

REVIEWING THE ROSENBERGS: DONALD FREED'S *INQUEST* AND ITS JURORS

History is about to crack wide open.

—Ethel Rosenberg in *Angels in America*

It is useful to begin with some immutable facts: Julius and Ethel Rosenberg died on the electric chair at Sing Sing Prison on Friday, 19 June 1953, and were pronounced dead at 8:06 and 8:17 P.M., respectively.¹ Nearly seventeen years later, on 23 April 1970, Donald Freed's *Inquest* opened at the Music Box Theatre in New York City. The play about the Rosenberg case ran for eight previews and twenty-eight performances, closing just twenty-three days after its premiere.² In its first minutes, *Inquest* alerted the audience that "EVERY WORD YOU WILL HEAR OR SEE ON THIS STAGE IS A DOCUMENTED QUOTATION OR RECONSTRUCTION FROM EVENTS."³ Freed asserts that he used only primary sources, no matter how "bizarre or poisoned" the words might have seemed, to construct his script.⁴ He employed these sources in three distinct ways and, accordingly, called for a divided stage to present the play. In Stage A, the players enacted portions of the 1951–3 court transcripts, whereas Stage B served as a plastic space, where flashback scenes of the characters' out-of-trial lives, pieced from letters, tapes, memos, and other available archival sources, interrupted the legal proceedings. Finally, relying on a large, partitioned screen situated upstage and on voice-over recordings, Freed assembled photographs,

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newspaper headlines, visual evidence submitted in the courtroom, and quotations from public figures to comment on the Rosenberg saga. The playwright thus toyed with time and place, offering the central story of the trial in a nonlinear manner. He bombarded the audience with projections and sounds to reinforce the reality on which the play was based and, at the same time, to evoke a nightmarish, multimedia world.

For Freed, the Rosenbergs were innocent, and *Inquest* condemned the government for misjudging and ultimately murdering the pair, depicting the husband and wife as victims of a conspiracy in a time of fear and excessive patriotism. In fact, the play is based on two books that had already reassessed the trial and concluded that the Rosenbergs were not guilty as charged: Walter and Miriam Schneir's *Invitation to an Inquest* and John Wexley's *The Judgment of Julius and Ethel Rosenberg*.⁵ Freed was certainly not the first to advocate on behalf of the Rosenbergs. However, unlike his predecessors, who had challenged the historical record with written works only, Freed attempted not just to rewrite and recontextualize facts but also to restage events. As surrogate bodies for those of Ethel and Julius Rosenberg, the actors in *Inquest* confronted the audience with a presence not possible in the written appeals, a presence that, first and foremost, proves so integral to the legal story.

A "theatre of fact," which *Inquest* exemplifies, presents material culled entirely from the historical archive and shares with a criminal trial an attempt to build a convincing narrative out of the facts at hand, a narrative that will persuade an audience to believe in its truth. Because a criminal trial insists that juries participate in a live proceeding before passing judgment, the theatre of fact offers an opportunity to see how another live event challenges an audience to consider factual evidence. In both cases, the liveness of the event provides for a heightened and intensified performance, not just from the witnesses/lawyers/actors who provide information but particularly from the jury/audience charged with the task of passing judgment. The theatre of fact, thus, seems especially well equipped to confront the legal record and to demand a reevaluation of certain cases. It asks us not merely to review history, but to re-view it as a live event. Indeed, it is the presence of live actors that can energize documents and facts as well as push the audience to new limits from which preconceived notions may be tested and the task of judging may be advanced. By looking at *Inquest* and the passionate responses of several of its critics, this essay examines what those limits are and traces the manner in which the theatre of fact intervenes in the making and changing of history.

SUMMONS

When *World Theatre* dedicated a 1968 issue to Erwin Piscator and to the documentary theatre, an unsigned introduction proposed that "[o]n the fringes of the establishment theatre, on the fringes even of the avant-garde theatre, in a type of under-world, a certain number of authors are striving to find their way within the framework of the 'documentary theatre.'"⁶ Leading this so-called marginal movement at the time were artists like Heinar Kipphardt, Rolf Hochhuth, and Peter Weiss, who built on Piscator's ideas in order to forge dramatic material

using factual, documented evidence. Of course, as Attilio Favorini explains in the introduction to his anthology *Voicings: Ten Plays from the Documentary Theater*, the “documentary impulse” has been with us for as long as theatre itself has.⁷ Favorini journeys through a wide range of historical periods and dramatic styles—from ancient Greece to the present, from Elizabethan chronicle plays to the Living Newspapers of the Federal Theatre Project—to stress how the Western stage has recorded, commemorated, investigated, and challenged the historical record. Still, he acknowledges that the trio of Kipphardt, Hochhuth, and Weiss, whose productions were all directed by Piscator, came to represent in the 1960s a “mainstream of documentary drama” (xxvi), which taps official records and digs in the historical archive, the better to confront the very institutions and powers that create those records and archives in the first place. It is that “theatre of factual reports,” to draw from Weiss’s language in his seminal “Fourteen Propositions for a Documentary Theatre,” that came to be known as a “theatre of fact” and that participated in bringing docudramas out from the deep fringes: a theatre constructed from “[m]inutes of proceedings, files, letters, statistical tables, stock-exchange communiqués, presentations of balance-sheets of banks and industrial undertakings, official commentaries, speeches, interviews, statements by well-known personalities, presse-, radio-, photo- or film-reportings of events and all the other media bearing witness to the present.”⁸ Of particular interest to dramatists working in this genre were court transcripts, which themselves reflected how facts and figures could be manipulated in the name of justice. *Inquest* thus belongs to a select group of plays, a theatre of fact that, under the influence of Weiss and his contemporaries, “entered the courtroom.”⁹ Precisely because the courtroom is at the heart of this theatre of fact, we should consider how the courts function as we discuss *Inquest* and its audiences.

A juror’s full title, “The Juror, the Judge of the Facts,” alerts us to the specific role assigned to juries in the U.S. legal system. The twelve men and women charged with determining a defendant’s guilt or innocence are most precisely ordered to “decide questions of fact and return a verdict in the case submitted to them.”¹⁰ Jurors weigh the evidence presented during a trial, endeavor to determine what is true and what is not, and collectively agree to endorse and, in so doing, legitimize one version of a contested story over another. The theatre of fact places its audience in a similar role, requiring them to judge the facts even while knowing that the words and memories onstage can only ever be fragments of a story now past. The challenge becomes quite formidable, as jurors/spectators must, in most cases, receive information passively, without much control over what is presented and in what manner, before having to make a decision about what to believe and what to dismiss. For jurors in a court case, the difficulty is only exacerbated by the knowledge that the defendant must be found either guilty or not. “Each of the opposing lawyers in these cases may be sincere and believe his client’s contention to be right,” explains Albert Osborn in *The Mind of the Juror as Judge of the Facts*, “but one of the lawyers must be against the facts, and in every case there must be a misunderstanding, error or deception somewhere in the matter.”¹¹ How facts are manipulated even as they are presented, how they are

kept from surfacing, how some events, factual or otherwise, are more open to interpretation than others: those are all questions and problems with which a jury must grapple.

Audiences of the theatre of fact, too, must consider how the playwright approaches his or her material, which ostensibly has all been culled from the historical archive. Like jurors at a trial, the audience realizes that not everything can be believed, not everything has been revealed, and that, like lawyers, playwrights and directors will stress one aspect of a story at the expense of another. As theatre scholar and practitioner Dan Isaac warns, the “so-called hard facts may be immutable, but the selection and organization of them is the crucial determinant of point of view and final purpose.”¹² Thus, the audience should question why the facts have been assembled. Isaac posits that most instances of theatre of fact are attempts to challenge and to protest a government’s victimization of individuals. If we agree with Walter Benjamin’s understanding of official records and documents as necessarily the barbaric tale of history’s victors,¹³ then the theatre of fact compels its audiences to reconsider how those documents came to be, how the record gains its authority at the expense of history’s so-called losers—indeed, how documented facts often mask abuses and misuses of power.

Storytelling in general, as Paul Gewirtz suggests in the introduction to *Law’s Stories*, provides the marginalized and victimized with an ability to disturb the status quo, allowing their particular voices and perspectives expression against a legal system that often leaves such voices out.¹⁴ Robert Ferguson contends more specifically that “imaginative literature” offers a society a tool with which to rescue the elements of a narrative “wrongly refused by the [state and] law.”¹⁵ Unlike historical narratives and dramas, which alter the archival record with invented fictions—note, for instance, Jerome Lawrence and Robert Lee’s insistence that “*Inherit the Wind* is not history” or the obligatory caution that “[a]ll characters, locales and names of organizations in this play are fictitious” at the end of John Wexley’s Scottsboro-inspired *They Shall Not Die*¹⁶—the theatre of fact is not content with fabricating new stories. Instead, in asking its audience to evaluate so-called hard evidence, the theatre of fact offers an opportunity to challenge history, to re-view it and its documents, to borrow Benjamin’s phrase, “against the grain.”¹⁷

Court documents, particularly, provide playwrights with a rich history (and often well-kept archives) of injustices committed against individuals. Moreover, as law and literature scholar Richard Posner explains, with countless examples of abuse and miscarriages of justice, the law itself becomes “a superb metaphor for the random, coercive, and ‘unfair’ light in which the human condition—‘life’—appears to us in some moods.”¹⁸ Not surprisingly, the theatre of fact constantly revisits legal proceedings, from Weiss’s *The Investigation* (1965) to Moisés Kaufman’s *Gross Indecency* (1997). Nevertheless, it is from the law that the theatre of fact perhaps borrows its most powerful and distinguishing tool: the occasion to examine the evidence, as jurors have it, in a live event.

Law professor Milner Ball contends that in a trial, “the procession of bodies ostensibly draws the mind to the particulars of a past event,” and that only

“through the particulars of the present performance” can jurors be carried “beyond both themselves and the performance itself.”¹⁹ Indeed, since its ratification in 1791, the Sixth Amendment of the U.S. Constitution prescribes that a criminal defendant has “the right to a speedy and public trial” in which the accused is “to be confronted with the witnesses against him.” As understood by a long legacy of legal scholars and judges, this Confrontation Clause compels a defendant to be physically present during his or her trial and any witness “to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.”²⁰ Live confrontation, of course, has been a staple of legal history for centuries. Even in our increasingly mediatised society, legal authorities continue to stress the importance of a trial’s liveness and to assume that for juries to judge the facts, face-to-face contact with the defendant and witnesses is integral to overcoming some of the difficulties in reaching a verdict. The same logic behind Quintilian’s advice to first-century lawyers to “bring the spectators face to face with the cruel facts”—through props, costumes, gestures, voices—or behind Cicero’s principle that “the images of the facts will designate the facts themselves” today still ensures our preference for live trials.²¹ Despite a significant shift from an oral to a literate culture at the beginning of the twentieth century, and despite the pressures effected on our conception of embodiment at the turn of the millennium by what Diana Taylor summarizes as “epistemic changes brought on by digital technologies,”²² the courthouse remains resilient and relatively unwilling to abandon live confrontation as a necessary component of evaluating evidence.

Philip Auslander has discussed this resilience and traced the legal field’s deep-rooted commitment to the idea that a live performance “can somehow give rise to the truth in ways that recorded representations cannot.”²³ He questions such a belief, noting that a live trial ultimately might not achieve a more accurate assessment of facts. Live testimony, he tells us, has less to do with arriving at the truth of such facts and more with “the performance of recalling [them] in the courtroom, before the accused and the jury” (129). Yet, in some ways, Auslander underestimates the ways in which the performance of recollection alters the experience of those involved, especially of those watching. His analysis of pre-recorded videotape trials, for instance, does not consider why witnesses are videotaped (as opposed to having only their voices recorded, or their statements printed on a page). Granted, the body on a television screen is not a live one, but it is the image of one nonetheless, and crucially, what remains for the jurors to see is still a performance of recollection, albeit edited and packaged for its spectators. It is this performance that creates the imperative connection between the past events and the present moment in which jurors can and must be carried beyond themselves. Thus, it is not necessarily liveness that the Sixth Amendment guarantees but the ability for jurors to weigh facts as part of a performance. Belief is therefore not tied merely to facts but to character. The Confrontation Clause calls for jurors to “look at” witnesses and at “the manner in which” testimony is delivered, not just at facts and documents. Borrowing Taylor’s terminology, we could say that the Sixth Amendment provides an opportunity

for jurors to examine the archive while at the same time participating in the repertoire. Through the performance of recollection, witnessing becomes transferable; jurors become implicated with and through the performers of memory in re-creating the past event.²⁴ Live testimony, then, seems less about encouraging certain behavior from those testifying (the witness may very well tell the same story on the live stand or in front of a video camera), and more about engaging jurors in a specific manner. They become involved not merely in the analysis of facts but in a performance. So, even the prerecorded trial, posited by Auslander as the nonlive event, retains components that activate live performance. He does not pause to contemplate some of these live elements: Why must participants still testify under oath and be filmed with lawyers and court officers present? Why are opening and closing statements by the trial lawyers still delivered live to the jury in the courtroom? Why convene in the courtroom at all?

A short etymological aside offers additional evidence that jurors are asked to participate in a performance during a trial and not just to evaluate factual information. A jury's role in a criminal case begins with the process of *voir dire*—the preliminary examination by the judge and lawyers that determines whether a potential juror is, to quote *Black's Law Dictionary*, “qualified and suitable to serve.” The jury's charge ends with the *verdict*, defined by the same dictionary as the “decision on the factual issues of a case.” Both “voir dire” and “verdict” come from Old French “to speak the truth.” In a footnote to their text, the authors of *Elements of Law* explain that although the literal translation is “to see speak,” *voir dire* (and *verdict*) derive from a corruption of *vrai dire*: “so what is really happening in *voir dire* is not that the lawyers are seeing prospective jurors speak, but that the prospective jurors are speaking the truth—or so it is hoped.”²⁵ The corruption, I think, is quite telling. The hope that jurors and witnesses speak the truth is sustained by making them perform, by making their speech and their bodies be seen. Truth finding again becomes inevitably entangled with the observation of individual characters in the process of performing memory. “Is this true?” can be answered only with the accompanying “Is the source qualified and suitable?” So, during *voir dire*, lawyers are indeed seeing prospective jurors speak, just as during the trial, jurors are seeing witnesses speak, and this connection alters the way in which facts and truth are understood. It is the act of seeing that changes most under live conditions.

Much has been written generally about the power of a live performer (on a stage or on a witness stand) to capture the attention of an audience. Specifically, scholars in theatre, law, and performance have stressed for centuries how audiences asked to see an event that has passed, which is at the heart of both a criminal trial and the theatre of fact, are aided in the process by viewing human bodies: vivid, embodied images inspire the imagination with such power that the dead come back to life.²⁶ Freddie Rokem's recent and already oft-quoted contribution to this conversation proposes that live actors performing history allow us, “even in cases where the reenacted events are not fully acceptable for the academic historian,” to recognize the “somebody” who “actually existed in the past.”²⁷ He notes that the “performer's presence holds a special force and attraction” (197), that the energy summoned by the performing body plays an

integral part in bridging the gap between historical past and theatrical present. The actors' very flesh—which in an Artaudian sense is energized and electrified²⁸—thus becomes the means by which an Ethel and a Julius Rosenberg can return to the living and demand a reevaluation of the facts. As Anthony Kubiak elaborates in his reading of Artaud, “theatre is not only the space in which thought is given flesh, it is also the space within which the fallen, tortured flesh of the body is dematerialized back into thought, into the immediate apprehension of its own pain as a history that exceeds representation.”²⁹ The stage provides a most effective site for the Rosenbergs' reappearance.

Interestingly, the so-called fathers of documentary theatre have often dismissed the crucial power of liveness and of the live actor within the theatre of fact. Piscator, whose work earned the first use of the label “documentary” in the theatrical field,³⁰ dedicated most of his writing to the technical and structural elements of a documentary theatre. His major treatise on acting per se, “Objective Acting,” charges the performer with a most specific mission: “[t]he more real, the more convincingly you play, the more you will have served your case—the actor convincing the audience—the more you will have rendered service to the cause of acting.”³¹ And although he emphasizes that “the faithful and real picture can only be created by both actor and audience,” Piscator understands that this cooperation will result primarily from “[t]he stage itself” (305, his emphasis). It is mainly through stage design and direction that Piscator looks to engage his jury/audience. Similarly, Peter Weiss, who offers a type of manifesto for the theatre of fact with his “Fourteen Propositions,” spends not a single one of those directives discussing the role of the actor. Weiss clearly makes a connection between the theatre and the legal court, emphasizing that the “documentary theatre submits facts to an appraisal.”³² However, he fails to consider how the live actor, much like the live witness or defendant, drives facts into the minds of a jury/audience. It is Daniel Berrigan, author (and protagonist) of the theatre-of-fact play *The Trial of the Catonsville Nine* (1971), who comes closest to theorizing how actors in a documentary piece relate to their public: “They are exerting pressure against the outer darkness. They are creating and communicating light around their bodies, the light of the spirit of man. They are saying something that others are saying in prison, and in the underground, and in exile, and, indeed, in death.”³³ A live audience will feel this pressure and see this light. Like jurors in a trial, their experience will transcend the mere encountering of facts. The courtroom proper and its performances of recollection insist on this.

Partaking in a live event heightens the juror's role. Given the generally passive and restricted function of jurors during court proceedings—according to law professor Randolph Jonakait, they sit in expected silence, listen, observe, and only through relatively recent reforms are allowed (on some occasions) to ask questions or to take notes³⁴—the intensity with which jurors tackle a case is often remarkable. Jonakait's description of the general behavior of jurors parallels Eugenio Barba's understanding of performance as an extradaily phenomenon. Of course, Barba is mainly concerned with the actor's movement and physical positioning, issues that are generally not discussed in relation to jury performance.³⁵ However, much in the same way that we recognize that

a performer achieves a particular energy level and ability to inform because of extradaily techniques, we might consider that a juror's capacity to process information and to make decisions is also intensified in an extradaily performance. Jonakait writes: "I was repeatedly struck by how seriously jurors take their job. People are plucked from their daily routine and commanded to serve as jurors. . . . [They] almost always agonize over making the right decision" (xii). In a recent article, Lucy Winner explains how even the process of jury selection leads to a sense of performance, admitting that she "felt a little thrill of delight to be cast in this featured role. I was Juror #1. . . ." As such, she "felt I must dedicate myself to finding THE TRUTH"³⁶ With such a clear and powerful purpose in place, the juror can play his or her part in a focused and determined manner. Driven by a Stanislavskian-like super-objective, the juror is, theoretically at least, fully prepared to dismiss the extraneous and the insignificant, anything that might prevent him or her from maintaining a through line of action.³⁷ Again extending Barba's understanding of the physical actor, we might say that the juror, placed in an extraordinary performance, is a "decided body," resolute in his or her desire to make sense of the facts at hand.

Milner Ball goes as far as to aver that since jurors are asked "to play parts in a government of laws and not of people," they are encouraged to transcend their individual prejudices, much like actors are at times required to draw "beyond themselves by the roles they play."³⁸ Whether the juror can overcome all prejudices is of course impossible to determine and perhaps even more difficult to believe. However, Ball's notion confirms that the jury's experience is, as the others argue, an extradaily activity, a performance not unlike an actor's. Such a performance might indeed inspire a more serious, responsible assessment of the evidence, as the live trial and its inherent ceremony push juries to think in new ways. Without what Osborn sums up as the "beautiful building, the fine fittings, the judge's gown, the formal conduct," all of which emphasize that "administering the law is not a common and ordinary human performance," the juror cannot "be made fully to understand that in him for the time being is embodied the whole ancient institution, trial by jury."³⁹ Osborn concludes: "In a setting of cheap tables and kitchen chairs, of plain walls and of uncovered floors, of shirt sleeves and tobacco smoke, the bare evidence, no doubt, can be brought out in a legal proceeding but not with the effectiveness that the performance deserves and that proper conditions help to produce" (1).

In short, the courtroom summons its jurors, not merely to decide on facts, but indeed to see and participate in a performance of recollection. The impressive setting, the bodies and voices of the witnesses, the real flesh of all the participants held together within the same space, all contribute to the experience of evaluating truth. Returning to *Inquest*, we can see that the theatre of fact also summons its audiences to re-view facts from an intensified position: the special hold or pressure exerted by live actors proves more effective than the documents alone could to alter what spectators will discover.

VERDICT

Inquest cast the audience in the critical role of members of the jury. After being asked to rise and recite the Pledge of Allegiance early in the play,

spectators were directed by the onstage Judge Irving Kaufman (played by Michael Lipton) to “pass upon the evidence” (11), just as the Rosenberg jury had been directed nineteen years earlier. Of course, most of the jurors here had already tried the case: in their heads, in their homes, in their hearts. *Inquest* should have proven easy. Instead, reliving the trial as theatre, this time literally playing the jury, the audience faced a difficult situation, particularly because Freed’s play confronted them with something unlike any article, pamphlet, or book ever had: a live performance. Although certainly not a perfect substitute, the grandeur of the Music Box Theatre, the ritual of playgoing, the social nature of a theatrical event, all helped to ignite an extradaily situation that could more nearly approximate the trial than perhaps reading Wexley’s or the Schneirs’ book comfortably in an easy chair or at a library cubicle ever could. Before a single fact is ever presented, the theatre of fact therefore helps to create the type of environment described by Ball from which audiences may more properly judge the evidence.

For an adult audience in 1970, the Rosenbergs were far from unknown. The story had played out in the early 1950s, at a time when, as John Neville notes, newspaper, not radio or television, “was still king.”⁴⁰ In fact, in his detailed study of the Rosenbergs and the media, Neville explains that Julius’s own mother, who had been absent from the court proceedings, did not come forward with a key piece of material evidence that could have proven incorrect one of the prosecution’s contentions—a console table that did not, as charged, conceal a microfilming compartment—because the illiterate woman was unable to follow the story in the press (112). Photographers, too, had to rely on the might of the pen to give their work weight, as the average-looking defendants defied all stereotypes about criminals. The Rosenbergs and the also-accused Morton Sobell appeared like everyone and nobody at the same time, and so their extraordinary story required words for its telling; the images alone would not have proven convincing. Perhaps the most revealing example of the text-based and imageless nature of the ordeal for most Americans is a two-line exchange, cited by Neville, between a photographer and Morton Sobell on the day of the verdict:

“Look this way Mr. Rosenberg.”

“Sobell,” the defendant deadpanned. (48)

In the midst of the excitement at the trial’s end, the photographer could have experienced a mental slip. However, the error corroborates the reality of the celebrated court case: it was presented to the public predominantly through written text and performed in each reader’s imagination. Appropriately, the playbill and the poster advertising *Inquest* used Picasso’s sketches of the Rosenbergs for its main design. The painter’s silhouettes were but a handful of brushstrokes that, like words, required each viewer to imagine a couple where there was only white space (Figs. 1 and 2).

Inside the theatre, however, the imagined figures were replaced by the real presences of actors Anne Jackson and George Grizzard. These effigies “fashioned from flesh” could literally body forth the absent, electrocuted couple, to borrow

Figure 1.

Pablo Picasso's "Ethel Rosenberg." © 2007. Estate of Pablo Picasso/Artists Rights Society (ARS), New York. Permission to reproduce this image has been granted for the print edition of the journal only. This image does not appear in the online edition of the journal.

Joseph Roach's terminology,⁴¹ and thus "*re-member* what has . . . been *dis-membered*."⁴² As Rokem reminds us, it is the actors' creative energy and not the documents that can "stand up for the dead."⁴³ So, the play may not have been a performance of recollection in the way that a trial asks witnesses to remember what has passed, but it was a performance nonetheless, and the actors onstage ensured that spectators tied the facts at hand to real, active figures. The human voices, the bodies, the faces of Jackson and Grizzard returned flesh and breath to the transcripts and archival materials. In the theatre, the Rosenbergs could, turning the Confrontation Clause inside out, stand up face to face to a new jury and demand to be looked at, to judge the audience as it reevaluated the

Figure 2.

Pablo Picasso's "Julius Rosenberg." © 2007. Estate of Pablo Picasso/Artists Rights Society (ARS), New York. Permission to reproduce this image has been granted for the print edition of the journal only. This image does not appear in the online edition of the journal.

historical record. They could even offer a Stage B in addition to the courtroom setting to present some of this record in an embodied form. A jury of twelve reviewers (ten writing about the Broadway production and two about an earlier Cleveland production) serves to illustrate that their experience of *Inquest* as a live event did exert a kind of pressure, as predicted by Berrigan.

"*Inquest* is unpersuasive even when it cheats, and to my mind it finally calls into question—and perhaps throws out of the court altogether—the whole possibility of a Theater of Fact," begins Walter Kerr in his review of the play.⁴⁴ Although he praises the performances and the staging, Kerr complains that Freed's fragmented script fails to allow the audience to make sense of the

evidence. Moreover, the critic warns that the flashback scenes should not even be considered evidentiary. Some of Freed's primary materials for the construction of the flashbacks were indeed not introduced in the legal proceedings in the first place, and their evidentiary weight can therefore be questioned. However, Kerr's language betrays a resistance even to consider an alternative version of the Rosenberg story. "The invented intimate scenes tend to take over," Kerr explains, carefully replacing Freed's explicit idea of historical reconstruction with that of invention. Particularly, Kerr takes issue with the playwright's attempts to highlight the factual basis for the onstage story. He mocks the audience members who followed the instructions to recite the Pledge of Allegiance and responds to the sign near the door explaining that there will be no curtain call with a sardonic "Oh? Why not? Is what we are to be seeing too real for that sort of pleasant acknowledgment of artifice?" He is compelled to push the point, "Naturally, electrocuted persons, whether they are villains or victims, do not take curtain calls. But actors do." As with his choice of the word "invented," Kerr divulges a certain unwillingness to accept Freed's premise of innocence by speaking here of "villains." His critique reflects a deep moral quandary:

"I am beginning to believe Julius Rosenberg innocent because George Grizzard is a fine actor" is what you say to yourself, wondering whether your conduct is proper. The faces, the dropped jaws, the hesitant fingers that are persuading you are not those of the Rosenbergs. They belong to George Grizzard and Anne Jackson, who are not on trial.

Surely, if he objects to a guiltless Julius Rosenberg, if such innocence is somehow improper, then Kerr's dismissal of *Inquest* arguably rests on the political and moral implications of an audience's exculpating the couple. Importantly, it is Grizzard's and Jackson's physical traits that affect Kerr most persuasively, leaving the reviewer in an uncomfortable position of "not even know[ing] when we are in or out of the theater, when we are in or out of the truth," to quote him further. It is precisely into this liminal state that Freed hopes to pull us, for it is here where history can be rethought and changed, as Kerr himself began to experience it, albeit unwillingly.

Freed subtitles his play "A Tale of Political Terror," and, in "The Case and the Myth," an essay published with *Inquest*, he proposes a necessary link between a theatre of fact and a theatre of cruelty. According to him, such cruelty rests on his insistence that the audience remember a past that can no longer be changed. He sees the sights and the sounds of the past—"a series of aural-visual souvenirs" (201)—as instruments with which a numb public can be unsettled, alarmed, and ultimately reawakened. He thus hopes to use his "antimyth" to inspire not "terror and pity in the old way," but rather anguish and shame (200–1). Like Artaud's plaguelike theatre, *Inquest* aims to attack a collective, to reveal lies, remove masks, expose hypocrisy, and, finally, to purify. Freed seemingly grounds his connection between *Inquest* and the theatre of cruelty in Artaud's conviction that one can "crush and hypnotize the sensibility of the spectator" by bombarding him or her with the facts in a highly sensorial manner.⁴⁵ Even from his opening

directions in the script, Freed seems committed to spreading a sort of disease predominantly through the use of archival materials: the collage of images and sounds that he called “TIME CHAMBER OF THE 1950’s” “begins to bleed into visibility” (6); “[a] dating process is evolved from the rash of masthead headlines” (6); images of newspaper articles grow like “a cancer-like network” (7). What Freed does not acknowledge—similarly to Piscator and Weiss—is that Artaud’s theatre of cruelty deeply relies on the actor’s physical presence, that the plague requires person-to-person contact, and that only the live event can “discharge [itself] into the sensibility of an audience with all the force of an epidemic.”⁴⁶ Although the Artaudian plague might seem removed from a court proceeding, both intersect for the purposes at hand in their insistence on live participation. It is a live and present audience that can be infected; it is a live and present jury that can be pushed to an extradaily sensibility. Change can then follow. And change certainly is at the heart of *Inquest*: a new version of the past will hopefully lead to new conditions in the present.

For Freed, circumstances in 1970 had not advanced sufficiently from those of the McCarthy era under which the Rosenbergs had been executed. He saw his play as an attempt to make a viable break with an oppressive past by attacking the present. Less than three months before the New York opening of *Inquest*, U.S. District Court Judge Warren J. Ferguson reversed an indictment against Freed, who had been arrested in Los Angeles in October 1969 for allegedly purchasing ten hand grenades for the Black Panther Party. His charges were dropped, even if Freed remained under federal scrutiny because of *Inquest*.⁴⁷ As the Broadway production of *Inquest* was being prepared, the National Rosenberg–Sobell Committee continued (unsuccessfully) to push for a reversal of the verdict,⁴⁸ and a much more notorious legal battle continued to be waged quite publicly in the country. The Chicago Seven, also associated with the Black Panthers, were finally acquitted of conspiracy charges of having incited riots at the 1968 Democratic Convention in February 1970. Like the trial of the Rosenbergs, the Chicago Seven trial had captured national attention and turned the courtroom into a site of grand spectacle. So, as they entered the Music Box Theatre, audiences were, at the time, highly exposed to a very public and contested legal battle, one that, following the 1968 revolution, pitted not only marginalized minorities against dominant, white America, but also a younger generation against an older one.⁴⁹ Age, it seemed, was a significant factor in how one viewed the law (and maybe the theatre) at the time.

Jonakait perhaps rehearses the obvious when he explains that, as jurors endeavor to assemble facts into a story on which they can then pass judgment, they “need to use their own background knowledge and common sense in addition to the trial evidence to construct meaningful explanations of what they have heard.”⁵⁰ Audiences of a theatre of fact, likewise, will inevitably rely on the stories and experiences they bring with them to the play in order to weigh the evidence presented. Freed, for one, saw the facts surrounding the Rosenberg case as proof of governmental abuse and victimization of individual citizens, but what of those who had no interest in changing the past or revising the history of a trial already tried and a punishment already administered? Given what Kubiak sees as

“[t]he apparent ability of theatre to translate the terror of thought into flesh, . . . its seeming capacity to translate the unrepresentability of physical terror into thought through representation,” such audience members would now come face to face with live theatre’s “unique political and cultural power to reform actions and behaviors.”⁵¹ Confronted with real bodies onstage, with palpable ghosts, such spectators would be trapped in a theatre of rather harsh cruelty, where the Artaudian sky could fall on their heads at any minute, and the acid-green “star of Ethel Rosenberg’s Hatred” could sear their consciences.⁵²

With giant headlines frequently flashing on the screens, *Inquest* particularly criticized newspapers for their role in the Rosenberg ordeal. Reporters are characters in the play whose sole purpose is to prompt the accusations of District Attorney Irving Saypol (performed by Mason Adams). First, Second, and Third Reporter are not granted full thoughts; Saypol completes their sentences, and the three characters never interact with the defense or with the accused.⁵³ *Invitation to an Inquest* had already proposed that Ethel and Julius, caught in a whirlwind of sensational, patriotic press, had been branded traitors by the general public well before the official verdict was reached, that the government had presented its case in the press before doing so in the court.⁵⁴ Subsequent studies of the media during the trial validate this hypothesis and demonstrate how the popular press blatantly favored the government’s position and silenced the defendants. Freed’s play, in turn, arriving at a time when the very idea of a rewritable, subjective history was not well established even in the academic field,⁵⁵ encountered harsh criticism from the press it sought to attack, as exemplified by Kerr.

Although I cannot offer a psychological analysis of Kerr, it cannot be entirely coincidental that his background and his critique of the play are part of a pattern. As trial lawyers often rely on simple biographical information to assemble juries,⁵⁶ I, too, turn to some basic personal data to examine some of *Inquest*’s jurors. Walter Kerr, for one, was an established forty-year-old writer working for the *New York Herald Tribune* in 1953 when the Rosenbergs were executed.⁵⁷ Several of Kerr’s colleagues—Brendan Gill of the *New Yorker*, Jack Kroll of *Newsweek*, William Glover of the Associated Press, and Richard Watts of the *New York Post*—were U.S.-born like Kerr, and all but one lived in New York City and already worked for the press during the critical years of 1950–3.⁵⁸ Kroll, the youngest of the group, served in the army during the Korean War, a war that according to Judge Kaufman was directly caused by the Rosenbergs’ spying.⁵⁹ Watts also had strong ties to the government, as he not only worked for the *New York Post* but had also acted as a civilian aide and foreign correspondent during World War II, taking up the challenge of explaining the U.S. government’s cause around the world. The similar backgrounds make all of these men members of the community that arguably prejudged and condemned the Rosenbergs. Their reviews of *Inquest* certainly agree that the play failed and that such failure lay on Freed’s commitment to the couple’s innocence. Admitting that the acting and staging were for the most part successful, the critics, although never actually suggesting that the executions were merited, nonetheless attack the play’s presumption in rewriting history. Like Kerr’s, the underlying tone of these critics implies a conviction of the Rosenbergs’ guilt.⁶⁰

A similar overview of those who approved of the play leads to some remarkable discoveries (and, in some ways, substantiates the practice of jury selection based on particular biographical traits). Of the mass-circulated reviewers, only three writers offered overall positive notices. Julius Novick of the *Village Voice* concedes that only a madman could maintain the Rosenbergs were tried fairly and concludes that *Inquest* is “the sort of achievement that might justify [Broadway’s] existence.”⁶¹ Although a native New Yorker, Novick is considerably younger than his colleagues, and was only eleven when the arrests were made.⁶² As he later confessed in an interview, everything he writes is informed by his “chicken-shit liberalism” and “sympathy for the oppressed.”⁶³ Not surprisingly, then, Novick sides with the Rosenbergs and, in turn, writes that he enjoyed *Inquest*; the theatrical experience likely depended on his political stand. Clive Barnes and John Simon, writing for the *New York Times* and *New York*, respectively, not only agree that the play was effective and gripping, but also address the question of the Rosenbergs’ innocence. “Whether they were guilty or not, I think the play may suggest further thought on the matter,” offers Barnes.⁶⁴ In fact, he had wanted to write that the case should have been reopened, but for the first time in his career, Barnes faced explicit censorship.⁶⁵ Simon takes his colleagues to task and resolves that “declaring the ‘theatre of fact’ bankrupt, seems to [him] as unwarranted as the trial . . . was unjust.”⁶⁶ In one sentence, the critic rebuts Kerr and exculpates the Rosenbergs. Barnes and Simon stand out from the other critics, not only because of their basic opinion, but also because they were born and raised abroad, and did not live in the United States when the Rosenbergs were tried.

Can the lines be so clearly drawn between younger and older critics, between U.S.-born and foreign ones? Two additional examples, although not adhering to the pattern, help to confirm that a line does exist. Markland Taylor, an Australian who was only seventeen when the Rosenbergs died,⁶⁷ wrote a fairly negative review of *Inquest* for *Entertainment World*. Yet Taylor overtly states that he has “no quibble whatsoever with . . . Freed for taking the stand for innocence” and admits that “even if *Inquest* has done nothing more than set us to discussing the whole question of American justice . . . it was well worth doing.”⁶⁸ Specifically, Taylor commends the play for attempting to do what the other critics find so distressing: reconsidering history. David Goldman, of WCBS radio, perhaps makes best sense of how *Inquest* affected the critics at hand. He confesses that a political review of the performance, which inspires “deep emotion,” cannot be avoided, for he is both a theatrical spectator and a citizen reminded of a “nightmare time in this country.”⁶⁹ Goldman, for the record, is American and was also only seventeen at the time of the electrocutions.⁷⁰ Deep emotion indeed drives all of the reviews, both positive and negative. The intensity recalls the type of agonizing attempts to make careful decisions that Jonakait observes in trial jurors. In all the critiques, the reviewers address the effective performances of Jackson and Grizzard, providing a clue as to why a play that ultimately did not present any new ideas—not only had the Wexley and Schneur books preceded it, but even some government officials had already admitted that the executions had been a mistake⁷¹—aroused such profound feelings.

For spectators like Novick, the play served to restore two wronged souls. He speaks of his love for the “stage-Rosenbergs” that in turn allows him to approach the real ones as decent and victimized human beings. Watts, quite contrarily, determines that the “extremely sympathetic” performances by the two “exceptionally fine players” are so convincing that Freed’s manipulation of the evidence must be the cause for the “stubborn skepticism” that does not allow an undecided spectator to make up his or her mind. Like Kerr, Watts describes a tug-of-war experience—the actors try to convince him of their innocence, and he is reluctant to accept such a possibility. Barnes depicts Jackson’s Ethel as “anguished almost beyond endurance.” This description might also apply to the experience of the critics/jurors, especially those who, at some level, participated in the culture that executed the Rosenbergs. So, men like Watts, Kerr, and the other critics of the 1950s press had to sit in judgment again, but now, the stage-Rosenbergs pulled them to believe something they apparently did not.

Before its appearance in New York, *Inquest* had been presented at the Cleveland Play House under the title *The United States vs. Julius and Ethel Rosenberg*. In its original incarnation, Freed’s work was a two-act piece that unapologetically presented the prosecution and the judge as nefarious creatures; it was, as the author described in an interview, a defiant attempt to debunk the myth of the Rosenbergs as spies.⁷² Slated at first for a few performances in 1969, the play proved so successful that its run was extended to nine weeks, and the *Cleveland Plain Dealer* praised its style, theatricality, and performances.⁷³ According to Professor Leon Katz, Cleveland viewers were left in “stunned, aggrieved silence at the conclusion of every performance, too shocked to move from the theatre. . . .”⁷⁴ The change in title for the Broadway production was part of a rewriting effort to make *Inquest* a more balanced work that would shift focus from the melodramatic plight of the accused to the distinct political climate of the 1950s.⁷⁵ Although *The United States vs. Julius and Ethel Rosenberg* is not published as it appeared in Cleveland, a combination of a fuller two-act version of *Inquest* (anthologized in Favorini’s *Voicings*) and a prepublication manuscript held at the New York Public Library helps us to underscore some of the possible differences between the two productions—differences that would have affected the position of the audience as a jurylike entity. Indeed, although we could look at political and cultural differences between Cleveland and New York to examine the ways in which Freed’s work was received in each city,⁷⁶ focusing on the audience as a trial jury yields significant results in understanding how critics responded to the plays. Because the Cleveland production seemed to downplay the liveness of the stage-Rosenbergs and ostensibly deemphasized the role of the audience as a jury, spectators inevitably reviewed the evidence at hand under less intense circumstances. The audience there was somehow denied the tools offered to “judge the facts” more efficiently.

Both *The United States vs. Julius and Ethel Rosenberg* and *Inquest* cast the audience as jurors, but the earlier version also included a “Man in the Street” character and specific lines of dialogue for jurors, so, presumably, actors would have sat among the audience to deliver these.⁷⁷ In effect, the sole responsibility of judging placed on the New York audience was diffused in the Cleveland

production, as scripted characters could be trusted to bear some of the burden in reprocessing the trial, and the assembled jury's special, extradayly position was in a way relaxed. With a less defined role to play and a super-objective that was no longer clearly theirs, the audience in Cleveland potentially lacked the focus that draws individuals beyond themselves, to recall Ball's theories about juries. Moreover, unlike the cancerous images of a spy ring that Freed used to launch the New York production, the opening screen directions for the Cleveland staging relied on real images of the Rosenbergs' family and environment (typescript, 1-4). Ethel and Julius, the actors, then appeared on opposite sides of the stage and recited lines from actual letters penned in prison. "Oh, darling, how greedy I am for life and living," confessed Ethel. Julius responded, "Everything seems so unreal and out of focus. . . . It seems like we're suspended, somewhere, far off seeing everything that's being done . . ." (typescript, 1-5). Thus, Cleveland audiences were introduced to the Rosenbergs as otherworldly apparitions. They were not human beings sitting in a courtroom, as they first appear in *Inquest*, but ghosts suspended in theatrical space, their very liveness doubted from the onset. In New York the play ended with the Rosenbergs' lawyer, Emanuel Bloch (played by James Whitmore), by himself onstage. "You have no idea how lonely it was," he mourned before "*mov[ing] into the shadows.*"⁷⁸ Both the unpublished manuscript and the later publication included a screen direction after this exit that is noticeably absent from the Broadway script. It called for giant photographs of the real Rosenbergs to come up, followed by one of the couple's two children to appear in between.⁷⁹ Capitalizing on these images after the audience had just witnessed the electrocutions onstage seemed an overtly manipulative move on Freed's part. It is easy to see that this was one of the ways in which the rewrite endeavored to mitigate the play's original one-sidedness. Still, although it tugged at the audience's emotions—and hence perhaps the stunned, aggrieved silence—plastering the images of the real Rosenbergs also impaired the effect of the stage Rosenbergs, as the audience was immediately reminded that the onstage bodies were precisely not the individuals pictured. In New York, once Grizzard and Jackson were removed from the stage, the Rosenbergs were taken away (again), and the audience faced a total absence of the live bodies; only shadows remained. For the viewers in Cleveland, although the injustice of the trial and executions was certainly stressed, the final images served to return to the Rosenbergs already known: those of headlines and photographs, those already tried and convicted, those whose live presence was precisely absent.

The United States vs. Julius and Ethel Rosenberg ran at the Cleveland Play House for more than twice as many weeks as originally slated. *Inquest* in New York did not last a full month. Whether this had anything to do with the political climate of each city, whether Walter Kerr disliked Freed's work for political or aesthetic reasons, whether Ethel and Julius Rosenberg were in fact spies, all of these questions can never be answered with full certainty. In Cleveland, where the physical presence of the actors was muzzled by real-life images and the juridical role of the audience was abated, the play proved a "memorable drama" even if it did not, as admitted by the *Cleveland Plain Dealer* review, change anybody's mind about the Rosenbergs. In its new form, *Inquest*

seemingly took its jury/audience on a heightened journey that sparked deep passion from its critics. The theatre of fact borrowed tools from the legal process precisely to attack it (we could say the legal process borrows tools from the theatre in the first place), and Jackson and Grizzard, much more than the evidence alone, compelled even staunch disbelievers to ponder the possibility of an alternative verdict, an alternative history.

Although an appellate system is in place for the review and reevaluation of criminal trials, Jonakait most emphatically notes that “*Jury verdicts are almost always final*”.⁸⁰ In other words, the process of evaluating facts in court tends, legally speaking, to end with a jury’s decision. Questions of law and of procedure will continue to be contested during appeals, but questions of facts, no matter how unfair or dubious the jury’s decision may be, are generally resolved by the twelve men and women selected for the task. The deliberation process occurs in mandated and protected secrecy, and only the group’s ultimate decision, without any rationale or explanation, seals the official record in a criminal dispute.⁸¹ It is no surprise, then, that the task of reexamining facts must often fall to those outside the legal field. The Rosenberg case, for one, has inspired a variety of scholarly, literary, and artistic treatments that, like *Inquest*, provide an alternative to the official account.⁸² If Donald Freed is correct, then the Rosenbergs stood no chance of receiving a fair verdict in a paranoid and manipulative time. However, their jury was accorded the opportunity to weigh the evidence presented in a live event; perhaps a less prejudiced or braver group might have even found them innocent. The public outside the court had no chance to evaluate the facts at hand except through the ostensibly biased and primarily written newspaper reports. Such a scholar as Alice Jardine argues that if the trial had been televised, the outcome would have been different.⁸³ Bringing television cameras into a courtroom opens a Pandora’s box of problems and questions, so I limit the issue here to the idea that the public might have been better equipped to judge the facts with access to a more fully embodied presentation, that what could have been seen (as in a prerecorded videotape trial) was the performance of recollection. Belief, then, would have been tied not only to facts but also to characters. Because our courts to this day uphold live trials, which are ultimately impractical, inconvenient, and expensive, as preferable to mediated ones, we must continue to emphasize the value of reviewing historical facts as live evidence. Clearly, the theatre of fact “does not pretend to vie in authenticity” with a real court event, as Weiss so adamantly warns.⁸⁴ The theatre piece cannot change the court’s actions, nor can it reverse an execution. However, it can bring the dead back to life. By allowing for a live presentation of facts, the audience may very well be taken to the heightened position from which it may perceive not merely documents and records but also the full-bodied angel of history, with his eyes staring, his mouth open, and his wings spread.⁸⁵ In so doing, it may inspire us to reconsider, review, and re-view the past—to change.

In 1972, some major critics participated in a panel discussion about the theatre of fact and the playwright’s responsibility within the genre. Kerr again captured the feelings of the majority, expressing his concern for a trend of historical theatre that, relying on screen images, news films, and court transcripts,

attempts to convince audiences of its validity. A theatre of fact that misleads is, according to Kerr, “not only ‘irresponsible’ but ‘dangerous.’”⁸⁶ The danger, of course, as Kerr experienced with *Inquest*, lies perhaps not so heavily in the facts themselves but in the theatre’s ability to convince, to shake one’s memory, and to reenvision the evidence. Kerr might have believed that the Rosenbergs were guilty, but watching *Inquest*, the faces, jaws, and fingers of the actors made him feel otherwise. His review might argue that a theatre of fact is an impossibility, but in fact, *Inquest* demonstrates how powerful and effectual such a theatre can be. It can, as Ethel Rosenberg tells us in *Angels in America*, crack history wide open.⁸⁷

ENDNOTES

1. John F. Neville, *The Press, the Rosenbergs, and the Cold War* (Westport, CT: Praeger, 1995), 133.
2. League of American Theatres and Producers, *Inquest*, Internet Broadway Database, www.ibdb.com/production.asp?ID=3076 (accessed December 4, 2004).
3. Donald Freed, *Inquest* (New York: Samuel French, 1969), 6–7, emphasis in original. Unless otherwise noted, references to the play will come from this publication of the script, which was the one used for the Broadway production.
4. Donald Freed, “The Case and the Myth: *The United States of America v. Julius and Ethel Rosenberg*,” in *Voicings: Ten Plays from the Documentary Theater*, ed. Attilio Favorini, (Hopewell, NJ: Ecco Press, 1995), 199–203, at 201.
5. Walter Schneir and Miriam Schneir, *Invitation to an Inquest* (1965; reprint, New York: Delta, 1968); John Wexley, *The Judgment of Julius and Ethel Rosenberg* (New York: Cameron & Kahn, 1955).
6. Introduction to “The Documentary Theatre,” *World Theatre* 17.5–6, ed. René Hainaux (1968), 375.
7. Attilio Favorini, “After the Fact: Theater and the Documentary Impulse,” in *Voicings*, xi–xxxix.
8. Peter Weiss, “Fourteen Propositions for a Documentary Theatre,” *World Theatre* 17.5–6 (1968): 375–89, at 375.
9. Dan Isaac, “Theatre of Fact,” *TDR* 15.3 (Summer 1971): 109–35, at 109.
10. Bryan A. Garner, ed., *Black’s Law Dictionary*, 2d pocket ed. (St. Paul: West Group, 2001), s.v. “Jury.” See also Albert S. Osborn, *The Mind of the Juror as Judge of the Facts, or The Layman’s View of the Law* (Albany: Boyd Printing Co., 1937), xi. Although most juries consist of twelve members, there are exceptions and much debate about the number.
11. Osborn, 8.
12. Isaac, 122.
13. Walter Benjamin, “Theses on the Philosophy of History,” *Illuminations*, ed. Hannah Arendt, trans. Harry Zohn (New York: Schocken Books, 1968), 253–64, at 256.
14. Paul Gewirtz, “Narrative and Rhetoric in the Law,” in *Law’s Stories: Narrative and Rhetoric in the Law*, ed. Peter Brooks and Paul Gewirtz (New Haven: Yale University Press, 1996), 2–13, at 5.
15. Robert A. Ferguson, “Untold Stories in the Law,” in Brooks and Gewirtz, 84–98, at 97.
16. Jerome Lawrence and Robert E. Lee, *Inherit the Wind* (New York: Ballantine Books, 1955), authors’ note; John Wexley, *They Shall Not Die* (New York: Alfred A. Knopf, 1934), back page.
17. Benjamin, 257.
18. Richard Posner, *Law and Literature: A Misunderstood Relation* (Cambridge: Harvard University Press, 1988), 77.
19. Milner S. Ball, “All the Law’s a Stage,” *Cardozo Studies in Law and Literature* 11.2 (Winter 1999): 215–21, at 217.

20. *Mattox v. United States*, 156 U.S. 237, 242–3 (1895).
21. Quintilian's *Institutio oratoria* (VI, 1.30–1), quoted by Jody Enders in *The Medieval Theater of Cruelty: Rhetoric, Memory, Violence* (Ithaca: Cornell University Press, 1999), 186; Cicero's *De oratore* (II, 354) quoted in Enders's *Rhetoric and the Origins of Medieval Drama* (Ithaca: Cornell University Press, 1992), 45.
22. Diana Taylor, *The Archive and the Repertoire: Performing Cultural Memory in the Americas* (Durham: Duke University Press, 2003), 16. On the shift from an oral to a literary culture, see, for example, Lawrence W. Levine, *Highbrow/Lowbrow: The Emergence of Cultural Hierarchy in America* (Cambridge: Harvard University Press, 1988). Levine writes: "Literacy encroached upon the pervasive oral culture that had created in nineteenth-century America an audience more comfortable with listening than reading. . . . Thus the generations of people accustomed to hearing and reciting things out loud . . . were being depleted as America entered a new century" (48).
23. Philip Auslander, *Liveness: Performance in a Mediatized Culture* (London: Routledge, 1999), 128–9.
24. According to Taylor, 19–20, the "archive" is made up of supposedly enduring materials, like court transcripts and documents, whereas the "repertoire" consists of embodied practices and knowledge, of performances. On the importance of embodied experiences as acts of transfer, see esp. 173; on witnessing as an act of transfer, see esp. 211.
25. Eva H. Hanks, Michael E. Herz, and Steven S. Nemerson, *Elements of Law* (Cincinnati: Anderson, 1994), 22 n. 38.
26. Jody Enders traces "the art of memory" in *Medieval Theater of Cruelty*, exploring the connections among the human body, the absent body, memory, and performance. She explains that "[t]he presence of memory . . . depends on the absence of things past and on the resurrected presence of the dead who may be brought back to life so that they might speak again" (75). See especially chap. 2, "The Memory of Pain," 63–82. Similarly, Joseph Roach offers that performers' bodies are "always offered up on the altar of surrogacy," that through this sacrifice, the dead can return to the world of the living. Live performance, in essence, can generate life. *Cities of the Dead: Circum-Atlantic Performance* (New York: Columbia University Press, 1996), 40. As Bert O. States summarizes, "theater ingests the world of objects and signs only to bring images to life," and because the actor's body is always a real body, it "takes us into a world within the world itself . . . [enabling] us to recognize the human 'from the inside.'" *Great Reckonings in Little Rooms: On the Phenomenology of Theater* (Berkeley: University of California Press, 1985), 37, 46–7.
27. Freddie Rokem, *Performing History: Theatrical Representations of the Past in Contemporary Theatre* (Iowa City: University of Iowa Press, 2000), 13. Rokem warrants that documentary drama does not quite fit his notion of "performing history," as a theatre of fact categorically does not accent "the time-lag between the 'real' events and their theatrical reenactment" (7). Like others attempting to demarcate the differences between historical and documentary drama or theatre, Rokem focuses on the tension between found and invented fact to label the genres. Still, because Rokem does not specifically consider the role of the actor as a categorizing factor, his ideas about the acting of history remain useful for discussing the actor's contribution to the theatre of fact.
28. Artaud conceives of the flesh as a charged conduit, a powerful component of "the incomprehensible magnetism of man." The flesh possesses "the secret pathways of the mind," and, through it, we can reach "the definitive understanding of Life." "There is a mind in the flesh," he writes, "but a mind quick as lightning." Antonin Artaud, "Situation of the Flesh," in *Antonin Artaud: Selected Writings*, ed. Susan Sontag, trans. Helen Weaver (Berkeley: University of California Press, 1976), 110, 111.
29. Anthony Kubiak, *Stages of Terror: Terrorism, Ideology, and Coercion as Theatre History* (Bloomington: Indiana University Press, 1991), 130, emphasis in original.
30. Favorini, xviii.
31. Erwin Piscator, "Objective Acting," in *Actors on Acting*, ed. Toby Cole and Helen Krich Chinoy (New York: Three Rivers Press, 1949), 301–7, at 302.
32. Weiss, 383.
33. Daniel Berrigan, "From Underground, Father Berrigan Speaks to Actors," *New York Times*, 31 January 1971, D1. Quoted in Isaac, 131.

34. On the restrictions faced by jurors in regards to taking notes and asking questions, see Randolph N. Jonakait, *The American Jury System* (New Haven: Yale University Press, 2003), 192–7.
35. For Barba's ideas about performance, see his and Nicola Savarese's *A Dictionary of Theatre Anthropology: The Secret Art of the Performer* (New York: Routledge, 1991), esp. 8–22.
36. Lucy Winner, "Democratic Acts: Theatre of Public Trials," *Theatre Topics* 15.2 (September 2005): 149–69, at 159.
37. Constantin Stanislavski, *An Actor Prepares*, trans. Elizabeth Reynolds Hapgood (New York: Routledge, 1948), 271–80.
38. Milner S. Ball, "The Play's the Thing: An Unscientific Reflection on Courts under the Rubric of Theater," *Stanford Law Review* 28.1 (November 1975): 81–115, at 101.
39. Osborn, 1.
40. Neville, 35.
41. Roach, 36.
42. Enders, *Medieval Theater of Cruelty*, 73, emphases in original.
43. Rokem, 98.
44. Walter Kerr, "Inquest: Kerr Votes Against It," *New York Times*, 3 May 1970, 99. All the quotations from the review appear on this same page, so for the sake of simplicity, I will not provide further references.
45. Antonin Artaud, *The Theater and Its Double*, trans. Mary Caroline Richards (New York: Grove Press, 1958), 83. It should be noted, too, that Erwin Piscator's Total Theatre involved "bombarding the emotions with an arsenal of theater technology to achieve maximal audience manipulation." This included mixing film sequences, political cartoons, photographic projections, music, and other media into the theatrical presentation to create "an alternative to the capitalist newspaper accounts of the same events." See Favorini, xix.
46. Artaud, 26.
47. "Two Released Temporarily in Grenade Case," *Washington Post*, 18 February 1970, A17; "Daughter of Aide in Canada on Bail," *New York Times*, 4 October 1969, 35. Judge Irving Kaufman, the same man who had condemned the Rosenbergs to the electric chair, urged FBI Associate Director William Sullivan to open an investigation into Freed's play. Years later, thanks to the Freedom of Information Act, the playwright was able to obtain copies of some of the memos, letters, and documents that circulated among FBI agents, J. Edgar Hoover, and Judge Kaufman. One of them ominously insisted, "RECOMMENDATION: This matter will be followed closely" (Richard Stayton, "Meet Donald Freed," in *Plays by Donald Freed*, [New York: Broadway Play Publishing, 1990], vii–xiv, at ix).
48. In a mass-mailed letter dated 20 April 1970, Morton and Helen Sobell, on behalf of the Committee, acknowledged Freed's contributions to the ongoing debate about the trial and for reviving memories at a time when it might "be possible to approach the case with greater objectivity." *Inquest Clippings File*, Lincoln Center Collection, New York Public Library.
49. One need only look at some of Chicago Seven Abbie Hoffman's words to understand the generational conflict inherent in the political one. Of using the television to grab the attention of U.S. citizens, for instance, he said: "We reached them as they sat having dinner. And the father would say 'Fuck those damn hippies. Beat 'em up cop. Go get 'em'. And the kids would look at their fathers and say 'I think I've had enough to eat, I'm going up to bed'. Or some of them went to Chicago." Quoted in his obituary by Nigel Fountain, *Guardian* (London), 14 April 1989.
50. Jonakait, 56.
51. Kubiak, 157.
52. Artaud, 79; Tony Kushner, *Angels in America: Perestroika* (New York: Theatre Communications Group, 1992), 114.
53. The major scene with the reporters is in on 10–11 in the Samuel French publication (see n. 3).
54. Schneir and Schneir, 50.
55. See, for example, Alun Munslow, *The Routledge Companion to Historical Studies* (London: Routledge, 2000); and Joan W. Scott, "Women's History," in *New Perspectives on*

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Historical Writing, 2d ed., ed. Peter Burke, 43–70 (University Park: Pennsylvania State University Press, 2001). Michel de Certeau's *The Writing of History* (New York: Columbia University Press, 1975) and Hayden White's *Metahistory* (Baltimore: Johns Hopkins University Press, 1973), both of which equate writing history to writing fiction, did not appear until the mid-1970s.

56. Although arguments are often made against a voir dire process that relies predominantly on basic biographical and demographic criteria, trial lawyers necessarily must take such information into consideration. The result, as Valerie P. Hans and Alayna Jehle mockingly explain, is that attorneys do indeed depend on “demographic characteristics and stereotypes only slightly less preposterous than the avoidance of bald men and people with green socks.” Hans and Jehle, “Avoid Bald men and People with Green Socks? Other Ways to Improve the Voir Dire Process in Jury Selection,” *Chicago–Kent Law Review* 78.3 (2003): 1179–1201, at 1179. Although an attorney will obviously search to fill his or her jury with individuals who fit particular conditions, oftentimes readily available information like gender, age, profession, and place of residence serve as the tools with which lawyers (and now jury consultants) make decisions. The courts themselves endeavor to facilitate the process. New York State, for example, proudly explains that its new juror questionnaire “provides lawyers with a . . . comprehensive biographical sketch of potential jurors” to facilitate a more effective voir dire. *New York State Jury Pool News* (Spring 2005), 6, www.nyjuror.gov/general-information/jpn-pdfs/jpnspring05.pdf (accessed 11 September 2006). Biographical information, in short, is seen as an important element to building juries.

57. John Corry, “Walter Kerr, a Dominant Critic during Broadway’s Full Flower, Is Dead at 83,” *New York Times*, D22, 10 October 1996. The few biographical facts included in this essay all come from this obituary.

58. All biographical information regarding the critics comes from a variety of newspaper and magazine articles: Martin Gottfried, “A Gentleman of the Press,” *New York Post*, 11 September 1976, 18; Peter Kihss, obituary for Watts, *New York Times*, 3 January 1981; Martin Weil, obituary for Gill, *Washington Post*, 30 December 1997, B6; Mel Gussow, obituary for Kroll, *New York Times*, 9 June 2000, C23; Kenneth Jones, obituary for Glover, Playbill Official Web Site, www.playbill.com/news/article/77015.html (accessed 5 December 2004).

59. “Your spying has already caused . . . the Communist aggression in Korea, with the resultant casualties exceeding 50,000. By immeasurably increasing the chances of atomic war, you may have condemned to death tens of millions of innocent people all over the world,” charges the Judge; *Inquest*, 68–9, ellipsis in the original.

60. Kroll complains that “this kind of [theatre of fact] can be used to turn any historical crux instantly on its head, to transform heroes into villains, villains into martyrs, doers of deeds into victims of fortuitous circumstance” (“Retrying the Rosenbergs,” *Newsweek*, 4 May 1970, 89). Gill writes, “Mr. Freed’s play . . . raises questions of ethics that make me uneasy and that I have yet to find a satisfactory answer to. . . . Mr. Freed is practicing on Judge Kaufman precisely the sort of character assassination that, for polemical reasons, he shows being practiced on the Rosenbergs” (“The Theatre,” *New Yorker*, 2 May 1970, 83–5). Glover charges that Freed’s use of actual transcripts is “as prejudiced as the epidemic bias he attributes to [the Rosenbergs’] investigators, jury and appellate jurists” (Associated Press Theater Review, 24 April 1970, typescript in *Inquest* Clippings File, Lincoln Center Collection, New York Public Library). Finally, Watts dismisses the “propaganda play” for “protest[ing] too much” (“The Matter of the Rosenbergs,” *New York Post*, 9 May 1970, 16). Again, for simplicity’s sake, further references to the reviews will not be noted.

61. Julius Novick, “Between Came Tears,” *Village Voice*, 30 April 1970, 47.

62. “Nathan Award Is Won by Julius Novick,” *New York Times*, 18 January 1983, C12.

63. Warren Kliever, “A Conversation of Critics,” *Back Stage*, 18 August 1989, 22.

64. Clive Barnes, “Effective Drama Made of Rosenberg Case,” *New York Times*, 24 April 1970, 37.

65. Stayton, ix.

66. John Simon, “Spring Cleaning,” *New York*, 18 May 1970, 64.

67. Charles Isherwood, “Variety Legit Critic Markland Taylor Dies,” *Variety*, 14 July 2003, 54.

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68. Markland Taylor, "Inquest," *Entertainment World*, 1 May 1970, in *Inquest* clippings file, Lincoln Center Collection, New York Public Library.
69. David Goldman, review of *Inquest*, WCBS Newsradio 88, typescript in *Inquest* clippings file, Lincoln Center Collection, New York Public Library.
70. Clipping from *New York Morning Telegraph*, 6 January 1969, in "Goldman, David" Clippings File, Lincoln Center Collection, New York Public Library.
71. As Freed himself reports, in *United States v. Morton Sobell* (1962) U.S. Attorney Vincent Broderick, responding to a question from Justice Thurgood Marshall, confessed that "[i]f Ethel Rosenberg were still alive—the bench would have to reverse her conviction." See letter from National Rosenberg–Sobell Committee and Freed's *Inquest* in Favorini, 191.
72. Pat Garling, "Play House Will Restage Famed Trial," *Cleveland Plain Dealer*, 14 March 1969, pd2.
73. Peter Bellamy, "Rosenberg Drama in Brecht Mold," *Cleveland Plain Dealer*, 15 March 1969, 6E.
74. Letter from Leon Katz, Carnegie–Mellon University, 30 March 1970, in *Inquest* Clippings File, Lincoln Center Collection, New York Public Library.
75. Louis Calta, "Rosenberg Trial Drama Due in April," *New York Times*, 29 January 1970, 30.
76. Freed and his producers, in fact, felt that rewriting the play was imperative for its transfer. They understood that what worked in Cleveland, where they believed "the political temperature is considerably lower than in New York," required a fairer treatment of the onstage prosecution team to succeed on Broadway. Beatrice Berg, "Inquest: Its Author Speaks for It," *New York Times*, 3 May 1970, 3, 9.
77. Donald Freed, *Inquest* typescript, submitted 6 November 1970, Lincoln Center Collection, New York Public Library, 1-6, 1-8, 1-22, 1-44, 2-6, 2-34, 2-54; In the *Voicings* anthology, see 146, 151, 152, 154, 158, 166, 172, 176, 185, 195, 196.
78. Freed, *Inquest* (Samuel French), 78.
79. Freed, *Inquest* typescript, 2-57; and Freed, *Inquest*, in *Voicings*, 197.
80. Jonakait, 278.
81. Jonakait, 273.
82. In addition to the work of Wexley and the Schneirs, see, for example, Edith Segal, *Give Us Your Hand! Poems and Songs for Ethel and Julius Rosenberg in the Death House at Sing Sing* (New York: People's Artists, 1953); Alain Decaux, *Les Rosenbergs ne doivent pas mourir* (Paris: Librairie Academique Perrin, 1969); E. L. Doctorow, *The Book of Daniel* (New York: Plume, 1971); and Robert Coover, *The Public Burning* (New York: Viking Press, 1977). Ethel Rosenberg and Roy Cohn, who helped to prosecute the Rosenbergs, have famously become characters in Tony Kushner's *Angels in America*, and Cohn is also the subject of other theatre pieces like *We Got a Date* and *Roy Cohn/Jack Smith* (Stephen J. Bottoms, "Re-staging Roy: Citizen Cohn and the Search for Xanadu," *Theatre Journal* 48 [1996]: 157–84).
83. Alice Jardine, "Flash Back, Flash Forward: The Fifties, the Nineties, and the Transformed Politics of Remote Control," in *Secret Agents: The Rosenberg Case, McCarthyism, and Fifties America*, ed. Marjorie Garber and Rebecca L. Walkowitz (New York: Routledge, 1995), 107–23.
84. Weiss, 387.
85. Benjamin, 257.
86. Louis Calta, "Critics Deplore 'Theater of Fact,'" *New York Times*, 4 January 1972, 28.
87. Tony Kushner, *Angels in America: Millennium Approaches* (New York: Theatre Communications Group, 1992), 112.