

Investigating the Truths: Inquiries, Conspiracies and Implied Performances in the Public Record

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The web of conspiracy is always more or less finely woven than what we do perceive of it (Mailer 1983: 9).

The focus in courtrooms or tribunal chambers on live witness evidence-giving is examined in literature dealing with the residue of legal encounters as a space of potential instability for the process of establishing narrative authority (Auslander 1999; Lynch and Bogen 1996; TDR 2008). These accounts focus on the self-conscious ‘play’ of witness performance — self-presentation, demeanour and verbal and physical fluency as the site of a particular, intractable form of challenge to attempts to construct a definitive legal record. In this essay I will examine some instances in which historically prominent legal proceedings have proved fertile ground for challenges to official narratives through the tendentious reconstruction of such witness performance as *implied* by the written record. This kind of reconstruction is a common feature of a body of conspiracy theories which read ‘against the grain’ of official narratives.

David Coady (2003) defines conspiracy theory as ‘a proposed explanation of an historical event in which conspiracy ... has a significant casual role ... to bring about the historical event which it purports to explain’ and which must ‘conflict with an “official”

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explanation of the same historical event' (Coady 2003: 201). In their return to the moment of performance to assert a version of what 'really' occurred, the conspiracy theories I am concerned with reinterpret the record of the trial or hearing in order to reveal its 'true' significance, one which is generally held to be hidden in plain sight.

I will be seeking to identify three particular models of implied performance which focus on differing aspects of legal proceedings. The cases I will be using as illustration are all American in this instance, and I encountered them as literary and electronic texts rather than live testimonial events. The American focus is by coincidence rather than design, notwithstanding that the public reckonings involved — the Warren Commission's report into the Assassination of President Kennedy, the Kean Commission's Hearings into 9/11 and the 1951 trial and subsequent execution of Ethel and Julius Rosenberg — amount to foundational texts in the history of conspiracy theorising from both ends of the political spectrum. In their narrative content they also act as arresting engagements with the cloudy nightmares of threat and state action that haunt a national psyche — political assassination, terrorism, domestic subversion.

In the final section of the essay I examine some of the overlaps between this mining of implied performance from the record and the strategies employed by documentary theatre as it too fixes on the trial transcript in order to represent it. For a theatrical representation of a legal encounter, both the textual record and the spectacle of the physical proceedings of the courtroom must be 'edited' and reimagined. Questions of interpretation thus immediately arise — what is appropriate to the representation of the truth of proceedings, whose voices, which exchanges, what of the materiality of the courtroom space should appear? Debates on the efficacy of this theatrical form tend to circle around the issue of verisimilitude. Some commentators suggest that the unproblematic representation of a staged 'real' fails to acknowledge the representational processes involved in its reproduction and, thus, fails to do justice to the complexity of the event's truths or the partiality of the interpreter's perspectives. I would suggest that such

theatrical representations have intriguing similarities to the process of conspiracy theorising which builds on implied performance in order to assert the affective power of its interpretation.

Conspiracies and Theories

Critical explorations of conspiracy theories suggest that they are a form of analysis which builds on postmodern doubt concerning the ability to gain purchase on complex and dislocating events. In his outlining of a model, Frederic Jameson (1988) asserts that:

Conspiracy is the poor person's cognitive mapping in the postmodern age; it is a degraded figure of the total logic of late capital, a desperate attempt to represent the latter's system, whose failure is marked by its slippage into sheer theme and content (Jameson 1988: 355).

In the context of such 'desperate attempts', the localised and specific episode of courtroom performance (performance here considered as managed self-presentation, deliberately reconstituted activity intended to affect or mislead) may be read as an originating, primal scene in which proliferating narratives and power structures are revealed and thus understood. These emerge from unseen networks into the accidental and unintended revelation of their deep structures. It is worth noting here that in examining the conspiracy theorist's work we must be careful to observe our own implication in the process. As Martin Parker (2001) points out, the writer dealing with this topic must be conscious of their role in identifying and clarifying a conspiracy, surmising and confirming that the 'patient is paranoid, falsely conscious, playfully reflexive', that they are enmeshed in a post-modern blurring of discourses and distinctions and that conspiracy is the problem to which truth is the answer (Parker 2001: 200). Parker goes on to suggest that such scepticism is the foundational 'hermeneutics of suspicion' at the heart of all human sciences, and that we are all, more or less, theorists of conspiracies (202). Mark Fenster (2008) also illustrates the undeniable historical reality of conspiracy, indicating that conspiracy theories can 'correctly identify present and historical wrongs' and that they are a

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constituent element of much political process (Fenster 2008: 11). At the same time, his analysis focuses most strongly on conspiracy theory's manifest extremes, suggesting that it 'is frequently wrong — and outrageously, even seemingly pathologically so, at times' (11).

Conspiracy theories seek gaps, omissions and slippages in the documentation of official processes and procedures. When they fix on those elements of performance — demeanour, behaviour, mimesis, enactment — which cannot themselves be 'fixed', which disappear with the ephemeral shift of performance, they occupy fertile ground. The case studies examined below each feature a prominent potential or claimed conspiracy theory which rests on the analysis of a moment of human performance in a legal context. In doing so, each theory employs a form of analytical performative writing to assert a slippage between the apparently explicit text — written or visually recorded — of testimony and its supposed subtextual content.

I characterise such themes as operating through three distinct and identifiable forms of implied performance:

- a) The ascription of particular performative underpinnings to a dialogue available only as the written transcript of testimony.
- b) The examination and interpretation of performance which is available both as text and as video record so as to recontextualise the particularity of that performance. Here, performance is not reinvented, but reinterpreted.
- c) The outlining of the implied demeanour of participants through embellishment of third party witness recall in instances where no transcript exists, or by the ascription of entirely imagined elements of performance where no account exists but witnesses are known to have been present to provide some form of 'audience' to activities subsequently written up as performance. In such cases the writer is generally not themselves an eyewitness to what went on.

In exploring the following examples in which an implied performance has become central to a conspiracy theory, I will thus be outlining the ways in which each provides a similar but qualitatively

different example of the process.

Oswald, Kennedy and the Proliferation of Doubt

An example of the first form of implied performance — the ascription of particular performative underpinnings to a dialogue available only as written transcript — occurs in the reinterpretation of the events surrounding the investigation of the assassination of President John F Kennedy by the Warren Commission Inquiry in 1964. Mark Lane's (1967) influential account of the evidence given by Jack Ruby (the killer of Kennedy's alleged assassin, Lee Harvey Oswald) to the Commission focused on Ruby's speech and behaviour when giving evidence as revelatory of his involvement in a conspiratorial plot. Here, the transcript of Ruby's interrogation is read for its sub-textual significance, with meaning hinted at, but hidden:

RUBY: But you are the only one that can save me. I think you can.

WARREN: Yes?

RUBY: But by delaying minutes, you lose the chance. And all I want to do is tell the truth, and that is all (Lane 1967: 236).

For Lane, Ruby is a witness with evidence of a conspiracy who is unable to speak about that conspiracy unless he is taken to Washington. He is fearful, uncertain, seeking support for his insinuations and anxious to go further if the conditions are right. In Lane's commentary Ruby is dropping signals that refer to what is, and must remain, unsaid - making for an expressive picture of the self-presentation of a hounded, disturbed individual seeking escape.

However, as Jean Davison's (1983) later account suggests, this reading of an implied performative demeanour from the textual account is tendentious. In her book, *Oswald's Game*, Davison provides an indication of the ways in which the record has become a 'lumberyard' in which 'by picking up a few pieces here and there, and doing some cutting and fitting, any theory could be built for which someone had a blueprint' (Davison 1983: 19). Davison examines Lane's account of

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the apparent fear of assassination manifested in Jack Ruby's interview. In this, Lane suggests that Ruby felt he could not tell the truth in the current location, and was dropping heavy hints that if he could be moved to Washington he would be able to reveal all. That he wasn't moved was evidence, to Lane, that the Commission didn't want what he had to say to become public. Lane makes much of the implications of Ruby's statements from the transcript, a transcript which Davison describes as reading 'like a play'. However, as Davison discovers on reading and reconstructing the text in greater detail, Lane's interpretation of the play text's performance is a clear mis-reading. In fact, she argues, Ruby appears anxious to reveal that he was *not* part of a conspiracy, and his reason for going to Washington is to take a lie detector test — prove this, so removing him from what he sees as an increasingly anti-Semitic attempt to frame him.

Davison's re-reading of Lane's own version of the interview transcript foregrounds the difficulty of establishing a factitiously reliable record of witness testimony without documentation of the witness's behaviour — that aspect of witness contribution which in legal terms is defined as demeanour — to support it. In this case we are concerned with a lack, an absence, and the influence on the record of that absence, allowing interpretation to play across the surface of recorded testimony to establish doubt and explore the possibility of judicial misinterpretation, avoidance or intentional deceit. Ruby's performance is presented by Lane as suggestive of the failings of the Warren Commission to provide an adequate account of what took place. In this case the image of a distracted, troubled witness, hinting at secrets, is edited from the available record to provide evidentiary fit, and remains as the ghosted impression assembled by Lane while the associated materials decay. The inscription of new performance is enough to indicate the existence of doubt, and that is also enough to assert this doubt over any claim to the validity of the official investigation.

The absence of a record of Ruby's 'performance' in such an instance, and the embellishment of the transcript through an implied one,

highlights the awkward position of the demeanour of witnesses in courtroom procedures. The reading of such demeanour is a crucial element of judicial processes, founded in the ability to command the presence of the witness for judge, counsel and jury to both interrogate the witness's recalled experience and to evaluate the manner of the witness's self-presentation. Here, demeanour is registered as an unexamined standard, a generalised concept which seems to take in diction, deportment, physical presentation, cosmetic appearance, attention, stance and many other signifying elements aimed at a normative standard of truthful behaviour. The fact that witnesses and defendants might still present themselves 'untruthfully' through a skilled playing indicates the degree to which such a common sense reading may be subverted, and yet it is also apparent that the affective impact of the courtroom encounter holds a persuasive power akin to that of the most accomplished mimetic theatrical representation.

9/11, Air Defence and the Playing of Operational Responsibility – Performance as Evasion and Diversion

The second form of implied performance constructed as evidence of conspiracy that I wish to present involves more developed transcription. It can be seen at work in the US Government's investigation into the events of 9/11. This examination and interpretation of performance is based on the availability of testimony as both text and video record.

Where the transcription of evidence and of judicial process seeks to prevent interpretive openness, it generally does so as part of a project aimed at reducing doubt concerning the authority of legal conclusions drawn from the courtroom proceedings, illustrating the material limits of circumstances in order to prevent the escalation of counter-narrative and conspiracy.¹ The advent of the supposedly protective authority of the video record would seem to provide a rooted basis for the revealed nature of courtroom truths. However, cases in which this process in fact provokes forms of performance analysis that are instrumental to

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the construction of larger narratives of conspiracy illustrate that specific theories may find confirmation through their ability to reexamine specific courtroom performances.

During the Public Hearings into the Kean Commission's Report on 9/11 in the US, accusations were made concerning the testimony of military witnesses involved in air force defence on the day. These suggested that their public statements about decisions taken regarding hijacked aircraft were contradicted by tape recordings of their actual behaviour. Major General Larry Arnold and Colonel Alan Scott, representatives of the North American Aerospace Defense Command (NORAD), first testified to Kean's panel hearing in May 2003 and Arnold returned to the Public Hearing in June 2004 to hear the Commission's statement regarding the improvised air defence on the day and to face questions arising. This testimony has been mined during subsequent commentary for discrepancies focusing not only on factual elements, but also on the performative — asserting that Arnold's statements make a series of rhetorical gestures which supplement their explicit content and also that his demeanour in the performance of his testimony before the Commission exposed the supposed untruths and subtextual voicings through particular hesitations and emphases.

Arnold's second testimony was to an open hearing of the Commission, in response to the report compiled by staff researchers on the response of the air force on the morning of 9/11 in which his previous evidence was cited. The researchers had found that NORAD officials, including Arnold, declared in their initial appearance at the Hearings, that they received hijack notification regarding Flights United 93 and American 77 at 9.16 am and 9.24 am respectively on the day. They claimed they had scrambled fighters from Langley airforce base directly in response to these warnings. The researchers' own analysis suggested that this was not the case and that such 'inaccurate accounts of what happened ... deflected questions about the military's capacity to obtain timely and accurate information from its own resources' (Farmer et al nd: 19).² Discovery of further bodies of material allowed the researchers to reconstruct discrepancies that

countered the version of an ordered military response put forward at the May hearing and in Leslie Filson's official NORAD account, *Air War Over America: Sept 11 Alters Face of Air Defense Mission* (for which Arnold provided the Foreword).

When Arnold returned in 2004 to give testimony concerning his own earlier statements he was asked why no one from his organisation had mentioned false and inaccurate reports of aircraft situations which occurred on 9/11 at the previous hearings. He was also asked why no mention had been made of open line recordings of communications between various airbases, control centres and commanders which illustrated that NORAD's response was confused, and not considered and controlled as he'd previously testified. In response, Arnold resorted to describing a failed memory process:

I didn't recall those facts in May of last year. That's the correct answer to that. In fact, as I recall, during that time frame, my concern was why did — the question that came to me was, 'Why did we scramble the aircraft out of Langley Air Force Base, the F-16s out of Langley Air Force Base?'... and I was trying to remember in my own mind, what it was that persuaded us to scramble those aircraft ...³

Arnold's strategy was to return to the moment of recall before the Commission in May 2003 and to try to reconstruct the live memory searching which took place at that point. In doing so, he positioned himself as a rather fumbling individual caught up in public events — both on 9/11 and in front of the Commission — presenting this individual lack of acuity to deflect the suggestion of misrepresentation by the body he represented — NORAD.

At face value this would seem to be unprofessional, but hardly conspiratorial. However, Arnold's strategy of befuddlement on his second appearance has not closed down the avenues of inquiry into Government collusion in 9/11. His second testimony has been repeatedly re-examined and re-narrated for its playing into the narrative frame of a conspiracy on the part of the whole Kean Commission exercise — by staff researchers and Committee members as well as the witnesses and NORAD. Arnold's original testimony becomes a

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key element of conspiracy theories which claim that the Kean Report is a revisionist one seeking to deflect attention from Government's complicity in the attacks. Here, Arnold's performance on his return to the Commission is the final proof that the Commission is engaged in a rewriting of what actually happened. David Ray Griffin's online account suggests that Arnold's recall of his memory failure is presented as a deliberate enactment of a failure to remember 'the future — that is ... not "remembering" a story that had been invented only after he had given his testimony' (Griffin nd).⁴ Thus, the 'story' told by Arnold of scrambling fighters to intercept Flight 77 is a fiction of the Commission's own making, one Arnold should have originally remembered and parroted to the Commission on his first appearance.⁵

According to Griffin, Arnold's return was an opportunity provided by the Commission to allow him to revisit his mistake in order to point to it and so to support the Commission's deception — something he managed to do and would have got away with were it not for the sharp eyes of Griffin himself. For Griffin, Arnold's failure to remember the alleged facts in May could not be credible because it would mean that Arnold's force failed to scramble in response to all the hijacked aircraft, only becoming airborne in response to a false report. Such a revelation would, in Griffin's words, be 'the biggest embarrassment of Arnold's professional life', and is not one he would have presented willingly.⁶

For the Commission, Arnold's second testimonial appearance became proof of an attempt to mislead in order to smooth his organisation's error-strewn performance. For Griffin, it was even more manipulative; not the self-defence of the incompetent searching for a believable excuse for error but the deliberately composed faking of such a defence as part of a strategy of disinformation. Griffin reads it as mimetic, a staged enactment of memory recall that seeks to account for his past certainty being disturbed. For both, Arnold's performance was an uncomfortable and awkward moment of revelation, although one that indicates very different kinds, and degrees of, conspiracy. In this case, testimony and its enactment are presented as expressing truths other than those spoken, as productive spaces for the exploration of apparent narrative discordance.

The Rosenbergs - Implied Performance as Confirmatory Embellishment

The third form of implied performance I wish to examine is of a rather different nature, focusing as it does on the demeanour of participants through embellishment of third party witness recall in instances where no transcript exists, or through the ascription of entirely imagined elements of performance where no direct account exists. While demeanour on the stand may be an element in the passing of judgment, the wider context of narratives circulating around a trial — through press, TV, radio and online media — tends to focus on the social and personal circumstances surrounding the event. Here the generic codes involved may be seeking to maximise the dramatic impact of personal witness and encounter.

This process can be seen at work in another celebrated and controversial case of North American conspiracy — the trial and execution for espionage of Julius and Ethel Rosenberg. In this case, the assertion of conspiracy — either a conspiracy by spies or a conspiracy by the authorities — weaves in and around the official record, with some embellished narratives supporting it and some opposing it. Here we move away from official notation and transcription of proceedings or testimony given under oath and into a realm of documentation at the margins of the official process — journalistic encounters with witnesses, notes and reports of surveillance, eyewitness accounts that do not appear as part of the official investigation, but rather as addendum, for example, material perhaps sold on or discovered subsequent to the official business of the case. These may have come from members of the public who witnessed elements of the case, agents involved in the activities that produced the evidence against defendants, or journalists and novelists watching and documenting the drama of these occasions. They are frequently the core documents of revisionism, and are a catalyst for the slipping of all originating moments into an historiography of conspiracy.

In the ongoing debate over the nature and detail of Julius and Ethel Rosenberg's spying for the Soviet Union during the 1940s, for which

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they were both executed in 1953, discussion of their involvement or otherwise has moved between the contradictions and complexities of the court evidence and reinterpretations of the case through research, publication and disclosure of classified documents. Accounts of the Rosenbergs' guilt often pursue a melodramatic line, speculatively capturing performance in peculiarly heated, revelatory moments and attempting to inscribe it as indicative of degeneracy, conspiracy and sedition. For example, Louis Nizer (1973) describes the only meeting between the detained Rosenbergs to take place without a partitioning screen. Here the author's depiction of the meeting extrapolates an implied performance from the scene and imagines a potent demonstration of the extremities of the personalities involved, as witnessed by an unprepared, shocked audience of prison staff. For Nizer, Ethel and Julius Rosenberg reveal an unguarded and unmanipulated image of themselves in this encounter that he suggests is all the more revelatory for its spontaneity.

Before anyone knew what was happening, they began pawing one another with wild abandon. They lost all control and wrestled passionately. The witnesses to the scene were stunned by the suddenness and violence of the outburst. They looked on in amazement at the writhing, groaning figures ... [Then, when they were separated] ... Ethel pulled her shirt together in a modest gesture which seemed ludicrous under the circumstances. She pulled her skirt down and demurely patted her dishevelled hair' (Nizer 1973: 395-6).

This book led to a defamation suit from the Rosenbergs' orphaned children (by then adults, their names changed to that of their adoptive parents) in the 1970s. A central point in their suit involved Nizer's dramatic rendering of another imagined scene.. In his account of Michael Rosenberg's response to a newsflash of the President's refusal of his parent's final appeal, Nizer presents the boy giving out 'a fearful scream like those that ejected him from his nightmares'. The boy's agonised is rendered as the despair as dramatic climax of the case. In the children's lawsuit the same moment is presented directly contrasting tones; Here the 'Plaintiff sat quietly with his hands folded looking down. Plaintiff did not cry'.⁷ In this episode, the Rosenbergs' suit

asserts that it is Nizer's construction of an implied performance which is part of a conspiracy.

The Rosenbergs sons' suit failed, it being found that there was no reckless or malicious disregard for the truth in Nizer's work, 'the literary and historical worth and accuracy of Nizer's account' not being an issue for the court 'however important they may be to the appellants'. This raises an important issue regarding the literary artifice surrounding such narrative interventions and accounts. The nature of Nizer's reading of the critical construction of identity and demeanour is presented within the judgment as fair comment, a legitimate fictional embellishment of the known facts which tends to the truthful. It is this 'tending' which is important here. With the establishment of guilt, the portrayal of behaviour consistent with the monstrosity that such guilt implies, becomes reasonable, and an associate of 'truth'. Literary quality is a quite different category from truthfulness but, for the Rosenbergs, it offered a conspiratorial reinforcing of an official lie. In this instance the genre codes of literary journalism and its shading into literary fiction amplify, enhance and dramatise the legalistic narrative surrounding the court case, establishing a degree of embellishment which interposes the sensational into the record's formality and presenting the meaning of human behaviour through the legitimating frame of the case's outcome. It is the arrival at a record of judgment that allows for the pursuit of a particular quality of implied performance.

Representing the Court

In excavating the record — generally in order to reveal an apparent contradiction, omission or misrepresentation drawn upon in the officially sanctioned version of events — the revisionist seeks a variety of evidential support. In these instances the locating of a primary moment, such as eyewitness testimony that has been overlooked, will often provide the support that moves a revisionist account from the theoretical to the empirical, dismantling the sense of conspiratorial *theorising* replace it with apparently prosecutable fact. However, where a criminal trial may demand the presence of witnesses and accused in order to

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judge the quality of their demeanour, the revisionist examination of the record may assert that its judgment of the significance of human performance from the transcript and the documentation surrounding the trial is equally authoritative — if not in front of the court, then at least in front of the general public. The theory's fix on a moment of performance which provides evidence of the originating generation of doubt is frequently the crucial support to a performative assertion of the failings of an official record.

In focusing on such revelatory moments of performance, the conspiracy theory becomes a form of performative writing — the marshalling of evidence into a persuasive narrative as a project which follows on the initial declaration of doubt. If we take the example of Lane's analysis of Ruby's evidence, we see the performative evocation of performance. The interpretation of Ruby's demeanour during testimony is constructed only through the invention of Lane's script. Similarly, if we examine Griffin's account of Arnold's testimony, we are being asked to consider the moment of witness hesitation as evidence of a failure of scripting in the moment of performance. In Nizer's account of the Rosenberg's meeting we are confronted with the performative assertion of disgust at deception, and with the Rosenberg's demeanour on the stand illustrating of the exact opposite of its apparently manifest content.

Each of these instances of the extrapolation of implied performance from the written record is grounded in a tense relationship with the idea of the record itself as a source of 'truth'. Each holds that the record exists as the capturing of a moment, but suggests that this capturing is only partial. Lane edits the transcript to reveal an interpretation which fits with the theory being advanced, though he does not dispute the validity of the transcript. Griffin reinterprets the visual record of a performance to reveal its lack of truthfulness, again in accordance with the theory being put forward, and again without contesting the validity of the record as a documentation of what 'happened'. Nizer reworks the record of an incident through literary tropes, framing the account as melodrama. In doing so, each writer attaches the genre

codes of conspiracy theory — of secrecy and revelation, treacherous characters, dramatic and suspenseful confrontations, to the basic, unadorned record.

This perhaps raises the question of how far that record itself is a literary construct, albeit one which claims a particular realist integrity. Legal dialogue is never innocent of narrative intent, of constructing a teleology through its use of the rhetorics of cross-examination and archly structured modes of persuasion. The verbatim transcript of an interview such as Jack Ruby's is a genre which has itself been shown to be susceptible to fictionalising strategies — the reason why all British police interviews are routinely recorded. I have elsewhere written on the truth-effects of witness evidence-giving in prominent trials, considering aspects of what it is that amounts to the impression of the authentic, or the 'real'. in the giving of testimony and in its interpretation, in particular where contrasting accounts are not clearly separable by other forms of evidence. However, my concern here is not to examine the perception of the real or of 'realism' in various genres and social phenomena. Rather, I am interested in outlining the strategies by which implied performance often becomes the seal of authenticity for the truth-effect of these interpretations. It is by claiming the affective interpretation of the truth of a performative supplement to the language captured in the textual record that these theories find the key to conspiracy.

The interpolation of the performed into the space between transcript and audience (a category covered in courtrooms by the defining of demeanour and the 'lost' recording of its particularity and qualities), is replaced in conspiracy theories by the implied demeanour drawn from verbal and or physical interactions, and by the confident normalising of linguistic delivery as slippery. Language is read in legal proceedings as having a demeanour of its own — polished, precise and fluent delivery of evidence all indicators of probable plausibility, facticity and truth. In the reading of implied performance, spoken language is often presented as necessarily obfuscatory, something to inspire distrust. As a result, the absence of the performative in the official record becomes

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the site for the conspiracy theorist of a loss of signification, hinting at the impossibility of the conspiracy remaining hidden. Gaps, holes, contradictions, absences, aporia are the stuff of conspiracy — the things which, the conspiracy theorist contends, the official record must try to cover up, though it can never adequately do so.

One of the key tropes of the forms of tribunal theatre which have become a popular contemporary theatrical form is the setting of theatre as a mode of documentation, in which the events being replayed may be rendered as a persuasive representation of surface reality — with surroundings and performance paying great attention to the detailed reproduction of physical circumstances, appearance and, in actor's performances, demeanour. In the public stature of a theatre such as the Tricycle in London's Kilburn, which has produced a string of verbatim dramatisations of landmark tribunals and trials, this stands as an arresting addition to the model of written, video, journalistic or eyewitness records which surround the space of the legal encounter.⁸ However, the commitment to a playing of the 'real' in such work is read by Stephen Bottoms (2006) as intensely problematic — he asserts that documentary drama is bedevilled by a mimetic realism which fails to acknowledge reflexively the process of its construction (Bottoms 2006: 56-68).

It is an irony of this mode of representation that it lights often on the affective power of performance, detailing and replaying a fluid version of it and yet, by the same token, asserting that the record of proceedings is a fixed and unmoving thing. Onstage, the judge's chair stands in for the judge's chair in the courtroom, the transcript being played before the audience stands in for the transcript being recorded in court, yet the actor playing the role of the witness provides a performative approximation of the delivery of evidence and may, sometimes, provide a very broad caricature. The tribunal play necessarily becomes a tendentious examination, both of evidence and of the nature of the real — one which performs a socially significant function, but which also suggests that there is an interpretive play in the record which is resistant to this claim to representational certainty. Bottoms'

analysis suggests that the dramatic and theatrical text — which openly acknowledges its partial and constructed nature — may be the one which more effectively embodies the complex and multifarious truths of the record's relation to the shifting mass of events, motives and experiences which it interprets than the realist account, for all its surface truth. The revelation of the emotive moment of human action at the core of the courtroom scene is itself an extracting of implied performance from the record, one which will enhance the affective power of a tendentious interpretation.⁹

Conclusion

Conspiracy theories frequently construct implied performances from the written or otherwise documented record of official legal proceedings in order to provide an affective account of a core gap in that record, a gap which is revelatory of the conspiracy they seek to prove. Having illustrated the ways in which some significant conspiracy theories have engaged with the space of performance surrounding witness evidence giving and demeanour, I have suggested that this taking hold of a performance trace in order to prove conspiracy shares ground with the manner in which documentary theatre practices may seek to fix interpretation of the record in performance so as to support a particular reading of the meanings of the court proceedings. In doing so, both indicate that demeanour and witness performance, resistant to capture in the written record of the trial, resurfaces as a peculiarly powerful and affective support to the tendentious interpretation of the written record.

Notes

- 1 The Coroner conducting the Inquest into the Deaths of Princess Diana and Dodi Al-Fayed in London in 2007-08 has described the wide-ranging nature of the courtroom proceedings as an attempt to do just this. See www.scott-bakerinquests, especially in his response to Sir Richard Dearlove, ex-head of the British Secret Intelligence Service, who challenged him

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- regarding the wide-ranging nature of the inquest. See www.scottbaker-inquests.gov.uk/hearing_transcripts/200208am.htm: 79, lines 15-24
- 2 John Farmer et al (nd) *Improvising a Homeland Defense, Staff Statement No 17, Commission on Terrorist Attacks*: 19 at www.9-11commission.gov/staff_statements/staff_statement_17.pdf
 - 3 Major General Larry Arnold (Thursday 17 June 2004) *Testimony to the National Commission on Terrorist Attacks Upon The United States, Twelfth Public Hearing, Washington DC* at: www.govinfo.library.unt.edu/911/archive/hearing12/9-11Commission_Hearing_2004-06-17.htm
 - 4 David Ray Griffin (nd) 'The 9/11 Commission's Incredible Tales' posted on www.lookingglassnews.org accessed 14 December 2009
 - 5 The conspiracy theory suggests that this fiction was created by the Commission to cover its discovery that in fact Federal Aviation Administration (FAA) technicians imagined another flight, number 11, was still airborne and heading for Washington for 35 minutes after it had crashed into the World Trade Center. The theory maintains that it was this 'ghost' flight that the scrambled planes were intended to intercept rather than Flight 77.
 - 6 Griffin (nd) op cit
 - 7 From Smith, Circuit Judge, 1977. *Michael Meeropol and Robert Meeropol vs Louis Nizer*, Doubleday and Co, Inc and Fawcett Publications Inc, United States Court of Appeals for the Second Circuit, 560 F.2d 1061, 19 May 1977 Available at www.law.umkc.edu/faculty/projects/ftrials/rosenb/ROS_CT5.HTM
 - 8 Tribunal plays produced at the Tricycle include Richard Norton-Taylor and John McGrath eds *Half the Picture: The Scott Arms to Iraq Inquiry* (1994); Richard Norton-Taylor ed *Nuremburg* (1996), *The Colour of Justice: The Stephen Lawrence Inquiry* (1999), *Justifying The War, Scenes from the Hutton Inquiry* (2003), *Bloody Sunday: Scenes from the Saville Tribunal* (2005); and Nicholas Kent ed *Srebrenica* (1996). For an account of the importance of this work, notwithstanding my own recurrent concerns, see Paola Botham 2009 'Witnesses in the Public Sphere: Bloody Sunday and the Redefinition of Political Theatre' in Haedicke, Heddon, Oz and Westlake eds 2009 *Political Performances: Theory and Practice* Rodopi New York.

- 9 Although David Hare's reading of the impact and significance of Richard Norton-Taylor's 1999 edited text of the Stephen Lawrence Inquiry, *The Colour of Justice*, quoted by Janelle Reinelt in the same edition of *The Drama Review* (Reinelt, 2006: 81) is an eloquent summary of how the verbatim text *might* weave its insightful effects without that self-reflexive structuring that Stephen Bottoms (2006) seeks.

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