump, presumably as the phone fell to the ground, and she testified that she heard Martin scream, "get off, get off," before the phone disconnected. Much of Jeantel's cross-examination focused on the veracity of this account, as the defense referenced her previous statements, her early interview with Martin's family lawyer Benjamin Crump, and the letter she wrote Sybrina Fulton (Martin's mother) in order to point to the inconsistencies in her statements regarding what she heard over the phone. The majority of her almost seven hours of testimony was cross-examination, a large part of which consisted of questions not directly related to her phone calls with Martin but rather pertaining to questions of her character, such as why she did not attend Martin's wake,

the process by which she became involved legally, the nature of her relationship with Martin, and the interactions between her and Sybrina Fulton.<sup>87</sup>

Jeantel was an overweight nineteen-year-old black woman from Miami. She was raised in a Haitian Creole speaking household and spoke in a particular African American English Vernacular. She wore silver hoop earrings and a simple black collared shirt on her first day of her testimony, her hair neatly pulled back. From Jeantel's very first statements the literal inability to hear her responses was a problem for the courtroom. There were two microphones in front of Jeantel and there was confusion about which one she needed to speak into in order for her voice to be amplified for the entire room. Almost every response she gave that did not have a simple "yes" or "no" answer she was asked to repeat, sometimes multiple times. She spoke very softly, at times mumbling, and with a thick accent and specific vocabulary. Early in her initial questioning prosecuting attorney Bernie de la Rionda clarified "I know you grew up in a Haitian family, so make sure that everybody can hear you, try to speak as clear... okay?" Defense attorney Don West even complained to the judge that he was "having trouble seeing the witness" to which the judge pointed out this was the first witness with whom he was having this problem.<sup>88</sup>

Jeantel's testimony was also characterized by its performative dynamics. The testimony became the most covered and talked about moment in the trial, in part because of its eventful unfolding. Jeantel was at times both visibly and verbally defiant and

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<sup>87</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 12: Trayvon Martin's Friend's Testimony Part 1," <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-1/v5K6X/>.

<sup>88</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 12: Trayvon Martin's Friend's Testimony Part 1," <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-1/v5K6X/>.

uncooperative, particularly in her interactions with West. She rolled her eyes, spoke out of turn and shifted around in her seat when she was particularly irritated. She was confused by the proceedings and often asked for things to be repeated or asked bluntly, “What are you talking about?”<sup>89</sup> West, the interrogator for the majority of her testimony, was at times condescending towards Jeantel. At the end of her first day on the stand, clearly frustrated, she threatened not to come back. When she did return the next day she was slightly more cooperative and had a markedly different tone. She was complacent, answering mostly with a droned out “Yes, Sir” and “No, Sir,” and she maintained a distant blank stare. Her tone was less defensive and she sounded and appeared exhausted and dejected.<sup>90</sup>

While most mainstream news legal analysts concluded that Jeantel was not a helpful witness for the prosecution’s case, perhaps even damaging, many failed to mention the areas in which she was a strong witness. She had a near perfect memory of dates and times, occasionally correcting the defense on the specifics of the timeline at hand. She had quite vivid memories of the interviews, statements, conversations and media events in which she participated and was able to remember exactly when they took place and who was present. At key moments, when the defense was attempting to point out an inconsistency or contradiction in her statements, she did her best to avoid misspeaking by slowing down and asking questions when she was confused. When West summarized her responses before questioning further, she was quick to correct his

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<sup>89</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 12: Trayvon Martin’s Friend’s Testimony Part 3,” <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-3/v5K85/>.

<sup>90</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 13: Trayvon Martin’s Friend’s Friends Testimony Part 1,” <http://www.wftv.com/videos/news/day-13-trayvons-friends-testimony-part-1/v5NXX/>.

summations when she felt they did not reflect her statements. And perhaps most importantly, she came off as brutally honest, admitting to moments in which she lied and occasionally offering uncomfortable and unfavorable personal information. While Jeantel was by no means a perfect witness, parts of her testimony offered integral information to the prosecution's case.

Jeantel's testimony was characterized throughout by a communication failure that occurred on the sending, transmitting and receiving end of testimony. Through her statements, it became clear that Jeantel suffered from both a personal and a collective trauma. The personal trauma related to Martin's death and her proximity to it. This trauma at times inhibited her ability to effectively communicate the events to which she was testifying. This personal trauma was also at times used against Jeantel, as a means to point out the ways in which she was not a trustworthy witness. Further, the collective trauma of which Jeantel was victim, that of being a young, black, woman growing up in the South, made it difficult for her legal audience to understand key elements of her testimony. These trauma related difficulties were further confounded by structural components inherent to legal testimony, which complicated Jeantel's ability to communicate. Cumulatively, these communication failures led to an inability to hear Jeantel's testimony, and therefore, to hear the only remaining parts of Martin's perspective from the evening of his death. The shadow cast by Jeantel's individual and collective trauma, one which the trial could neither prevent nor account for, silenced and inhibited key parts of the witness' testimony.

***“Can I tell you what happened that day?”***

Courtroom atmospheres are always governed by difficult to navigate procedures and guidelines that necessitate explanation and guidance for those who are unfamiliar with the trial process. These processes, however, are not just disorienting or difficult to understand and follow, they are also difficult to reconcile with the needs of witnesses who are being asked to speak about traumatizing events and experiences. Judith Herman summarizes this conflict:

The mental health needs of crime victims are often diametrically opposed to the requirements of legal proceedings. Victims need social acknowledgement and support; the court requires them to endure a public challenge to their credibility. Victims need to establish a sense of power and control over their lives; the court requires them to submit to a complex set of rules and procedures which they may not understand, and over which they have no control.<sup>91</sup>

We see these opposing needs crash in Jeantel’s testimony and contribute to her failure to be understood. Throughout Jeantel’s testimony, elements built into the structure of legal testimony confused and inhibited her ability to effectively testify and be heard in the legal forum.

An issue that came up immediately in Jeantel’s testimony was the narrative form of her answers, that is, that she recounted the events in a story-like manner. As Jeantel was recounting her conversation with Martin that evening during direct questioning, West objected to the “narrative form of the testimony.” De La Rionda agreed to rephrase, and

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<sup>91</sup> Judith Lewis Herman, “The Mental Health of Crime Victims: Impact of Legal Intervention, Paper for a Symposium on the Mental Health Needs of Crime Victims,” Office for Victims of Crime and National Institute of Justice, U.S. Department of Justice, June 2000 found in, Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (Philadelphia, PA: University of Pennsylvania, 2005), 82.

reasked her a question related to what Martin had told Jeantel about the man following him. De La Rionda asked, “What was he complaining about?” and Jeantel responded “That a man just kept watching him.” West objected again and restated his problem with the narrative form of Jeantel’s answers, adding that he wanted to hear only “What was said and what the response was.”<sup>92</sup>

As the testimony went on and the basic communication of Jeantel’s words and phrases proved difficult to manage, objections to the narrative form were less frequent. It appeared that communication was so difficult that both sides seemed to concede to the occasional narrative form of Jeantel’s answers. There were, however, still moments of confusion for Jeantel regarding the strict question and answer format. During cross-examination, West asked Jeantel about her various conversations with attorneys and family members following the event of Martin’s death, speaking in reference to the records of specific pre-trial meetings in which he was aware Jeantel had participated. He confused and disoriented Jeantel by asking her to recount the timeline following the evening of Martin’s death in reference to the specific times provided by cell phone records and to a calendar of events, neither of which she had access. She told him, “you got me confused” and “you lost me” and finally she asked directly “I don’t understand what you talking about, what part you at?” West struggled to address this confusion, as he was unable to break from the technical manner through which he was attempting to communicate the timeline of events. During this exchange, it was clear that Jeantel did remember the timeline West was trying to elicit, at times she even corrected his dates.

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<sup>92</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 12: Trayvon Martin’s Friend’s Testimony Part 1,” <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-1/v5K6X/>.

Unable, however, to recount the story in the narrative form with which she was most comfortable, she struggled to conform her memory to West's highly legalistic form of questioning. Finally, Jeantel, clearly frustrated, said, "You get me confused, can I *tell you* what happened that day? That day. That March 19th, that day?"<sup>93</sup>

Jeantel struggled to break from and make sense of the events outside of a narrative style of "telling." This strict question and answer format of speech is unique to state and legal proceedings, and thus, is a format in which most people have little experience speaking. For Jeantel, a narrative way of communicating events was the most familiar. However, this is not a format that the courtroom is built to accommodate. The court's narrative formulation occurs in a specific and often highly technical way. Criminal trials are not a place where individuals are welcomed to tell their stories. Rather, witnesses are asked to respond to a specific and guided set of question. This format at times disoriented and challenged Jeantel's ability to clearly communicate, let alone defend, the events to which she was testifying.

### ***"I did not write that"***

Another issue that contributed to Jeantel's inability to effectively communicate was the court's reliance on and constant production of written statements. Early in Jeantel's cross-examination, West asked her to revisit her deposition with the defense from months earlier. In this deposition, he reviewed her early interview with Crump. West was trying to point out an inconsistency in her various accounts of the dialogue she

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<sup>93</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 12: Trayvon Martin's Friend's Testimony Part 3," <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-3/v5K85/>.

reported to hear between Martin and Zimmerman over the phone. This was, however, a complex procedure, as he was referring to an interview in which he referred to another interview. Jeantel was visibly disoriented, and asked to see the deposition. After asking her to look over it, West asked “Do you acknowledge that those were your answers that day to the questions that we just read?” to which she responded “might have been” (*she was asked to repeat*) “might have been, cause we’re having the same issue with my voice.” The court reporter read back “‘might have been’, can’t hear what you said after that, can you speak into the microphone please.” “Might have been,” she obliged.<sup>94</sup>

Here, it was clear that Jeantel was suspicious of her own words in legal translation. Late in her testimony Jeantel admitted to literacy problems, and after the trial it was revealed that she was functionally illiterate.<sup>95</sup> This helped explain many moments in the trial where she was handed and asked to read and review pieces of her own deposition. Though she looked closely at the documents she was unable to read aloud or directly reference any of their contents. Thus, she was being asked to rely on West’s account of what her words said. Being acutely aware of the difficulty experienced by those translating her statements into legal documents, she distrusted that her words were accurately transcribed. The legal necessity of turning Jeantel’s statements into written legal documents, which could be cited, and re-read was greatly complicated by Jeantel’s illiteracy. Once translated, or wordified into legally legible terminology, Jeantel’s statements became inaccessible to her. She was unable to recognize her own statements once they underwent this legally necessary conversion. Jeantel’s previously spoken

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<sup>94</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 12: Trayvon Martin’s Friend’s Testimony Part 4,” <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-4/v5K9m/>

<sup>95</sup> Jelani Cobb, "Rachel Jeantel on Trial," *The New Yorker*, June 27, 2013, accessed April 28, 2015, <http://www.newyorker.com/news/news-desk/rachel-jeantel-on-trial>.



words, thus, became part of the alienating structure of the courtroom. They were yet another of the many elements which hindered the witness' ability to clearly articulate and defend her testimony. At times, her own words were effectively transferred by this wordification process into tools of the defense, inaccessible to Jeantel and used to point out that she was not a credible witness.

As Vismann and others have pointed out, the central goal of the criminal trial is to attribute words to an act or event. Alleged criminal acts must be put into legal language in order for them to be examined, archived and, ultimately, for appropriate legal action to be determined and executed.<sup>96</sup> For Vismann, the court is a space in which "a past, nonverbal deed is made present in language, for a mute act outside demands its representation in court in order to be communicated, in order to be subject to any kind of transitive activity such as judging."<sup>97</sup> Thus, a trial is tasked with converting nonlinguistic acts into usable units that can help inform a decision. In this way, wordifying is a central and inextricable element of the judicial process.

### ***"I could hear Trayvon"***

Jeantel also encountered difficulty with her previous statements in recorded form. One of the most salient moments in which her recorded voice entered the courtroom was late in the second day of Jeantel's testimony; West questioned her on an early recorded interview she had had with de la Rionda. West again tried to point out an inconsistency in Jeantel's statements in relation to what she was able to hear of Martin and Zimmerman's confrontation. In her early interview with Crump, as well as in the letter to Fulton, Jeantel

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<sup>96</sup> Cornelia Vismann, "Breaks in Language at the Nuremberg Trials," Wissenschaftskolleg Berlin, 2011, 2.

<sup>97</sup> Vismann, "'Rejouer les crimes!.'Theatre vs. Video,'"166.

did not make mention of being able to hear Trayvon distantly yelling, “get off, get off,” after the phone presumably left his ear. The first mention she made of this was in her interview with de la Rionda, West read this deposition aloud:

West read the dialogue aloud, “‘Could you hear who was saying that?’ ‘I couldn’t hear it was Trayvon, I couldn’t know if it was Trayvon’, something like that...” (*he trails off*). De La Rionda objected to this as improper impeachment, and the judge told West, “If you have what she said you need to read that” to which West responded “I have to play it, I can’t, the transcript isn’t accurate enough because of the way it was said.” Jeantel asked to see the transcript, stating that she would perhaps be able to decipher it. West returned to the transcript, reading, “I could’na heard Trayvon, I couldna heard Trayvon.” Jeantel corrected him “I could hear Trayvon, trust me, they messed up. I could hear Trayvon, I had told you, because my voice is low, I had told them I could hear Trayvon. Can you just read it, can you finish reading it, Sir?” West continued, “on this transcript it says...” Jeantel interrupted, “I didn’t write that. I did not write that.”<sup>98</sup>

West then suggested that they instead try and listen to the recording of the interview. The defense played Jeantel’s voice aloud, in an attempt to isolate this moment and hear whether or not she said, “couldn’t” or “could.” The recording was then played a total of four times, each time West returned to Jeantel, asking her to state what she heard herself say. Each time she said frustratedly, “I could hear Trayvon.” At one point she also asserted, “It’s how I speak. You can, not, hear, me, that, well.”<sup>99</sup>

The entire process of entering, deciphering and questioning this transcript and its accompanying recording ended up taking almost an hour. In this instance, Jeantel’s present statements, her previous words in written form and her previous words in recorded form all came together in a confusing performance of unhearability. All at once,

<sup>98</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 13: Trayvon Martin’s Friend’s Friends Testimony Part 5,” <http://www.wftv.com/videos/news/day-13-trayvons-friends-testimony-part-5/v5P8G/>

<sup>99</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 13: Trayvon Martin’s Friend’s Friends Testimony Part 6,” <http://www.wftv.com/videos/news/day-13-trayvons-friends-testimony-part-6/v5P97/>.

the court was unable to understand her present speech, her speech in writing, and her speech in recorded form. With regard to each representation, she was trying to argue that she *could hear* Trayvon, that she could hear and identify her friend's screams moments before his death. This communication failure revealed a number of dynamics about her testimony. Most importantly, Jeantel was unable to defend herself using any of the various re-presentations of her own words. All mediations of Jeantel's words failed her. In all three forms, she felt, and West's responses revealed, that she was not being heard. As she pointed out in her testimony, she did not author the transcript and, for this reason she could not be sure that the person who did had accurately heard her words. Further, in the recording, her voice was difficult to interpret. Jeantel was, however, unable to advocate on her own behalf and to reclaim her own words to clarify what she said. Her attempt to clarify both the recording and the transcript were ignored. This agency had vanished due to the impeachment technique at work. Witnesses cannot clarify their own previous statements when statement inconsistency is precisely the concern. In this way, Jeantel's words did not only fail her, they came to haunt her. Despite her repeated efforts to restate what she heard herself saying in the recording, she could not clarify her past speech in the recording, read the present transcript presented, or be sure that the material read aloud by West was accurate. Jeantel became trapped by her words, any effort to correct or restate went unheard.

At the same time, Jeantel was also being told that she herself could not hear. The entire exercise of reviewing her transcript and recording was intended to invalidate her claim that she could hear Martin. To defend herself, she was trying to make clear that, in a past interview, she was not heard. But again, in trial they were not hearing her words.

Thus, they could not grasp that she had heard Trayvon. Through this orchestrated communication failure, both Jeantel and the screaming voice of Trayvon Martin were rendered silent. Jeantel was not heard and was told she could not hear. As a result, neither Martin nor Jeantel were heard in court.

This portion of Jeantel's testimony was important insofar as it related to a key part of her role as a witness more broadly. Jeantel participated in the trial as a percipient witness (or eyewitness) meaning that she was testifying to what she perceived through her own senses.<sup>100</sup> In court, a percipient witness is there to speak concerning what they themselves can remember about an event. For this category of witness, one's memory of what they experienced is the information the court is interested in eliciting, and the witness is the vehicle through which this information is entered and made legible in the legal forum. In this way, these witness testimonies constitute a kind of nontransferable speech act, as one cannot recite someone else's account of events as this is often considered hearsay and is, thus, inadmissible in court. The authority of percipient witnesses is rooted in the fact that they in some way experienced contemporaneously the event or part of the event in question. Without this experience, they lack the authority to speak directly about the events in question.

In this way, Jeantel was an interesting witness because her testimony contained information concerning what she *heard* of the event. She did not see any part of Martin and Zimmerman's altercation, but rather heard how Martin described Zimmerman to her and the beginning of Martin and Zimmerman's verbal and physical dispute. Further, the dialogue she was asked to recount was not one in which she was an active participant.

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<sup>100</sup> "Legal Information Institute," Cornell University Law School, accessed April 28, 2015, [https://www.law.cornell.edu/wex/percipient\\_witness](https://www.law.cornell.edu/wex/percipient_witness).

Rather, the words she was asked to enter in court were someone else's, but were being entered by way of Jeantel as she was the only person available to deliver them. In this way, when she was not understood, Jeantel was not always at the liberty to rephrase her statement. If the court could not hear or understand what she was saying she heard in regards to the event, then they could not hear her testimony, as the crucial part of her testimony consisted of those words and phrases she remembered hearing. In this way, discrediting Jeantel became a matter of bringing into question whether or not she really heard what she claimed to have heard, a technique which can be seen most clearly in this moment, when she was trying to assert that she *could* hear Martin. Jeantel was there to testify to what she heard, thus, by maintaining that she did not hear, she was in effect not a witness, as the auditory information she possessed was the terms on which she was asked to enter and speak in court about the events as she experienced them.

### **“Last Person”**

Jeantel's testimony was also inhibited in crucial ways by the personal trauma she suffered from her proximity to Martin's death. One of the most emotional moments in Jeantel's testimony was during direct questioning when she was asked how she first heard that Martin had died. Jeantel began to rock back and forth slightly in her chair and looked to the ceiling. She explained that the Monday following Martin's death there was a rumor at his school that he had died the night before but that she did not believe it. In fact, she admitted, that despite growing talk, she did not believe Martin had died until Tuesday afternoon when a friend sent her a news article, at which point she registered the time of his death in relation to their phone call that Sunday night. When asked about how

she became involved in the case, with reference to when she realized Martin had died, Jeantel, becoming increasingly emotional, tried to explain:

Really much I did not know what like, if I was any way in this case, like, my friend did go to the wake, and they did, they said they had got the man, so I said okay. *(the statements were difficult to hear and she is asked to repeat)* She went to the wake, like some of my friends went to the wake, and they had said, they had said *(heavy breathing)*, his body, his body, was down, that his body *(heavy breathing)* he dead... he dead.<sup>101</sup>

Jeantel began to weep with her hand in front of her face and was physically unable to complete the answer. The words that she did manage to get out did not quite cohere into sentences, or give any clear or temporal information regarding how she came to be involved in the case. De La Rionda asked if she was okay to proceed and then changed the subject, leaving the question without a clear answer as to the timeline of Jeantel's initial involvement.

Much has been written about the intersection between trauma and law and the important ways in which it affects witness testimony. Trauma is now known to fundamentally alter the way one experiences an event, and thus, affects one's ability to recollect and testify to the event in critical ways. The very structure of one's cognitive experience changes in instances of trauma, such that the event is not entirely assimilated or experienced fully at the time of its occurrence. Rather traumatic events often enter one's consciousness belatedly through repeated and often unexpected takeovers of one's cognitive processes. In this sense, traumatic symptoms cannot be interpreted simply as a distortion of reality or as a falsehood or displacement of meaning. Trauma is rather the

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<sup>101</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 12: Trayvon Martin's Friend's Testimony Part 4," <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-4/v5K9m/>

displacement or latency of the *event itself*, which is yet to be fully consciously realized by the traumatized person.<sup>102</sup> As Cathy Caruth eloquently puts it, “The traumatized, we might say, carry an impossible history within them, or they become themselves the symptom of a history that they cannot entirely possess.”<sup>103</sup> Thus, the very psychological structure of trauma can fundamentally inhibit one’s ability to articulate one’s experience in words, let alone legally legible language.

These moments of testimony are the first indication that Jeantel was a traumatized witness. Jeantel’s inability to fully articulate how she came to understand that Martin had died is an example of the way in which trauma disabled her ability to find and manage words. Amid her heavy breathing, she managed only short phrases that she had to repeat, “they had said, they had said, his body, his body, was down, that his body, he dead... he dead.” This level of difficulty was undoubtedly related to the intensity of the subject matter at hand. The question that was posed (when had she first heard Martin died) demanded that she recount an experience that was traumatizing and was therefore difficult for her to put into words. It also involved a description of an event to which she might not associate a singular time or place. While she had heard, both through rumors and news, that Martin had died, her testimony revealed that she did not *realize* Martin had died until her friends told her they were at his wake and saw his body. “They had said, his body, his body, was down” was Jeantel’s effort to explain that it was not until this moment that she was able to fully understand Martin was dead.

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<sup>102</sup> Cathy Caruth, *Unclaimed Experience: Trauma, Narrative, and History* (Baltimore, MD: John Hopkins University Press, 1996), 16-19.

<sup>103</sup> Cathy Caruth, "Trauma and Experience," 1995, in *Trauma: Explorations in Memory* (Baltimore, MD: Johns Hopkins University Press, 1995), 5.

This moment was important both as an indication of trauma and as it pertained to her broader testimony. Jeantel was being asked to remember the timeline of her initial involvement, which presumably began at the moment she heard of Martin's death. However, Jeantel's testimony indicated that this moment did not occur (despite news and rumors) until days later. The latency in her realization of Martin's death could have helped explain why she was not immediately involved in the case, a point the defense spent time on as a means to impeach Jeantel's testimony, by suggesting that a truly concerned witness would have contacted law enforcement immediately.

Zimmerman's defense team spent a great deal of time questioning Jeantel regarding the timeline of her initial legal involvement. Directly following Martin's death there was a period of time in which Martin's family and the growing public audience were unaware that Martin had been on the phone in the moments leading up to his death. When Martin's parents finally learned of Jeantel and this phone call, Fulton began to contact both Jeantel and her mother to find out what Jeantel knew about the events leading up to her son's death. Jeantel openly admitted that she did not want to be involved and avoided Fulton. After Jeantel's mother agreed for her to meet with Fulton, Jeantel had a friend help her write a letter, with the hope that she could give Fulton this letter and avoid face-to-face contact with Martin's mother altogether. When West asked her why she was hesitant to meet with Fulton, she managed only short and unclear answers saying "I never wanted to see someone cry" and adding, "her son dead." West continued questioning her on this, and after a series of questions he asked, "Is that partly why you didn't go to the memorial service, because you didn't want people there to know



you were the last person and you didn't want to talk to Ms. Fulton?" Jeantel responds exasperatedly:

You got to understand. (*West interrupts but she continues*) You-got-to understand, you the last person, and he died on the phone after you talked to him! You got to understand what I'm trying to tell you, I'm the last person, you don't know how I felt, *you think I really wanna go see the body after I just talked to him?*<sup>104</sup>

Jeantel's wording in this moment included important indications that she was a traumatized witness. This traumatization helps to explain why it was so difficult for Jeantel to articulate this portion of her testimony. Jeantel used the phrase, "last person," to describe herself and her position as a witness multiple times throughout her testimony, in reference to the fact that she was the last person with whom Martin spoke. This, however, also seemed to be her way of indicating the proximity she felt to Martin's death. By "last person," she meant to say that she was Martin's last communication. She was the last person with whom he spoke, the last person to hear him alive, and perhaps she felt the last person who could have somehow altered or intervened in the situation. Jeantel might also have felt, as she testified, that she was the "last person" insofar as she was the last chance for Martin's perspective of events to be heard publicly. In this way, her self-description as the "last person" indicated the proximity and importance with which Jeantel associated herself to Martin's death.

Jeantel's rhetorical question to West, "*You think I really wanna go see the body after I just talked to him?*" was also indicative of the fact that Jeantel was a traumatized witness. Jeantel was trying to communicate that at the time of the wake, she was unable

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<sup>104</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 12: Trayvon Martin's Friend's Friends Testimony Part 6," <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-6/v5LGm/>.

or unwilling to make the connection between Martin's body and the phone conversation she had had with him days earlier. She was unable to bring herself to "see the body" of Martin, as she felt as though she had "just" heard his voice over the phone. In this way, Jeantel's phrasing reveals that for her there was a disconnect, at the time of the wake, between Martin's living speaking voice and his dead silent body. Bridging this connection would involve not just attending the wake, but also the full realization and acceptance of the events that occurred in between their phone call and his body being presented in a casket. Her use of the word "just" indicated that for her, the phone call was fresh and recent in her memory, as, in reality the wake was held five days after she spoke to him over the phone. "Just" also could have indicated that the time between the phone call and the funeral seemed to have vanished or in some way never fully occurred for Jeantel. Further, Jeantel's repetitive use of the pronoun "you" begged her interrogator to imagine her situation from a first person perspective. Jeantel said directly to West "*you* got to understand," "*you* the last person" and "he died on the phone after *you* talked to him." This use of second person pronoun seemed to be Jeantel's effort to assert that only the experience (or perhaps an imagining of the experience) of how she felt at this time could allow West to understand why she did not attend the wake and why she was avoiding Fulton. In this way, she was asserting that her answer to West's question could not be described circumstantially or factually, but rather had to be understood experientially in order to be fully comprehended.

As exemplified in these moments, Jeantel's difficulty in recounting these events was due to the fact that she was traumatized by Martin's death and by her proximity to it. Her latent realization of Martin's death, as indicated in parts of her testimony, was an

indication of trauma that could have informed the questions at hand in important ways. For Jeantel, her involvement in the case did not fully begin until she came to truly understand that Martin had died. The defense sought to point out Jeantel's delayed involvement in the case as a way of questioning why she did not contact law enforcement or Martin's parents immediately if she had such vital information, therefore discrediting her testimony. If her own description of the realization of Martin's death is taken into account, as well as her difficulty in making the connection between Martin's voice and his dead body, we see that there is perhaps a psychological explanation for this delayed involvement. An understanding of the structure of trauma can help to explain why Jeantel did not attend the wake, why she was not immediately involved in the case and why she had such difficulty articulating these important explanations in the trial. In this portion of the testimony, evidence of Jeantel's personal traumatization regarding Martin's death entered the trial and at times inhibited her ability to communicate an important part her testimony.

***"I don't talk about death"***

Towards the end of Jeantel's first day of testimony, West questioned Jeantel about her statements in previous interviews in order to point to inconsistencies therein. Jeantel's wording of what exactly she heard, through the phone, of the conversation between Martin and Zimmerman in her direct-examination differed from her early statements in her interview with Crump just days after Martin's death. In the exchange between Jeantel and West regarding the Crump interview, Jeantel tried to explain that she did not remember the conversation very well and that she "rushed on it" because she did not want to talk about the events and that she did not know Crump at the time. At one point

she said clearly, “I was so shaken up with everything, that day I really just rushed on everything.” The idea that Jeantel “rushed on” her interview with Crump was one which she tried to communicate many times throughout her testimony. At one point, Jeantel, increasingly frustrated, tried to explain this once more:

Crump interview, I can explain Crump interview. Crump interview I really did not want to do the interview with Crump, so I had hurry up on Crump interview cause I really did not want to be on the phone, talking about the situation, deadly situation, *I don't talk about death*. So, Crump interview I rushed it off. I had told you from when we met, I had rushed it, and I had told the state I rushed on Crump interview. Crump interview is nothing. Crump interview don't mean nothing to me.<sup>105</sup>

Jeantel's effort to explain the Crump interview speaks to an important aspect of Jeantel's behavior as a traumatized witness; Jeantel was aware of the limitations of her speech and tried to communicate them. She was consistent in asserting, throughout her testimony, that she did not initially want to be involved in the legal investigation. In this way she voiced her first limitation: the simple desire not to be involved. Further, Jeantel's blatant assertion “I don't talk about death,” was her attempt to voice her limitations as a traumatized witness. In the Crump interview, in her various depositions, and in her own testimony, Jeantel was being questioned about the details and surrounding events of her phone call with Martin. While the courtroom often reformed the narrative to address the logistical or semantic aspects of what Jeantel witnessed, for Jeantel, speaking about this event always also meant speaking about the death of her friend. Further, she did not assert that she did not like to talk about death, or that she did not normally talk about

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<sup>105</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 12: Trayvon Martin's Friend's Friends Testimony Part 5,” <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-5/v5P8G/>.

death, but rather clearly stated that she simply *does not*. Perhaps in an effort to indicate that she did not because she could not. Jeantel openly admitted that she did not possess the vocabulary with which to talk about the death of her friend. This portion of her testimony was her attempt to explain that she had rushed through the interview with Crump, during which she was asked to speak about something she did not want, or have the ability, to talk about. Further, Jeantel's statement, "Crump interview is nothing. Crump interview don't mean nothing to me" was perhaps her attempt to communicate that she was unable to talk about this early interview because it lacked clear and coherent meaning in her memory of the events.

Jeantel was trying to communicate both that she did not want and that she was not able to adequately participate in this initial interview with Crump, and also that she could not speak confidently to the interview or its contents at the time of her testimony. In this way, Jeantel was testifying to her inability to testify. In this portion of her testimony, Jeantel attempted to explain what she was unable to articulate. Jeantel was clearly traumatized by the death of her friend and possibly also by the onslaught of media and legal events which followed quickly thereafter. She *was*, however, able to summon words and descriptions for her experiences and at times was quite clear and detailed in what she could recount. In spite of the communication and trauma related difficulties which occurred throughout her testimony, Jeantel was able to find a way to speak about, and even at times defend her memory of, what she heard over the phone on the night of Martin's death. In this way, she was perhaps unlike other examples of victims of trauma, whose psychological state might render them completely silent, cognitively unable to access the events and, thus, incapable of any kind of descriptive articulation of them.

While there were moments in which finding words was particularly difficult for Jeantel, she offered what information she could manage. But more than this, she attempted to articulate her limitations as a witness. In her explanation of the Crump interview which came late in her testimony, perhaps once she was more familiar with the difficulty she was experiencing in testifying to these events, she attempted to explain her inability to explain. There was, however, no acknowledgment or visible understanding of this attempt by her interlocutors. Instead, she simply appeared, at times, confused and unwilling to speak about the nature of her initial legal involvement and without a legally legible defense as to why her statements changed.

Felman, interested in the ways in which the law tries and fails to capture traumatic experience into legally legible language, points out the unique ways in which the attempt to handle trauma legally occurs. Given the fundamental incompatibility between the psychological structure of trauma and the linguistic needs of the courtroom, traumatic histories become particularly challenging to convey in court. Felman theorizes that in effect, when law and trauma come into contact, the structure of trauma is often reenacted in the courtroom. In other words, the same idea of a latent experience, or the very inability to see or understand, that is inherent in the structure of trauma repeats itself in court. Felman describes this as the “failure to see trauma.”<sup>106</sup> The trial repeats this un-understandability, which cannot be dispelled in spite of evidence. The idea that Jeantel was traumatized and that this traumatization could have affected her testimony was neither addressed in the trial nor in mainstream news legal analysis of her testimony. Instead, the parts of her testimony that were disabled or discredited by trauma remained without a clear timeline or description, in effect, reenacting the structure of trauma itself.

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<sup>106</sup> Felman, *The Juridical Unconscious: Trials*, 83.

## Trauma and Impeachment

Jeantel's trauma was also, at times, used as a way to discredit parts of her testimony. The issue of Jeantel's absence at Trayvon Martin's wake was one which came up multiple times during the trial. Jeantel did not attend the wake, and in the letter to Fulton she said that she did not attend because she was sick and in the hospital. This initial explanation was restated publicly by Crump and circulated in the media.<sup>107</sup> Prior to the trial, however, Jeantel admitted that she lied to Fulton and that the real reason she did not attend Martin's wake was because she did not want to see his body. This point, one which the prosecution perhaps attempted to address early as to get it out of the way, was later emphasized by the defense. It became part of a set of small "lies" told by Jeantel which the defense sought to highlight as means of impeachment. Jeantel also lied about her age (claiming to be a minor) and her name in hopes that these falsifications would protect her privacy as attention around the case intensified. Jeantel also admitted that she softened parts of her testimony in her original deposition with de la Rionda because Fulton was in the room and she was concerned about upsetting her. Jeantel's "lies," while no doubt falsifications, clearly came from a place of trauma and the accompanying desire to protect oneself and others grieving Martin's death. She lied about why she did not attend her friend's funeral as a means of obscuring the fact that she was unable to fully face the tragedy and its aftermath. And she lied about her name and age as a means of protecting her identity and privacy as national attention around the case mounted.

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<sup>107</sup> Vivian Kuo and Josh Levs to CNN newsgroup, "Chief witness In Trayvon Martin Case Lied Under Oath," March 7, 2013, accessed April 28, 2015, <http://www.cnn.com/2013/03/06/us/florida-trayvon-martin-case/>.

In a legal environment, however, these admissions were readily available tools the defense could use to throw into question the witness' reliability and to cast doubt upon the validity of her other statements. The defense spent a lot of time on Jeantel's "lies," bringing them up repeatedly and questioning her about them at great length. These "lies" became the foundation of the defense's attempt to impeach Jeantel in cross-examination, used to show the jury that Jeantel was an untrustworthy witness. Excepting some small state-by-state variations, witnesses can be properly impeached using some combination of a number of rhetorical mechanisms deemed available to attorneys. These include, disability (the witness has a deficiency in perception, memory, communication), bias, criminal history, character assessment such as a witness' past bad or immoral acts or reputation for truthfulness and inconsistent or contradicting statements.<sup>108</sup> Zimmerman's defense touched on most of these mechanisms, but focused their attention on highlighting the witness' communication deficiency, character assessment, and statement inconsistencies. While their use of Jeantel's previous falsifications fall within the bounds of proper impeachment techniques, it is worth noting how these modes of impeachment were related to and aided by trauma.

The use of Jeantel's "lies" to impeach the witness allowed for trauma to act as a double-layered barrier in Jeantel's testimony. First, her traumatization inhibited her ability to speak clearly and articulately about the events surrounding Martin's death. And second, what words she was able to utter and which were heard in the courtroom were then discredited by mistakes that arose from her traumatization. In this way, trauma inhibited both her ability to speak and her ability to be heard. The structure of trauma was

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<sup>108</sup> Martin A. Schwartz and John Nicodemo, "Impeachment Methods Illustrated: Movies, Novels, and High Profile Cases," *Touro Law Review* 28, no. 55 (2012): 1-8.



effectively reenacted in the courtroom by the inability to see, acknowledge and articulate that the witness' trauma was affecting her testimony.

***“Are you listening?”***

Jeantel's immediate audience also contributed to the communication failures that occurred throughout her testimony. While Jeantel struggled to assimilate to the structure of legal testimony and had difficulty speaking about traumatizing events, there was also an inability to hear on the part of her interlocutors. At one point during her cross-examination, when Jeantel was trying again, frustratedly, to explain that she had rushed through her early interview with Crump, she turned to West and said blankly, “I had told you. You listening? I had told you what happened to me in the Crump interview, I had rushed on it. *Are you listening?*” Her gaze was fixed intensely on West who had his back to her as she spoke.<sup>109</sup>

This moment with West was indicative of the problem of understanding that was occurring on the receiving end throughout Jeantel's testimony. In her remarks, Jeantel asserted that she had already provided an answer to the question that West was again asking, stating, “I had told you.” She was aware that her previous response was not received, so here she tried to reiterate. Her question, “Are you listening?” directed at West, revealed that Jeantel was aware of the multi-directional communication difficulty occurring. The choice of the word *listening* indicates that Jeantel knew this was more than a matter of whether West could hear her. While hearing implies that one is able to perceive noise, listening indicates an attentive hearing, one in which the listener is paying

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<sup>109</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 12: Trayvon Martin's Friend's Friends Testimony Part 6,” <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-6/v5LGm/>.

attention to or making an effort to register the meaning of that which is heard. Further, using “you,” she directed her question at West, the party who she understood to be responsible for the non-listening that was occurring. Jeantel was aware that she was not the only party who was contributing to the communication breakdown occurring. Acts of hearing were at times conflated with acts of understanding. She knew she was often not being heard, but she also knew that even her audible statements were not always *listened to* and not entirely understood by her audience.

A potent example of the difficulty of listening occurred early in Jeantel’s testimony when she was recounting to de la Rionda how Martin initially described Zimmerman on the phone. In Jeantel’s account, Martin was telling her that there was a man watching him. In her testimony, when asked how Martin described Zimmerman, Jeantel recounted that he said, “The man look ‘creepy,’ ‘white,’ excuse my language, ‘cracker.’” This was quickly followed by jury members indicating that they did not hear. De La Rionda told Jeantel “They’re having trouble hearing you, so, take your time.” She tried again, “Creepy-ass cracker,” “Creepy-ass cracker?” De La Rionda repeated. The judge added “can you repeat what your answer was please?” “Creepy-ass, um what’s the question?” Jeantel paused and asked. De La Rionda re-asked how Zimmerman was described and Jeantel said “I had asked him what the man looked like, he looked like a creepy-ass cracker,” “Okay let me make sure we got that, CREEPY, ASS, CRACKER” de la Rionda repeated, “Is that to mean like a white individual?” “Yes. Caucasian.” she concluded.<sup>110</sup>

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<sup>110</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 12: Trayvon Martin’s Friend’s Testimony Part 1,” <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-1/v5K6X/>.

A similar exchange took place when Jeantel recounted that Martin, later in the phone call, told her that Zimmerman was still following him through the complex. Jeantel testified that Martin told her “the nigga is still following me now.” “I can’t hear you” the court reporter announced “the nigga, is still, following, me now” she repeated, but the confusion continued.<sup>111</sup>

**DE LA RIONDA:** He’s still following him?

**JEANTEL:** Yes.

**DE LA RIONDA:** Did he use a word to describe that?

**JEANTEL:** Now the nigga is still following me

**DE LA RIONDA:** Pardon my language but did he say the word, pardon my language did he use the word nigger to describe the man now?

**JEANTEL:** Yes, that’s slang.

**DE LA RIONDA:** Okay, so and he said, used the N word to describe the man following him still?

**JEANTEL:** Yes.<sup>112</sup>

There was a moment when questioning began to move forward, when quietly a member of the jury told the judge “I’m sorry I just can’t hear.” Jeantel looked to the juror and said frustratedly “Yes, the man is still following him,” perhaps assuming that it was the action that was confusing the juror, not the word “nigga” which had now been referenced five times. This was followed by an objection from West, who pointed out that the witness has rephrased her response and asked that the answer just be read back by the court reporter. The judge rejected this request, and stated that the witness must be re-asked and re-answer the question. De La Rionda attempted to move forward but the judge interrupted, reiterating that the court needed the question concerning Martin’s statements

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<sup>111</sup> Ibid.

<sup>112</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was “Day 12: Trayvon Martin’s Friend’s Testimony Part 1,” <http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-1/v5K6X/>.

re-asked and re-answered “clearly and loudly.” De La Rionda and Jeantel complied and for the final time Jeantel clearly stated “now, the, nigga, is following me.”<sup>113</sup>

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Both of these moments, in which Jeantel was asked to repeat race-related language multiple times, left a mark on the opening section of the testimony. This was the first moment in the trial, now on its third day, when any “racial language” was spoken. The need for repetition seemed to stem, in part, from the disorientation caused by Jeantel’s description, perhaps because the audience was unaccustomed to this vocabulary. No other phrase or word that Jeantel uttered for the rest of the trial involved as much repetition as these. As Jeantel noted, she understood the words “cracker” and “nigga” to be slang, however, she seemed aware that her audience might not. In this way, Jeantel came off as honest, including and repeating these words despite the discomfort or confusion they appeared to cause her audience, as indicated by their inability to hear, and the prosecution’s hesitance to repeat, the words. In this way the phrases were a small reminder of the historical and cultural differences present in the courtroom. The words, simple slang pronouns for Jeantel, proved to be somewhat polemic and confusing for the predominantly white lawyers, court reporter, and jury, who placed a certain importance on them by insisting they be clarified and repeated, by Jeantel only, several times.

Judge Nelson’s assertion that Jeantel herself must be the one to repeat the phrase “nigga is still following me” not the court reporter, had important implications. While the judge was likely simply sticking to trial protocol, which calls on a witness to repeat statements themselves whenever possible, this moment nonetheless was significant. Jeantel’s utterance of the words “nigga” and “cracker” became a kind of speech act which

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<sup>113</sup> Ibid.

only she could perform. Importantly, this was not Jeantel's choice of vocabulary, but rather what she heard Martin say and what she was now repeating. For this reason, she was unable to rephrase or provide further description for the word choice. Jeantel, however, became the bearer of these words. For one, they were said to her, and thus she was the only person who could legally testify to the fact that they were said. But further, she became the inserter of these words not only because, as Judge Nelson asserted, she was procedurally the most appropriate one to repeat them, both also because her interlocutors avoided them. In this way, Jeantel became the sole vehicle through which vocabulary perceived as racial entered the trial.

***“What would make that racial?”***

These words used by Martin to describe Zimmerman, repeated by Jeantel, and seared into the audience's memory in these opening moments of the testimony, later resurfaced in one of the most heated and poignant moments of the trial. On the second day of Jeantel's testimony, West again questioned her concerning her delayed involvement in the case and whether this was because she came to think the case was a “racial thing,” as she once expressed in an interview with Crump. West asked her what made her think that this was a “racial” event.

**WEST:** So when you answered Mr. Crump's question, that's not on the recording, what you think about it being a racially charged event, you said, “Yes it was.”

**JEANTEL:** Yes, Sir. (*declarative*)

**WEST:** and what did you base your answer that you thought it was a racial thing, what information did you base that on?

**JEANTEL:** Cause how the situation happened.

**WEST:** Tell me, what is it about this event specifically that convinced you it was racially based?

**JEANTEL:** Trayvon was being followed, and it was around 7:00 and it's not that late. And its in the rain, like come on now. It was in the rain, or it was raining.

*(they go back in forth on the specifics on where she understood Martin to be standing, until West continues)*

**WEST:** So when you say it's a racial event, what did he tell you that made you think it was a racial event?

**JEANTEL:** Somebody was watching him and then he describing the person that was watching him and following him, and that was kinda strange, that a person keep watching you and following you, like he's being stalked. *(repeat)* Like he's being stalked by a person.

**WEST:** What makes that racial?

**JEANTEL:** What would make that racial? What would make that racial? *(she shakes her head slightly).*

**WEST:** What's one thing about what Trayvon Martin told you, that made you think this was racial?

**JEANTEL:** Describing the person, describing the person, describing the person that was watching him, and following him, Sir. *(she says this in a deliberately clear way)*

**WEST:** I see, describing the person is what makes you think it was racial?

**JEANTEL:** Yes.

**WEST:** And that's because he describes him as a "creepy-ass cracker"

**JEANTEL:** Yes.

**WEST:** So it was racial, but it was because *Trayvon Martin put race in this?*

**JEANTEL:** No.

**WEST:** You don't think that's a racial comment?

**JEANTEL:** No.

**WEST:** You don't think that creepy-ass cracker is a racial comment?

**JEANTEL:** No.<sup>114</sup>

This moment stood out in the trial, as it was the most explicit moment in which the racial profiling of Martin was discussed. It is worth noting that in pretrial proceedings, the defense fought to have the words such as "profiled" barred from use by the prosecution in their opening statements. Judge Nelson ruled that prosecutors could use the word "profiled" but only if the idea of race was not included, meaning specifically that they could not say, "racially profiled."<sup>115</sup> This exchange between Jeantel and West was the extent to which profiling was directly discussed in the trial. As Patricia

<sup>114</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 13: Trayvon Martin's Friend's Friends Testimony Part 1," <http://www.wftv.com/videos/news/day-13-trayvons-friends-testimony-part-1/v5NXX/>.

<sup>115</sup> *NPR News*, "Prosecution Can't Use Race."

Williams points out in her analysis of the trial, in Jeantel's inability to answer these questions "remains the cold, sad silence at the center of it all."<sup>116</sup>

For Jeantel, the racial component of this event was self-evident. As she articulated, the elements that made this event racially motivated lay in plain sight in the details of "how the situation happened." For Jeantel, the racism resided, partially, in the mundane aspects of the event. It was around 7:00pm, which, as she pointed out, is "not that late." Further, she noted that it was raining, a comment she made because it was the obvious explanation as to why Martin was standing under the shelter of one of the complex's public buildings, an act interpreted as suspicious by Zimmerman. For Jeantel, in these details, in the totally ordinary nonthreatening behavior of Martin, lay the reality of everyday racism. What was fundamentally "racial" about the event was that Martin need not do anything out of the ordinary to be perceived as threatening and be subsequently watched, followed and killed.

When asked what about the action of being stalked "makes that racial" Jeantel shook her head back and forth slightly and managed only, "What would make that racial? What would make that racial?" For Jeantel, this event did not need to be made racial through explanation, but rather for her, was always understood as "racial" because the person being stalked was black and the stalker was not. In Jeantel's understanding of the event, the "racial" aspect was visible in the factual, undisputed, details of the case. In court, however, this self-evidence is rendered meaningless. While self-evidence can be powerfully convincing in non-trial atmospheres, in a trial, evidence cannot speak for itself, it must be spoken for and if it is not it effectively remains silent. Jeantel was unable to substantiate what she believed to be self-evident, and thus, her powerful assertion that

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<sup>116</sup> Williams, "The Monsterization of Trayvon," 22.

Zimmerman racially profiled Martin was nullified because it lacked the verbal explanation that the court atmosphere mandates.

Moreover, the histories that made this event clearly or self-evidently a “racial thing” are deeply entrenched in Jeantel’s lived experience as a young black woman. In this way, there was in this moment a different kind of inaudibility occurring, perhaps described more accurately as speechlessness and deafness combined. West asked Jeantel to describe an experience that she could not possibly sum up in a concise, court appropriate, answer. He was asking her to describe why, as a black youth living in Florida, the act of being watched, followed and eventually murdered in an almost entirely white resident housing complex was understood as a “racial thing.” He was asking her to describe the experience of being young and black and living in the United States. Jeantel’s inability to describe this experience to West was not due to her lack of education or legal familiarity. The inability to explain to West why she felt this event had a racial component, one that was not contributed by Martin’s descriptors, was related to the in-expressibility of this history of trauma. Felman, borrowing from Walter Benjamin, speaks of the tradition of the oppressed as one which is “expressionless.” For Benjamin, the history of the oppressed is one in which the subjects of this history are “denied a language in which to speak of their victimization.”<sup>117</sup> By asking Jeantel to explain what made this event racial, he was asking her to describe a history of trauma for which few, if any, have the language to fully describe.

This expressionlessness of the traumatic history of racism, is however, also characterized by deafness. Even if Jeantel had formulated a more detailed description or explanation as to why she felt this event was “racial,” there was an inherent inability for

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<sup>117</sup> Felman, *The Juridical Unconscious: Trials*, 33.



others in the room to fully comprehend this experience. Jeantel perhaps knew that whatever explanation she posed would fall on the deaf ears of her male white interrogators. As Benjamin theorizes, the tradition of the oppressed is denied the language with which to speak of traumatic experience in part because official history is based on the perspective of the victor. Felman summarizes this victor perspective by noting, “the voice with which it speaks authoritatively is deafening.”<sup>118</sup> In her dialogue with West, his demand for a clear, legally acceptable explanation as to “What makes that racial?” effectively silenced Jeantel. In turn, West was able not only to deny the validity of Jeantel’s statements, but effectively accuse Jeantel of being the one entering a racial narrative.

It was clear in this exchange that Jeantel and West operated under two fundamentally different understandings of history. The dissonance between these two understandings both silenced and deafened. While Jeantel and West were in the same room, speaking about the same event, their lived experiences were such that they perceived this event in two inherently different ways. In this instance, West was not in disagreement with Jeantel regarding the facts of what occurred. Rather the two disagreed about the intention behind those events. The two had qualitatively different interpretations of the same basic actions. They were unable to understand one another, in this instance, not because they could not hear or understand one another’s words, but because their lived experiences lead them to fundamentally different understandings of the events.

In these moments, the cultural and historical differences, which contributed to the inability to understand Jeantel’s testimony, were visible. Of the many communication

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<sup>118</sup> Ibid., 30.

hurdles Jeantel encountered in her testimony, this was perhaps the most difficult to overcome. In these moments, it became clear that even when clearly stated in accordance with courtroom procedures, there were elements of Jeantel's testimony that were fundamental difficulty for a predominantly white jury or the middle-aged white male attorneys on either side of this case to understand. Important parts of her testimony came from knowledge that had its foundation in Jeantel's lifelong experience as a young black woman living in the American South. This, experience based, understanding could not easily be communicated or transferred to those conducting and assessing Jeantel's testimony. In this way, Jeantel's testimony not only revealed her private trauma of having such proximity to the death of her friend, but was representative of the larger collective trauma, of being a young, black teenager growing up in the South. As Felman notes, the interaction between trauma and law often unsettles the distinction between private and public traumas.<sup>119</sup> Jeantel's testimony came to embody a larger collective trauma of racism in the United States.

### **Jeantel "Puts Race In This"**

Jeantel's testimony was characterized throughout by both inaudibility and deafness. This communication failure occurred on multiple levels of the testimony's transmission. The sending, transmitting and receiving aspects of the communication process were all obstructed by elements of trauma, legal testimonial structure, and historical difference. Through these difficulties and failures in communication, Jeantel's trauma, both personal and collective, unavoidably entered the trial. The court, fundamentally unequipped to handle this trauma, did not acknowledge its presence.

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<sup>119</sup> Felman, *The Juridical Unconscious: Trials*, 7.

Instead it lingered disruptively throughout Jeantel's testimony, inhibiting her ability to make heard her crucial defense of Martin.

Thusly, the court was unable to handle or make legible the parts of Jeantel's testimony affected by trauma and as a result her testimony was not heard. This was important because trauma was not an incidental part of Jeantel's testimony but rather, was at heart of what she was trying to communicate. Both sides of the case made an active attempt to keep out the discussion of whether Zimmerman had racially profiled Martin. However, Jeantel, speaking on behalf of Martin, tried to make this trauma known, to bring it into court both through what she heard and what she knew from her experience as a young black woman. By refusing to acknowledge the existence of this racial trauma, her legal audience could not hear this crucial part of Jeantel's testimony. This failure was not just due to the difficulty Jeantel had communicating, but also to the condition of listening created by her interlocutors, as both the defense and the prosecution were unable and uninterested in making what Jeantel was trying to say legible in court.

Jeantel's testimony was her effort to enter the issue of racial profiling into the trial. Key parts of her testimony could have substantiated this claim, such as Martin's report that Zimmerman spotted and proceeded to follow him as well as Zimmerman's question "What are you doing around here?" However, in her effort to bring race into part the narrative being constructed, she instead, became the inserter of a kind of reverse racism. Jeantel's testimony was manipulated by the defense to portray Martin as the actor who did the profiling and Martin as the one who "put race into this." Instead of hearing the collective trauma her testimony was representative of and taking into account the way

in which it was important to the facts of the case, her testimony was used as a way to deflect the issue of racism onto Martin via Jeantel.



## Chapter 3.

### Hoodie on Trial



Prosecuting attorneys John Guy and Bernie de la Rionda enter into evidence Trayvon Martin's hoodie, July 3<sup>rd</sup>, 2013, image courtesy of *New York Times*.



### Hoodie On Trial

In the public outcry to have Zimmerman arrested and charged, the black hooded sweatshirt Martin was wearing the night he was killed became a focal point. In Zimmerman's initial 9-11 call to the police he told the police dispatcher, "this guy looks like he's up to no good or he's on drugs or something, it's raining, and he's just walking around looking about," to which the dispatcher asked, "Okay and this guy, is he white, black, or Hispanic?" and "Did you see what he was wearing?" Zimmerman responded "He looks black" and "Yeah, a dark hoodie, like a gray hoodie and either jeans or sweatpants and white tennis shoes. He's here now and he's just staring." As attention around the case mounted, Zimmerman's call to the police was released to the media. His description seemed to verify what many had suspected, that Zimmerman had no solid grounds on which to suspect Martin of having criminal intentions, besides that he was a black teenager wearing a hoodie. According to the FBI investigation, lead detective Officer Chris Serino told authorities, "he believed that Zimmerman's actions were not based on Martin's skin color, rather based on his attire, the total circumstances of the encounter and the previous burglary suspects in the community."<sup>120</sup> For those defending Zimmerman's assessment of the situation and his right to act in self-defense, the hoodie became a way of deflecting an accusation of racial profiling. For Zimmerman's defenders, as Fox News commentator Geraldo Rivera famously proclaimed on national television, "the hoodie is as much responsible for Trayvon Martin's death as George

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<sup>120</sup> City of Sanford to Mother Jones newsgroup, "Transcript of George Zimmerman's Call to the Police."



Zimmerman was."<sup>121</sup> However, for those outraged about the unjust nature of Martin's death, the hoodie became a way of calling attention to what they felt was an insidious manifestation of racial profiling.

The hoodie became a visual symbol that not only brought attention to the case in demonstrations and showed solidarity with Martin and his family, but also a way to express outrage at the very thing that made the event and the subsequent lack of legal action so contentious, that the hoodie in some way justified the murder of Martin.

Protests all over the country featured crowds of people donning hoodies. On March 21st, thousands gathered in Union Square, Manhattan with their hoods up for the "Million Hoodies March."<sup>122</sup> Public figures also began appearing with their hoods up. The Miami Heat released a photo of the entire team, heads bowed and hood up. Congressman Bobby Rush memorably spoke on the floor of the House of Representatives with his hood up and state senate sessions in New York and Georgia featured statesmen wearing hoodies under their suits.<sup>123</sup> As Chike Jeffers notes, the appearance of people of all races and backgrounds wearing hoodies in protest marked a "poignant embrace of black youth culture at a critical moment where it seems to have been targeted as representative of the badness of blackness generally"<sup>124</sup> All at once, the hoodie became a symbol of solidarity, a nonviolent representation of outrage, the archetype of racial profiling, the supposed

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<sup>121</sup> Dalina Castellanos, "Geraldo Rivera: Hoodie Responsible for Trayvon Martin's Death," *Los Angeles Times*, March 23, 2012, accessed April 28, 2015, <http://articles.latimes.com/2012/mar/23/nation/la-na-nn-geraldo-rivera-hoodie-trayvon-martin-20120323>.

<sup>122</sup> Katherine Boyle, "Trayvon Martin's Death Has Put Spotlight on Perceptions About Hoodies," *The Washington Post*, March 15, 2012, accessed April 28, 2015, [http://www.washingtonpost.com/lifestyle/style/trayvon-martins-death-has-put-spotlight-on-perceptions-about-hoodies/2012/03/24/gIQAwQ6gaS\\_story.html](http://www.washingtonpost.com/lifestyle/style/trayvon-martins-death-has-put-spotlight-on-perceptions-about-hoodies/2012/03/24/gIQAwQ6gaS_story.html).

<sup>123</sup> Boyle, "Trayvon Martin's Death Has Put Spotlight."

<sup>124</sup> Chike Jeffers, "Should Black Kids Avoid Wearing Hoodies?," 2013, in *Pursuing Trayvon Martin: Historical Contexts and Contemporary Manifestations of Racial Dynamics*, ed. George Yancy and Janine Jones (Plymouth, UK: Lexington Books, 2013), 138.

culprit of Martin's death, a stereotypical emblem of guilt, and the key mobilizing object in the call for justice. Around it gathered protests, opinions, disagreements, presidential statements, anger and grief.

In this way, prior to the trial, the hoodie became what the philosopher Bruno Latour might refer to as a "ding." Latour's idea of an "object oriented democracy" posits that public political debate can and should happen by way of significant and contentious objects which are battled out in a public sphere. For Latour, these objects, which embody various "matters-of-concern," become a kind of "prostheses" for a society that is inherently "politically-challenged."<sup>125</sup> Objects can be used as a way to discuss and address issues on which there is no consensus and no transparent sense of general will. A given object or, what Latour refers to as the *ding*, is "the issue that brings people together *because* it divides them."<sup>126</sup> Around the *ding* gathers an assembly of relevant parties, battling out various re-presentations pertaining to a divisive matter of concern in an effort to come to what Latour calls a "provisional makeshift (dis)agreement."<sup>127</sup> The hoodie, thus, became the thing through which a debate about a supposedly "post-racial" America occurred. And as such, it became a highly anticipated piece of evidence in the Zimmerman trial. Journalists present when the hoodie was ushered into court reported that, "a breathless, aching stillness" took over the room as the hoodie was ushered in for the first time.<sup>128</sup>

In the trial, various expert interpreters were brought in to speak on the hoodie's behalf, each addressing different material characteristics of the object. As a piece of

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<sup>125</sup> Latour, "From Realpolitik to Dingpolitik," in *Making Things Public: Atmospheres*, 4-22.

<sup>126</sup> *Ibid.*, 6.

<sup>127</sup> *Ibid.*, 8.

<sup>128</sup> Amy Padnani and Troy Griggs, "The Zimmerman Trial Day-By-Day."

material evidence, the hoodie offered clues concerning the distance of the gun from Martin at the time it was fired, the potential positioning of Martin when he was shot, and the potential presence or absence of DNA information belonging to Zimmerman on the garment. This material information could be used to either substantiate or discredit the competing narratives regarding the nature of Martin and Zimmerman's altercation. The piece of physical evidence, however, took on a much larger role in the trial. The object that was technically the recipient of the deadly gunshot, through its presentation and various interpretations, was animated such that it became the violent agent of the assault. While the object could have potentially functioned to substantiate Martin's perspective, it was transformed through its legal reading and not only failed to assist in bringing about Martin's perspective, but actually substantiated Zimmerman's account of the events that evening. Through the examination of the physical evidence offered, the object's figurative presence in court, and its animation through expert testimony, the object assisted in constructing the narrative that a violent hoodie-wearing black teenager attacked Zimmerman that night. By way of the hoodie's physical entrance and interpretation in court, the garment came alive and was successfully attributed violent actions and transformed into the agent of Martin's own death.

### **Hoodie as a Knowledge Possessing Object**

In Martin's absence, the court was left only with his autopsy and clothing as means to piece together his narrative perspective concerning how the physical altercation that led to his death occurred. Thus, the hoodie became one of the few pieces of evidence potentially capable of speaking on behalf of Martin. Its material qualities, such as the DNA evidence and the gunpowder particles were potentially capable of

substantiating a different narrative of the physical dispute leading up to Martin's death. In this way, the physical evidence offered by the hoodie was important to some of the contested facts of the case, such as who had an upper hand in the fight and how Martin was positioned when he was shot. The object was presumably believed by the prosecution to be in some way capable of advocating on Martin's behalf.

The hoodie exhibit was first entered into evidence on the eighth day of testimony when the prosecution brought in firearms laboratory analyst Amy Siewert from the Florida Department of Law Enforcement (FDLE), in part, to present her evidence concerning the hooded sweatshirt. There were actually two sweatshirts worn by Martin the night he was killed, one black and hooded, the other gray with a visible blood stain surrounding the bullet hole, both of which Siewert discussed in her testimony. She explained for the jury that a fired firearm leaves a pattern of burned and unburned gunpowder particles, as well as smoke and gases, traces of which can then be found on objects which came in contact with the weapon's fired bullet. Siewert had performed distance determinations using Zimmerman's weapon and a swatch of Martin's sweatshirt to assess how far the muzzle of the gun was from the clothing at the time the shot was fired. She stood in front of the jury and directly referenced the exhibit, pointing to portions of the hoodie as she explained to the jury what she looked for in her testing. Her testimony ultimately concluded that, "the clothing displayed residues and physical effects consistent with a contact shot."<sup>129</sup>

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<sup>129</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 17: George Zimmerman Trial Part 7," <http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-7/v5prz/>.

The next witness was Anthony Gorgone, a crime lab analyst and biologist who worked in the DNA unit at FDLE. Gorgone, who analyzed Martin's hoodie for DNA evidence, also had the exhibited entered to accompany his testimony. Gorgone's testimony focused on whether or not Zimmerman or Martin's DNA could be either identified or included or excluded as being possibly present on the items he examined. He took the jury through each of the items, explaining the tests he performed, his findings, and the statistical analysis of the results. In regards to the hooded sweatshirt, Gorgone explained that when looking at bodily evidence that we know to have belonged or been worn by a particular person, what he looked for was any DNA evidence which was "foreign" to that individual's DNA profile. On the hooded sweatshirt he located the various bloodstains that existed all over the garment and tested them for foreign DNA profiles. Gorgone testified that all DNA evidence was "non-foreign" to Martin. In other words, no traces of Zimmerman's DNA were found on the hooded sweatshirt.<sup>130</sup>

This information could have been interpreted as helpful in dismantling Zimmerman's narrative, as the brutal assault and injuries he claimed to have endured would have likely left some bodily remnant on the figure which inflicted them. In this way, the hoodie offered some information that could potential be read in Martin's favor. However, the DNA information was quickly discredited by the defense. In Gorgone's cross-examination, West spent a majority of his questioning addressing the fact that environmental conditions as well as evidence handling could have degraded the DNA evidence, making it difficult to find and identify individual DNA profiles. The hoodie was thrown carelessly, still wet with rain and blood, into plastic biohazard bags during

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<sup>130</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 17: George Zimmerman Trial Part 9," <http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-9/v5py6/>.

the initial Sanford police investigation on the night of Martin's death, which lasted only a few hours before the department concluded there was not enough evidence to contest that Zimmerman had not indeed acted in self-defense.<sup>131</sup> Correct evidentiary handling would have entailed putting the garments into paper bags in order to let them breathe and dry properly. Due to this mishandling, Gorgone testified that when he eventually received the evidence weeks later (when a more thorough investigation had finally begun) the garment was still damp and had some molding. When O'Mara presented the hoodie he asked Gorgone if this was one of pieces of evidence which "stank to high heaven" upon unpacking it, which the witness confirmed. The defense highlighted this aspect of the hoodie's life in Gorgone's cross-examination in order to point out that the mistreatment of the evidence might have degraded the reliability of the DNA testing and results.<sup>132</sup>

In effect, what little scientific information the hoodie was able to offer that could have functioned on Martin's behalf was later discredited by law enforcement's flippant handling of the garment and the material degradation that occurred as a result. While the validity of the firearms forensic information was not questioned in the trial, the object was perceived as unable to provide reliable DNA information, information that could have helped dismantle Zimmerman's account. In this way, the hoodie's credibility was jeopardized from the onset, as it was assumed to be of so little importance that it was initially treated like trash by investigators. This initial mishandling of the object was indicative of the flawed assumption quickly made by Florida law enforcement that

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<sup>131</sup> Kolvaleski, "Trayvon Martin Case Shadowed."

<sup>132</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 17: George Zimmerman Trial Part 14," <http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-14/v5qD2/>.

Zimmerman justly killed Martin and that, thus, there essentially was no case, no potential that the hoodie would ever need to be scientifically functional for adversarial purposes. In this way, the physical evidence was unable to testify even on its own behalf.

### **Hooded Figure in Court**

While the information presented in Siewert and Gorgone's testimonies concerning the hoodie did not prove to be pivotal for the case, the physical entrance of the object that the testimonies necessitated was powerful. These expert testimonies both involved the prosecuting attorneys ushering in the large framed exhibit, which contained Martin's black hoodie for the experts to refer to directly in their explanation to the jury. The hoodie was suspended between sheets of Plexiglass, with its arms spread wide to either side and hood up. Because of the fabric's dark color, the pool of Martin's dried blood surrounding the bullet hole was not visible. The hoodie's only visible characteristics were the front pouch pocket, a white fruit-of-the-loom tag, and black drawstrings around the collar that dangled unevenly on the breast of the garment. The Plexiglas portion was outlined by white matte board which enclosing the hoodie in a boxy, cross-like shape. The object encased in its evidentiary presentation strongly resembled the hooded silhouette of a figure.<sup>133</sup>

For both Siewert and Gorgone's testimony, Guy and de la Rionda together carried in either side of the framed exhibit. Looking at the floor with solemn faces and mumbling directions to one another, they struggled to maneuver the large framed hoodie through the courtroom. Once it was in its place, the two held either end of it up, allowing it to face the

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<sup>133</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 17: George Zimmerman Trial Part 7," <http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-7/v5prz/>.

jury directly at eye level. At one point during Siewert's testimony, the court reporter announced she was unable to hear the witness, as the exhibit was so large that it obscured the view for the rest of the room. Guy suggested she back away from the exhibit so the court reporter and others could see and better hear her.<sup>134</sup>

For Gorgone's testimony, Guy and de la Rionda again carried in either end of the Plexiglas frame. Gorgone stepped down from the stand and examined the object in front of the jury. At one point de la Rionda, perhaps in an effort to save time, attempted to have Gorgone examine the object without stepping down, bringing the Plexiglas frame to his side and propping one end of it up against the witness stand. While trying to reach across the arm span of the object to point out an area of interest, Gorgone tripped and fell slightly into the framed figure. The exhibit was thus deemed unfit to be examined from the stand and Gorgone stepped down in front of the jury in order to examine it properly. For Gorgone's cross-examination, West and O'Mara again carried up either end of the framed hoodie exhibit and discussed it at length. West stood in front of it, while O'Mara kept the exhibit in place by holding the top of the frame in place with both hands above his head. The presence of the escorts served as a constant reference to the figure's size.<sup>135</sup>

The hoodie in its Plexiglas encasement became a recurring character in the trial. Each time it was entered it captured the attention of the courtroom, as the garment unavoidably resembled a human figure, with outstretched arms and a faceless hooded head. The bottom of the frame was held at waist height by its escorts, and thus, appeared to be standing at about the same height as the men surrounding it. Like a witness, it was

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<sup>134</sup> Ibid.

<sup>135</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 17: George Zimmerman Trial Part 9," <http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-9/v5py6/>.



entered, questioned, and eventually permitted to step down. When it was not being used as an exhibit in court, it could occasionally be seen leaning up against the barrier that separated the audience from the barristers, often positioned right in front of Martin's parents. Unlike other evidentiary objects, it could not be picked up and put down easily. Instead, entering the figure in order to point to something on it was so elaborate that for much of Siewert and Gaugh's testimony it was held in front of the audience even for questions for which its presence was not pertinent. The exhibit, while included for its potential material information took on a much larger physical presence and metaphorical characterization in court.

The hoodie also had an ominous presence in court. The black garment was faceless and thus appeared anonymous. The position of its arms straight out at shoulder height made the figure appear assertive, maintaining a powerful gesture that could be read as one which welcomed aggression. Moreover, because of the hoodie's dark color the blood stain was not visible, hence, there was no immediate visual reminder that this garment belonged to the deceased or that the hoodie had fallen victim to a bullet in the chest. Instead the hoodie had only a small, barely visible tear on the right breast where the bullet had entered. Further, the hoodie's sheer size laying flat in the frame made it appear much larger than those handling it. The fact that it took two people to maneuver the figure through the room not only emphasized its size, but contributed to a sense that the hoodie needed to be escorted and constrained and could not be left unattended or freestanding. The one attempt to prop the exhibit next to the witness stand which resulted in the witness tripping and falling slightly into the object, while an accidental occurrence, served as a subliminal reminder that the hoodie needed to be constantly held in place by

its handlers, as it was unable to stand alone and too unwieldy to be moved without assistance. In this way, the hoodie not only embodied a silhouette, but also referenced a large, dark, anonymous human figure.

### **Animating the Hoodie**

The hoodie, while acting as a powerful visual reference in its casing, also offered material evidence which when spoken for, effectively animated and ascribed actions to the object. The most important testimony concerning the animation of the hooded figure was that of Dr. Vincent Di Maio. On the second to last day of testimony the defense brought Di Maio, an experienced forensic pathologist and gunshot wound expert. Di Maio was on the stand for over three hours and his testimony focused specifically on the relationship between the physical evidence and Zimmerman's account of events that evening. Di Maio did not examine first hand any of the physical evidence in the case, but rather relied on photographs of Zimmerman's injuries taken by police, civilians and investigators; medical and EMS records of Zimmerman's injuries; Martin's autopsy report and photographs of his body taken at the scene and by medical examiners; the firearms examiner's report regarding the gun, hoodie and body of Martin; and Zimmerman's reenactment video of the altercation. Based on his examination of these pieces of evidence, Di Maio reached an expert opinion regarding whether or not Zimmerman's version of events was consistent with the physical evidence. According to Zimmerman's account, Martin jumped on him, pushed him to the ground and at the time

he fired his weapon, Martin was straddling him and banging his head into the concrete sidewalk.<sup>136</sup>

Di Maio began by outlining for the jury what forensic pathology was followed by a very clear explanation of the mechanics of firing a gun. He explained that firing a gun produces a interaction between gunpowder and air that leaves visible physical traces. Depending on the distance of the muzzle from the skin there is a particular kind of “powder tattooing” which he defined as marks on the skin resulting from the powder burns that come out the muzzle of the gun. The appearance of this tattooing can determine how far the gun was from the body when it was fired. From this explanation Di Maio asserted, “based on the concentration of the marks and the size of the pattern, its my opinion that the muzzle of the gun in this case was two to four inches away from the skin.” He then demonstrated using the his jacket and a pen, lifting the lapel and explaining, “So, the barrel of the gun was against the clothing, the muzzle of the gun was against the clothing but the clothing itself had to be two to four inches away from the body at the time Mr. Martin was shot.”<sup>137</sup> He corroborated this opinion with Zimmerman’s account that Martin was straddling him when he fired his weapon. His own slight leaning forward and back accompanied his description while he explained:

If you lean over somebody, you would notice that the clothing tends to fall away from the chest. If instead you’re lying on your back and somebody shoots you, the clothing is going to be against, so the fact that we know the clothing was two to four inches away is consistent with somebody leaning over the person doing

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<sup>136</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 20: George Zimmerman Trial Part 5," <http://www.wftv.com/videos/news/day-20-george-zimmerman-trial-part-5/v59Kr/>.

<sup>137</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 20: George Zimmerman Trial Part 6," <http://www.wftv.com/videos/news/day-20-george-zimmerman-trial-part-6/v59Lq/>.

the shooting and that the clothing is two to four inches away from the person firing.<sup>138</sup>

While the burn patterns found on the hoodie were crucial to his claim that the hoodie and Martin's skin were two to four inches apart, the physical evidence pertaining to the hoodie was never formally introduced. Instead, Di Maio used his own shirt and verbal description and allowed the jury to henceforth imagine how this physical altercation might have occurred. The cross-examination of Di Maio was not very well organized nor particularly effective and only mentioned in passing that there were other possible explanations for the two to four inches between the garment and Martin's body. The prosecution also failed to call into question the informal way in which Di Maio discussed the physical evidence and did not bring in their own expert witness to offer a counter scientific reading of the possible explanations concerning the distance between the garment and Martin at the time she was shot. In effect, Di Maio was granted the authority to speak declaratively about the object's actions as no alternative narrative concerning the hoodies movements was offered and his went virtually unchallenged.

De La Rionda did ask Di Maio why he only took Zimmerman's version of events into account when considering the physical evidence. Di Maio explained that he would have had to disregard the other witness statements in regards to the gunshot wound because when the weapon was fired, "the only one present there is Mr. Zimmerman, so you have to go by what he is saying." De La Rionda then tentatively challenged the Di Maio asking, "I respectfully beg to differ with you, there was another person there, wasn't there?" "Well there were another couple of witnesses, yes," Di Maio responded. De La Rionda attempted to clarify, "No I mean, respectfully, the other person there is not

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<sup>138</sup> Ibid.

among us anymore.” Di Maio nodded, “right because he’s the only one who communicates, that’s correct.” De La Rionda finished this exchange by clarifying enthusiastically, “He can’t speak because he’s dead!” Di Maio concurred and they moved on. In the exchange, it appears de la Rionda was attempting to point out that Martin was also present in the altercation in which he was killed, presumably as a way to abstractly note that if Martin were still alive there would be another version of events to consider. De La Rionda’s point was never made explicit, however, his exclamation, “He can’t speak because he’s dead!” seemed to resonate in the room. While Martin was unable to speak or physically appear in court, his silhouette was present and spoken for by way of the hoodie. In this way, the hoodie was the part of Martin that survived the violent act and that was now able to appear in court to testify concerning the injuries it sustained and the actions of the person by which it was once worn.<sup>139</sup>

The hoodie’s movements were, however, only spoken for in Di Maio’s testimony, where it was the key object which allowed him to formulate his opinion that the physical evidence was in accordance with Zimmerman’s account. The hoodie, once animated, served only to validate Zimmerman’s account that he was being violently attacked and feared for his life at the moment he shot Martin. In this way, Di Maio’s testimony effectively attributed a particular style of movement to the hoodie that went uncontested. As an interpreter of the hoodie, Di Maio was able to help attach a particular narrative of events to the object’s physical characteristics. He combined the evidence concerning Martin’s wound with the object to articulate his conclusion that there existed two to four

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<sup>139</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 20: George Zimmerman Trial Part 8," <http://www.wftv.com/videos/news/day-20-george-zimmerman-trial-part-8/v599P/>.

inches between the hooded figure and the body who inhabited it at the time the shot was fired. This two to four inches part of narrative, formulated by Di Maio out of the physical evidence, became key to substantiating the claim that Martin was the violent aggressor that night.

Building a narrative interpretation out of an object in court involves that the person presenting the object show that what one can see or understand about the object's physical characteristics aligns with a particular interpretation of events. In this way, objects are made to mean by the way of their ability to reference and therefore substantiate elements of a narrative. Because evidentiary objects are understood as things that have relevance to and potentially possess information about an event which occurred outside of the courtroom, they are understood as legally useful insofar as they are capable of adding description or proof of the facts in question. It is through the process of matching the object's characteristics to narrative elements that an interpretation of both the object and the event is built.

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As Judith Butler argues in her essay "Endangered/Endangering: Schematic Racism and White Paranoia," the process of aligning the visual to the narrative is one in which ideological readings can easily seep into the interpretation. The Rodney King video is perhaps the most well known example of ideological understandings assisting in the process of adhering visual characteristics, specifically movements, to a particular narrative of events in court. The video, widely viewed by the public prior to the trial, depicted a black man exhibiting no clear resistance or imminent bodily threat, being excessively beaten by four white police officers. This footage was famously disassembled

in the trial of the four officers such that the defense was able to freeze-frame the video and dissect the sub-images to successfully argue that King's body movements belonged to an endangering agent who was personally responsible for each of the baton blows he received. King's bent limbs were transformed through the defense's reading into "cocked" legs, and his convulsions following each blow were read as indications that the agent could rise at any moment.<sup>140</sup>

Butler's analysis of what she calls a "feat of interpretation" asserts that this narrative was successfully attached to the video because the images were reproduced in a "racially saturated field of visibility."<sup>141</sup> What stabilized these images in this particular meaning in court (that King was violent, threatening and resisting arrest) was the way the visual was used to reference ideological understandings of black male bodies. Butler argues that the defense's legal strategy was to align King's movements with an already pervasive racist understanding that black bodies are dangerous and violent. For Butler, making this alignment relied on the notion that "this is an action that the black male body is always already performing within the white racist imaginary, has always already performed prior to the emergence of any video."<sup>142</sup> Thus, the defense did not need to invent an entirely new narrative in which Rodney King's body was dangerous and warranted neutralizing, but rather needed only to attach this particular imagery to an already deeply entrenched social narrative of violent and uncooperative black bodies. In this way, the process of narrative stabilization is one which often looks for obstinate or seemingly concrete concepts to which visual or interpretive evidence can cling.

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<sup>140</sup> Judith Butler, "Endangered/Endangering: Schematic Racism and White Paranoia," 1993, in *Reading Rodney King Reading Urban Uprising*, ed. Robert Gooding-Williams (New York, NY: Routledge, 1993).

<sup>141</sup> Butler, "Endangered/Endangering: Schematic Racism and White," in *Reading Rodney King Reading*, 15.

<sup>142</sup> Butler, "Endangered/Endangering: Schematic Racism and White," in *Reading Rodney King Reading*, 19.

Through the hoodie, we again see a situation in which an ideological understanding of the hoodie was able to assist in attaching the object's physical characteristics to a particular narrative of events. If we accept Di Maio's unchallenged reading of the two to four inches between Martin and the hoodie at the time he was shot, there still exists multiple explanations as to why this could have been the case. As the prosecution tried ineffectively to point out, this evidence could also be consistent with Zimmerman grabbing or pulling at some part of Martin's sweatshirt. Di Maio, however, only took into account Zimmerman's version of events, in which, this two to four inches was consistent with the narrative that Martin straddled and physically dominated Zimmerman. Di Maio needed only to validate this claim with a small and inexact fact in order to substantiate Zimmerman's narrative. The rest of the imagining of this version of events came from an already existing narrative of the hooded black teenager as a violent aggressor. The black hooded teenager, as Butler might put it, is *always already* the aggressor. While Di Maio's testimony helped to set into motion the hoodie, a previously existing "racist schema" aided the animation of this figure.<sup>143</sup> Through his testimony, Di Maio was able to animate the hoodie as an object of aggression by attaching the garments physical evidence to an already existing conception of a violent hoodie-wearing subject.

### **The Hoodie-Wearer**

Throughout the trial's various interactions with the hoodie, the object often maintained a nameless identity. During Di Maio's cross-examination, de la Rionda often spoke about Martin allusively, at times referring to him as "another person there," "the person not among us anymore," and "the person that's dead." While the hoodie was

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<sup>143</sup> Butler, "Endangered/Endangering: Schematic Racism and White," in *Reading Rodney King Reading*, 19.



labeled as and known to be Martin's, often Martin was not explicitly named nor attributed to the actions of the hoodie being discussed. In this way, the actor became not Martin but more generally the hoodie-wearer. By avoiding filling the hoodie with a specific identity, the garment became a kind of stand in for the supposed hoodie-wearing type. This is seen when de la Rionda briefly asked Di Maio about the possibility of other explanations for the two to four inches between the hoodie and Martin's skin. He tried to suggest that perhaps this could be attributed to the way the hoodie is worn.

**DE LA RIONDA:** Now, have you ever worn one of those hoodies, those jacket sweatshirts?

**DI MAIO:** Not that type, no.

**DE LA RIONDA:** Have you seen people wearing them?

**DI MAIO:** Yes, Sir.

**DE LA RIONDA:** Don't they normally wear them a little big?

**DI MAIO:** Yes, Sir.

**DE LA RIONDA:** And don't they kinda hang down?

**DI MAIO:** Yes, Sir.<sup>144</sup>

This exchange with Di Maio, for one, served as a subtle reminder that these professionals were not the hoodie-wearing type. Further, his question "Don't *they* normally wear them a little big?" was telling of a formulation of a distinct group of people who he understood to constitute the hoodie-wearer type. De La Rionda never explains whom this "they" whom he imagined "normally wear them a little big" consists. It can, however, be inferred that de la Rionda was referring to a sub-culture which Di Maio could identify, as he answered in the affirmative without any hesitation. Further, the question, "Have you seen people wearing them?" was another indication that there was a particular group of people to which de la Rionda was referring. De La Rionda's question was vague. To have

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<sup>144</sup> "Video/Blog Archive: George Zimmerman," WFTV Channel 9. The video used was "Day 20: George Zimmerman Trial Part 11," <http://www.wftv.com/videos/news/day-20-george-zimmerman-trial-part-11/v6Bgr/>.

seen “people” wearing hoodies is not helpful information, as hooded sweatshirts are nondescript and commonly worn garments. This question can hence be read as quietly referring a certain group of “people” which Di Maio indeed claimed he had before encountered. The moment revealed a shared language between these two men about the “they” who they both understood to wear hoodies in a similar fashion. Di Maio did not need to have this subset of people further described. Both men knew without any further description the kind of hoodie-wearing people about which they were speaking.

It is worth noting that the hoodie itself, before any wearer, violent event, or trial, is an ontologically benign object. There is nothing intrinsically violent about the garment itself. As Jeffers points out in regards to the controversy, “hooded sweatshirts are among the most ordinary, common, and banal forms of casual wear available.”<sup>145</sup> While the hood function of the garment could be understood to be associated with some degree of self-imposed anonymity on the behalf of the hoodie-wearer, the hood also serves a practical weather shielding purpose. A garment having a hood does not make it an object with criminal intentions. This could perhaps be compared to this issue of sagging pants, another wardrobe choice often associated with black youth culture. In the case of sagging pants, there is concern about the connotations of the origin of the style, as some claim it began as an imitation of prison attire (where belts are often not permitted) and thus, bears some (though distant) historical reference to criminal culture.<sup>146</sup> There is, however, no comparable origin claim to made about the hoodie. Wearing a hoodie in any of its many iterations does not automatically ascribe one to any political or ideological affiliation. Following Martin’s death, various entertainment blogs compiled photographs of

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<sup>145</sup> Jeffers, "Should Black Kids Avoid," in *Pursuing Trayvon Martin: Historical*, 130. .

<sup>146</sup> Jeffers, "Should Black Kids Avoid," in *Pursuing Trayvon Martin: Historical*, 137.

celebrities wearing hoodies (including those such as Sarah Palin, Bill O'Reilly and Marc Zuckerberg) in an effort to point out that these hoodie-wearers looked in no way sinister.<sup>147</sup> The photos functioned to highlight that the perception that the hoodie warrants concern or suspicion depends entirely on who is wearing it. The reading of the endangering and suspicious hoodie-wearer is not indigenous to the object itself, rather, it must be socially constructed.

The hoodie-wearer as a type is, thus, formulated out of visual and historical associations to groups associated with hoodie wearing. Many have claimed that the hoodie-wearer is associated with a black youth oppositional culture.<sup>148</sup> It is, however, important to note that this construction relies much more heavily (if not entirely) on the black youth that is inside the hoodie than it does on the garment itself. In response to the claim that by wearing a hoodie Martin was putting himself in danger Jeffers notes, "What put Martin at risk is not what he was wearing but the fact that he was a young black male, and no change in his choice of clothing could have changed that."<sup>149</sup> The hoodie became a way of deflecting the accusation of racial profiling, to instead claim it was not Martin's race but rather his supposedly threatening choice of attire. Throughout the trial, the image of the "hoodie-wearer" functioned as a proxy for talking about a young black male. Other evidence introduced and remarks made throughout the trial helped to solidify the image of the hoodie-wearer. The only time the jury was shown a pre-mortem image of Martin wearing the hoodie in question was in the 7-Eleven footage, where one can only make out

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<sup>147</sup> Jeffers, "Should Black Kids Avoid," in *Pursuing Trayvon Martin: Historical*, 139.

<sup>148</sup> Reverend Al Sharpton asserted that the hoodie "Now represents an image of an urban street kid that either embraces or engages in street thug life and I think its unfair,"

[http://www.washingtonpost.com/lifestyle/style/trayvon-martins-death-has-put-spotlight-on-perceptions-about-hoodies/2012/03/24/gIQAwQ6gaS\\_story.html](http://www.washingtonpost.com/lifestyle/style/trayvon-martins-death-has-put-spotlight-on-perceptions-about-hoodies/2012/03/24/gIQAwQ6gaS_story.html)

<sup>149</sup> Jeffers, "Should Black Kids Avoid," in *Pursuing Trayvon Martin: Historical*, 131.

a tall, black, male, hooded teenager roaming around in a surveillance video, a image which as previously discussed, comes with its own set of problematic references.

Through the hoodie, Martin was made into the hoodie-wearing type, both in his deadly encounter with Zimmerman in the housing complex and then again in court when the object was entered of evidence. In both spaces, the hoodie functioned as the thing through which a particular kind of racialized behavior was ascribed to an actor.

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Throughout the trial, the presence of the hooded-figured as evidence took on a powerful visual and metaphorical role in assembling the narrative that Martin was the agent of his own death. Depicting Martin as the violent aggressor was merely a matter of superimposing the already familiar image of the criminal hoodie-wearer onto the exhibit at hand. The object was unable to advocate with what little information it possessed on Martin's behalf. Instead, the figure's physical presence in court was unavoidably referential of a large, dark, hooded figure, who was escorted through the courtroom and spoken for by experts who attributed it to a narrative in which it was a violent, physically dominating agent. The presentation and interrogation of the evidence successfully animated the inanimate object, and attached it to a particular ideological reading of a black hoodie-wearing teenager.

Importantly, the hoodie was not used as the tool with which the presence of a racial dynamic was erased from the dispute over the nature of the fight between Zimmerman and Martin. Rather, the hoodie became the object through which the racial dynamic at play was inverted. What to many was perceived as an event in which a black teenager fell victim to racial profiling which lead to his murder, was legally reconstituted

by way of the hoodie, as an event in which a dangerous black teenager attacked an innocent neighbor and was thus, responsible for his own death. The hoodie became a way to avoid using explicitly racial language, while at the same time injecting a racist reading into the reconstruction of events. The conception of the hoodie-wearer as dangerous is inextricable from the black teenager inside the garment. In this way, the object did not remove the issue of race from the argument, but rather relocated it in the object's associative qualities, where it was perhaps more difficult to see and therefore combat. Thus, through the evidence that the hoodie was interpreted to present, the object became a way to ascribe a racist narrative without ever mentioning or even visually referencing skin color.

In these various moments in which the hoodie was handled, spoken for, and ultimately animated with a particular kind of behavior, the issue of race, which the trial tried diligently to keep out, found a way to enter the forum. In pretrial statements and hearings, both sides made clear that they wished to exclude a conversation concerning the role race or racial profiling played in the case. When asked before the trial about the racial overtones of the case, Angela Corey, the prosecutor who charged Zimmerman with second-degree murder said, "We only know one category as prosecutors, and that's a 'V.' It's not a 'B,' it's not a 'W,' it's not an 'H.' It's 'V,' for victim. That's who we work tirelessly for. And that's all we know, is justice for our victims."<sup>150</sup> The statement, in which Corey used "W," "B," and "H" as abbreviations for racial identifications, was one of many indications that the prosecution intended to approach the case without using Martin's race as part of their narrative.<sup>151</sup> Prosecuting attorney John Guy stated more than

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<sup>150</sup> Alvarez and Cooper, "Prosecutor Files Charge of 2nd-Degree."

<sup>151</sup> Bloom, "Zimmerman Prosecutors Duck the Race"

once in the state's closing statement that the case was "not about race."<sup>152</sup> The defense was also conscious to avoid the question of race being explicitly addressed. In pretrial hearings the defense was successful in convincing Judge Nelson to agree that the phrase "racial profiling" could not be used in the state's opening statements.<sup>153</sup> In this way, both sides rhetorically tried to avoid using the color of Martin's skin as a factor in putting together the narrative of events.

The issue of racial profiling, however, found its way into the trial by way of the hoodie. The hoodie became a way to quietly reference, visualize, and attribute actions to a black male teenage hoodie-wearer. The prosecution at times made these references inadvertently, such as through the actual entrance of the enormous hooded silhouette or in de la Rionda's unconscious word choice when he asked Di Maio "Don't *they* normally wear them a little big?" The racial references were also, however, at times calculated by the defense, most predominantly in their construction of Martin as the violent and physically dominate agent that was substantiated scientifically by the hoodie itself. The interpretation of the garment itself was one of the key moments in which an ideological understanding was subtly invited into the trial to aid in the project of narrative construction. Despite the trial's filtration mechanisms, through the hoodie, race found a way to distinctly enter and affect the legal project being enacted. The entrance and animation of the large, faceless, hooded figure cast a dark shadow in the trial, behind which a racist interpretation lingered.

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<sup>152</sup> Ibid.

<sup>153</sup> *NPR News*, "Prosecution Can't Use Race."



“We’re all stuck here for a little while”<sup>154</sup>

Laws come to us in the form of language and as such are simultaneously constrained by the vocabulary available, and liberated by the polysemic character of words. The identification and enforcement of laws and legal rights, therefore, must be mediated through acts of narration and attribution of meaning. Kimberlé Crenshaw and Gary Peller in their essay “Reel Time/Real Justice,” discuss the process through which legal terminology is assigned meaning.

The terms that embody and guarantee the rule of law.... are necessarily indeterminate. Their meaning must be socially constructed-- through narratives of place and time-- for there to be any meaning to them at all... the “law” and the “facts” of the social world do not exist in any objective, ready-made form. They must always be interpreted according to politics, ideology, and power.<sup>155</sup>

Trials face the task of determining the meaning of legal terminology as it applies to a particular, isolated, event. The particular is reconstructed so that it can be examined in accordance with an indefinite law. The narrative structure assembled in any trial, despite its occurrence in a highly regimented space, does not evade the social and political world in which we live. Rather, social and political structures inform what evidence is made to present both in and out of court.

The Rodney King beating and subsequent trial is a particularly polemic example of how social and political structures enter and affect the narrative structure that informs the interpretation of legal terminology. In 1991, King, a twenty-five-year-old man pursued by police for speeding and running a red light on California Highway 210, was

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<sup>154</sup> Part of Rodney King’s statement to the media in his call for peace during the Los Angeles Riots (1992).

<sup>155</sup> Kimberlé Crenshaw and Gary Peller, “Reel Time/Real Justice,” 1993, in *Reading Rodney King, Reading Urban Uprising*, ed. Robert Gooding-Williams (New York, NY: Routledge, 1993), 64.



brutally beaten by four white police officers. The beating was caught on camera by George Holliday, who watched and videotaped the event unfold from his balcony and released it to a local Los Angeles news channel days later.<sup>156</sup> Public outrage over the video eventually led to the trial of the four officers involved. The highly anticipated and publicized seven weeklong trial ended with the acquittal of all four officers by an all white jury. Importantly, the not guilty decision did not occur *in spite of the video* depicting the event but rather *by means of the video itself*. The defense deconstructed the video in court and reconstituted the video stills to successfully convince the jury that King was a dangerous agent who needed to be forcefully subdued. Seeing the video and then hearing the jury's decision was (and still is) a disorienting experience. For many who saw the video, King was the clear victim of police brutality. But in the legally victorious narrative, King was a violent actor who was accurately and reasonably perceived as dangerous by those charged with enforcement of the law. The stark misalignment of these two narratives begs the question, what happened in the legal space between the beating and the verdict to make this inversion possible?

The Rodney King example has since come to function as an important place from which to begin an examination concerning how the articulation and enforcement of law is mediated through narrative structures which are neither neutral nor immune to the question of race. The trial was so controversial and elicited such strong reactions, in part, because it constituted a salient demonstration of the sharp distinction between legal and material reality; formal legal equality did not function as adequate protection for people of color. The facts and legal terminology that determine how the law operates, even when

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<sup>156</sup> Richard Serrano, "King Case Aftermath: A City in Crisis," *Los Angeles Times*, May 2, 1992, accessed April 28, 2015, [http://articles.latimes.com/print/1992-05-02/news/mn-1287\\_1\\_rodney-king](http://articles.latimes.com/print/1992-05-02/news/mn-1287_1_rodney-king).

“equally applied,” are always interpreted according to structures of power.<sup>157</sup> The King case catalyzed an important discussion of the ways in which courts reproduce and solidify socially constructed systems of knowledge, and, thus, how ideological interpretations enter the process of assigning meaning to legal terminology and adjudicating past acts.

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In December of last year, a grand jury in Staten Island ruled against indictment of a New York Police Department Officer, Daniel Pantaleo. A widely circulated, civilian-captured, video showed Pantaleo killing Eric Garner by means of an illegal, and seemingly unwarranted, chokehold. Garner was an unarmed black man who Pantaleo and other NYPD suspected of selling untaxed cigarettes.<sup>158</sup> A protester at an impromptu demonstration at the scene of Eric Garner’s death following the announcement turned to a reporter and said, frustratedly, “We had a video. How can we win? We can’t win!”<sup>159</sup> The protesters statement powerfully reminds us of the reactions following the acquittal of the officers caught on video brutally beating Rodney King. In light of the current political moment, it is imperative that we return to, and expand upon, the conversation sparked by the Rodney King decision.

I am writing at a moment in which people in the United States, and particularly those of my generation, are paying heightened attention to what occurs in criminal legal

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<sup>157</sup>Crenshaw and Peller, "Reel Time/Real Justice," in *Reading Rodney King, Reading*, 62.

<sup>158</sup> J. David Goodman and Al Baker, "Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case," *The New York Times*, December 3, 2014, accessed April 28, 2015, <http://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>.

<sup>159</sup> Vivian Lee, "'I Can't Breathe' Is Echoed in Voices of Fury and Despair," *The New York Times*, December 3, 2014, accessed April 28, 2015, <http://www.nytimes.com/2014/12/04/nyregion/i-cant-breathe-is-re-echoed-in-voices-of-fury-and-despair.html>.

environments and the way it relates to the maintenance and perpetuation of a racially biased criminal justice system. The societal repercussions of the legal criteria of “reasonable fear” necessary for justified self-defense killings are becoming increasingly clear. This legally stipulated idea is coming to be recognized as a foundational element of contemporary, post formal legal equality, racism. It is the contemporary justification that allows for the *legal killing* of innocent black men and women in this country. In every major case that has arisen in which the victim is black and the perpetrator is not, and/or is law enforcement, the murder of an unarmed black person has been justified through the notion that the “use of force” was a legitimate response to a “perceived threat,” and that, thus, the perpetrator acted in self-defense because they had a “reasonable fear” for their life. The recent, heightened, attention on these kinds of events has highlighted this legal terminology and the process through which it is defined, one in which racist interpretations can, and often do, enter the construction of narrative and attribution of meaning.

This issue is in no way new, but rather has long been deeply entrenched in our nation’s legal system. In recent years, however, the leveraging of user-generated media to bring attention to individual deaths has helped facilitate increased attention to this crisis. Individual deaths have become the vehicles through which public outrage over a systemic injustice is concentrated and communicated; a single event is representative of many. Oscar Grant, Latasha Harlins, Trayvon Martin, Reshida McBride, Michael Brown, Tamir Rice, Eric Garner and Walker Scott are all examples of individual deaths that called attention to the crisis of contemporary American race relations. In all of these cases, the

public outcry rallied media attention and legal action that otherwise might never have materialized.

In three of the largest and most recent reactions, those to the Martin, Brown and Garner cases, the original event, the killing of an unarmed black man that went initially uncharged, sparked nationwide protests, outrage and debate. In all of these cases the public demanded, among many things, that some legal repercussion be pursued. The outrage surrounding all three deaths focused not only on the unjust killing, but also on the unjust and inadequate reaction of our legal system. In all three of these deaths the perpetrator was not initially entered into any formal legal process; not until after public outrage and pressure were they initiated into criminal proceedings. All three legal endeavors that resulted from these reactions ended without a conviction or indictment.

Interestingly, the eventual legal decision which emerged in the cases of Martin, Brown, and Garner sparked reactions as large as, or larger than, the reaction to the event itself.<sup>160</sup> In July of 2013, after the Seminole county jury acquitted George Zimmerman of all charges in the killing of Trayvon Martin, demonstrations occurred all over the country and President Obama made a televised national address asking for calm.<sup>161</sup> Since the *State v. Zimmerman* acquittal, the reactions to legal decisions have only escalated. On a November evening last fall, crowds gathered around the Ferguson police headquarters waiting for the grand jury decision in the case of Darren Wilson. The Ferguson grand jury announced that no charges would be pressed against Wilson, the officer who shot and killed Michael Brown, an unarmed eighteen-year-old. The initial event sparked nationwide protests and a great deal of media attention to the city of Ferguson, Missouri,

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<sup>160</sup>Goodman and Baker, "Wave of Protests After."

<sup>161</sup>Cohen to CNN newsgroup, "Obama: Trayvon Martin Could Have Been Me."

which, as was revealed to the nation through this particular event, has a long history of abusive and discriminatory law enforcement practices.<sup>162</sup> The announcement that Wilson would not be indicted brought about a night of escalated protests in Ferguson, which resulted in violence and arson. Most recently, in December of last year, when a grand jury in Staten Island decided not to indict NYPD Officer Daniel Pantaleo, the decision sparked some of the largest and most disruptive civil rights demonstrations New York City has seen in recent decades.<sup>163</sup> <sup>164</sup> The idea that the legal decision was as infuriating to some as the initial unjust death is not entirely new, but has perhaps been seen more frequently and carried more traction in recent years. In the case of Rodney King, the decision of the Simi Valley jury to acquit the four officers sparked the Los Angeles riots of 1992, some of the most deadly and destructive race riots the country has seen since the Civil Rights era.<sup>165</sup>

The reactions to the event versus to the legal decision are important to compare. The former is often an expression of grief and outrage that is coupled with or translated into a general demand that some legal repercussion be pursued. The latter, however, does not come with as clear of a goal. These secondary reactions, those in response to the verdict of the legal event, are ones that seem to express anger and discontent about the

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<sup>162</sup> Dashielle Bennett and Russell Berman, "No Indictment for Ferguson," *The Atlantic*, November 25, 2014, accessed April 28, 2015, <http://www.theatlantic.com/national/archive/2014/11/ferguson-verdict-grand-jury/383130/>.

<sup>163</sup> Goodman and Baker, "Wave of Protests After."

<sup>164</sup> There is an important distinction between the decisions to not indict an individual (what occurred in the Ferguson and Staten Island grand juries) versus an acquittal. A grand jury decision to not indict effectively says "no criminal act occurred, or is even suspected to have occurred, no trial necessary" whereas an acquittal after a trial by jury says something to the effect of "the supposed criminal act has been adjudicated in an adversarial setting, and the accused is not guilty of said alleged criminal act." These are markedly different; perhaps most importantly in the sense that in one, a trial occurs in which two sides have an opportunity to argue their case. I am, however, not discussing them separately but rather grouping them in this discussion more broadly as I believe for my purposes, both legal decision say something to the effect of "the killing was justified, what happened was legal."

<sup>165</sup> Serrano, "King Case Aftermath: A City."

system more broadly. The translation of political grievance into a legal event, though the fulfillment of the demand resulting from the initial attack, has proved dissatisfying, inadequate or in some cases has seemingly repeated the initial injustice. These secondary reactions beg the question, what is it that we ask for or expect when we demand a legal event? What is it that we think can, or will, occur in this space?

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This paper has been an exploration of how it is these publicly perplexing verdicts are reached. I am interested in how a trial unavoidably comes to act as much more than a legal, technical, space. I wished to examine through what modes social, political, and historical crises, which a trial is often *also* addressing, enter and perform in the courtroom.

I have found that examining the presentation and interpretation of evidence is an important place in which to look for how and in what ways racist ideological readings enter and are reinforced within the trial forum. In a legal space, the forum and what it seeks to accomplish heavily condition all speaking and listening. What might be meaningful or apparent to a public audience, can take on a very different role when contested in a legal context. Images can be manipulated to show things they do not, voices and experiences can be rendered inaudible, and ideological narratives can be readily attached to inanimate things. This does not mean the legal forum is inherently deceitful or unjust, but rather indicates that the forum is often a much more porous, messy, political and historical space than it is willing to acknowledge.

I believe that there are various forms of legal shadows that can, and do enter and effect legal proceedings. Issues of gender, class, sexual orientation, linguistic difference,

and political agenda, are some examples of other kinds of disruptive and potentially transformative issues that the legal space is unable to handle, account for, or control. This project has, however, lead me to a larger and perhaps more difficult question, which is in what way do race-related shadows pose a uniquely problematic and pervasive disruption in the legal forum? Is not the inability to recognize, address, and legally translate personal and collective histories of racial trauma at the heart of a crisis facing the American criminal justice system? I wonder, if in the moments in which shadows of racial trauma emerge and disrupt the trial, the legal forum can also be seen to, as a result, show symptoms of its own trauma, namely that of its long history of institutionalized racism.

## Video Appendix

### Chapter 1.

“Day 10: Zimmerman Trial Testimony Part One”

<http://www.wftv.com/videos/news/day-10-zimmerman-trial-testimony-part-1/v49Yn/>

### Chapter 2.

“Day 12: Trayvon Martin’s Friend’s Testimony Part 1”

<http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-1/v5K6X/>

“Day 12: Trayvon Martin’s Friend’s Testimony Part 3”

<http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-3/v5K85/>

“Day 12: Trayvon Martin’s Friend’s Testimony Part 4”

<http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-4/v5K9m/>

“Day 12: Trayvon Martin’s Friend’s Friends Testimony Part 5”

<http://www.wftv.com/videos/news/day-13-trayvons-friends-testimony-part-5/v5P8G/>

“Day 12: Trayvon Martin’s Friend’s Friends Testimony Part 6”

<http://www.wftv.com/videos/news/day-12-trayvons-friends-testimony-part-6/v5LGm/>

“Day 13: Trayvon Martin’s Friend’s Friends Testimony Part 1”

<http://www.wftv.com/videos/news/day-13-trayvons-friends-testimony-part-1/v5NXX/>

“Day 13: Trayvon Martin’s Friend’s Friends Testimony Part 5”

<http://www.wftv.com/videos/news/day-13-trayvons-friends-testimony-part-5/v5P8G/>

“Day 13: Trayvon Martin’s Friend’s Friends Testimony Part 6”

<http://www.wftv.com/videos/news/day-13-trayvons-friends-testimony-part-6/v5P97/>

### Chapter 3.

“Day 17: George Zimmerman Trial Part 7”

<http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-7/v5prz/>

“Day 17: George Zimmerman Trial Part 9”

<http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-9/v5py6/>

“Day 17: George Zimmerman Trial Part 10”

<http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-10/v5pzZ/>



“Day 17: George Zimmerman Trial Part 12”

<http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-12/v5qDD/>

“Day 17: George Zimmerman Trial Part 14”

<http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-14/v5qD2/>

“Day 17: George Zimmerman Trial Part 15”

<http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-15/v5qKq/>

“Day 20: George Zimmerman Trial Part 5”

<http://www.wftv.com/videos/news/day-20-george-zimmerman-trial-part-5/v59Kr/>

“Day 20: George Zimmerman Trial Part 6”

<http://www.wftv.com/videos/news/day-20-george-zimmerman-trial-part-6/v59Lq/>

“Day 20: George Zimmerman Trial Part 8”

<http://www.wftv.com/videos/news/day-20-george-zimmerman-trial-part-8/v599P/>

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