

## Making a Genre: The Case of the Contemporary True Crime Documentary

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### INTRODUCTION

Endlessly fascinating, in my opinion, are the significant and enduring synergies between trials and documentaries, especially concerning issues of how to transpose nonfictional law cases with at their heart real evidence and real participants into entertainment. Whereas the trial/crime film used to be a relatively niche genre, in recent years, especially in the last two or three, there has been a veritable explosion in the number of trial and crime documentaries, across cinema, television and other screening platforms, which merit, in a journal such as this, further academic consideration. As many of the actual cases featured in these documentaries remain unresolved and open, and as the landscape of the trial and crime documentary is constantly evolving, it would be foolhardy to attempt any sort of retrospective overview of this new genre just yet. Instead what this article seeks to do is discuss this heterogeneous series of individual texts and offer an account of some of the trend's major or most distinctive elements via a series of longer case studies. Bookended by *The Staircase* from 2004 (the genre's touchstone or foundational text) and *Making a Murderer* from 2015 (the genre's most notorious example to date), this discussion will look at a diverse range of examples (series, podcasts, one-off documentaries) that nevertheless share common concerns around the law and how it can be represented, the truth, evidence and miscarriages of justice.

### *THE STAIRCASE*

*The Staircase* (2004) is an 8-part series, which follows the high profile trial of author Michael Peterson, accused and ultimately convicted of murdering his second wife Kathleen on 9 December 2001; it is also a particularly potent example of the following-the-subject documentary and a seminal true crime series cited by many subsequently (for instance Sarah

Koenig, producer of *Serial*) as inspirational.<sup>1</sup> The series has also even more recently been frequently recalled in conjunction with Netflix's *Making a Murderer*, as journalists and others hooked on the later films remember 'binge-watching' it in 2004.<sup>2</sup> *The Staircase*'s director, Jean Xavier de Lestrade, on the back of the success of his earlier real-case documentary *Murder on Sunday Morning* (2001), was invited to follow and film the Peterson case as it progressed from hearing to trial, and was thus able to film events outside the courtroom as well as proceedings within it, notably inside Michael Peterson's family home each day after court business had concluded. Influential also because of the level of detailed scrutiny its length (eight 45-minute episodes) afforded its filmmakers, *The Staircase* is gripping because some of the more uncanny details (the revelation, for instance, that a friend of Peterson's and his adopted daughters' biological mother had died in a very similar way to Kathleen years earlier) seem too outlandish to be true, an issue that resurfaces in many true crime series as if to prove that reality can be stranger than *Gone Girl*.<sup>3</sup>

Although de Lestrade was granted access to both legal sides, Durham County District Attorney, James Hardin, was less keen than defence attorney David Rudolf and his team to let the cameras in; as a result, *The Staircase* ostensibly favours Peterson as we get to know that side of the case much better – a perennial issue for many similar documentaries, and one substantiated by the producer, Denis Poncet, when he confirmed that de Lestrade told him 'this is a great story, but I could only do it if I believed he was innocent'. The director saw that he 'had a film' only when it became obvious (to him) that Peterson was on trial 'because of the sort of man he was' – that is, a bisexual married man who actively sought the

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<sup>1</sup> Cf. Melanie Goodfellow 'IDFA: Lestrade launches "The Staircase III"', *Screen Daily*, 26 November 2015. <http://www.screendaily.com/news/idfa-lestrade-launches-the-staircase-iii/5097388.article>. Accessed 25 August, 2016.

<sup>2</sup> Whet Moser 'The Staircase is a compelling companion piece to *Making a Murderer*', 19 January, 2016, <http://www.vulture.com/2016/01/the-staircase-making-a-murderer-companion-piece.html>. Accessed 25 August 2016.

<sup>3</sup> Maureen Ryan in 'Staircase Murder Documentary: An Update on a Bizarre and Fascinating Case' (3 April 2013) draws the parallel with *Gone Girl*, yet another topical reference point for the later true crime series. [http://www.huffingtonpost.com/maureen-ryan/staircase-murder-documentary-last-chance-sundance\\_b\\_2805852.html](http://www.huffingtonpost.com/maureen-ryan/staircase-murder-documentary-last-chance-sundance_b_2805852.html). Accessed 25 August 2016.

company of male escorts.<sup>4</sup> However, after two and half years of close proximity to Peterson, de Lestrade still did not know ‘for sure’ whether his subject was innocent or guilty, a lack of certainty he shares with many later true crime documentary directors. The filmmakers started filming in January 2002, a mere six weeks after Kathleen Peterson’s death, and their access – and the concomitant interest in character – lends the series a quite particular and effective level of detailed contextualisation.<sup>5</sup> *The Staircase* follows a chronological narrative structure leading up to Peterson’s conviction, displaying a forensic, almost fetishistic, fixation with evidence, such as the police video and photographs of the scene of Kathleen’s death. Like *Serial*, a decade later, the foundation for each episode of *The Staircase* tends to be a piece of evidence – the ‘striking coincidence’, as the title of Episode 3 declares, of Elizabeth Ratliff’s body having also been found at the bottom of a staircase in 1985 or the discovery in Episode 7 of the blow poke that the prosecution has argued could have been Peterson’s murder weapon.

*The Staircase*, like many true documentaries that followed, raised particularly interesting questions about what legal scholar Jessica Silbey refers to as ‘evidence verité’ – namely the ‘film footage of arrests, criminal confessions, and crime scenes’ routinely admitted in U.S. courts of laws as ‘the best evidence of what happened’, especially of past events ‘about which there is a dispute’,<sup>6</sup> and the validity of or attitudes towards that evidence when presented not just to experts within a court of law but to the jury and the largely untrained eyes of the television audience members. *The Staircase* resonated with viewers and continues to be influential and memorable largely because, while it did not employ fictional methods such as reconstruction to embellish its narrative explicitly, it did mobilise and exploit, often quite explicitly, a real trial’s inherent melodrama and sensationalist narrative complexity. As another law scholar, Peter Brooks, has argued, ‘Narrative is indeed

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<sup>4</sup> ‘*The Staircase – Inside the Series*’, Sundance TV.

<https://www.youtube.com/watch?v=mXLaDPJk1ZU>. Accessed 25 August 2016.

<sup>5</sup> De Lestrade was also invited to film the other side of the trial, that is, in the District Attorney’s office. However, the DA became increasingly reluctant to grant the filmmakers the same level of access as the trial proceeded. XXX

<sup>6</sup> Silbey ‘Evidence Verité’ (2009—2010) 1257.

omnipresent in the law’ and ‘No doubt any courtroom advocate knows the importance of narrative presentation instinctively’.<sup>7</sup> The same could be said of documentary makers: the most affective, dramatic narrative comes from reality not fiction, and that the true crime story, especially one that culminates in a trial, has inbuilt narrative cohesiveness that does not require artificial augmentation, makes it even better fodder for nonfiction films.

First broadcast a year after the actual trial (one of the longest in North Carolina history) concluded on 10 October 2003, the outcome of Peterson’s original trial (that he was found guilty) is therefore already known. However, *The Staircase* does not recount its narrative retrospectively; instead it tells its story with all the heightened urgency – the cliff-hangers, the contradictions and twists and turns – of a trial narrative unfolding in the present. As a viewing experience this ambivalent state of re-enactment posing as enactment can prove immensely liberating, and I distinctly recall, as I raced through *The Staircase*, never wanting to find out what the verdict was, despite knowing that the information would be easily accessible. Its opening sequence is evocative of this double status.

**Image: The Staircase (i.e. attached to the para below – can go in the middle of it if easier)**

**Caption: Michael Peterson in *The Staircase***

After a fairly conventional prelude in which archival television news footage establishes the premise for the story – namely, Kathleen’s death the night before – de Lestrade cuts to Michael Peterson walking through his home. A handheld camera pursues him, first into the sitting room where Peterson, in the dull, matter-of-fact tones characteristic of his delivery, recounts in detail his version of events the night Kathleen died: how they drank two bottles of wine, watched a rental movie before going to sit outside by the pool. The casualness of the handheld, observational style so often creates a sense of camaraderie and intimacy, so this is an interesting, if chilling, tactic for the filmmakers to deploy at this early stage in relation to a suspected (and, by the time the programme airs, convicted) murderer.

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<sup>7</sup> Brooks ‘Law as Narrative’ (1996), 16—17.

Immediately placing and contextualising Peterson in the domestic domain is also significant as it places him very clearly at his ease. Peterson then ushers the camera out onto the deck, and then towards the pool, where he sits on a sun lounger, pats one of the family dogs, and recounts Kathleen's final moments as she left him to go to bed. Here, still speaking in his growly monotone, Peterson makes an eerily seamless transition from re-counting *his* movements that night to re-enacting *Kathleen's* as he leaves behind his point of view, as it were, and shifts to retracing her route from the pool to the house. From the position he remembers Kathleen to have been in, Peterson looks back in the direction of the poolside chair on which he would have been sitting that night, and recalls, gesturing with his pipe, 'That was the last time I saw Kathleen – alive', hastily correcting himself, 'No, she was alive when I found her, though barely'.

Testimony in the present tense is a staple feature of much documentary, whether through re-enactment (rehearsing past actions for the benefit of the camera as Michael Peterson does) or through interview and dialogue. The urgency of this in-the-present address makes spectatorship an active as opposed to passive activity, which in turn conveys both urgency and presentness to the viewer. Recounting in the present tense summons up into the present a charged historical moment, regardless of when we are watching, as exemplified by renewed interest in *The Staircase* post-*Making a Murderer*. This play with time and the tonal and emotional complexity of *The Staircase's* ostensibly simple opening sequence brings to mind Sigmund Freud's 1914 essay 'Remembering, Repeating and Working Through' in which he argues that repetition is a displacement activity, a substitute for remembering; a symptom, therefore, of *not remembering*. The patient, according to Freud, 'does not *remember* anything at all of what he has forgotten and repressed, but rather *acts it out*.'<sup>8</sup> To Freud's mind, the patient's compulsive repetition of 'everything that has already made it from the source of the repressed into his manifest personality' should not be treated as an event of

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<sup>8</sup> XXX Freud 'Remembering', need to convert to Penguin p. 36 Penguin; p. 150 Complete Works)

the past ‘but as a present-day force’.<sup>9</sup> Pursuing this idea, the ‘compulsion to repeat’ (36) signals not just lack of memory, but an impulse not to remember. A recurrent feature of many documentaries is an inherent belief that returning to the site where an event, in particular a traumatic event, occurred, will bring both subjects and audiences closer to understanding what ‘really happened’. But Peterson’s flat bonhomie is confusing and could be read one of two ways, either implying guilt (because he is just too cool and controlled) or resonating with the innocence of the man who has got nothing to hide. Either way, Peterson’s gestures remind us that ‘walking through’ is not the same as ‘working through’, a sense underscored by the contrast between the relative calm of this sequence and the rerunning, moments later, of Peterson’s distraught 911 call over excerpts from the police crime scene video. Which, if either of them, are to be believed?

*The Staircase*’s compulsiveness as a viewing experience (and one emulated by many later true crime documentaries) stems from this simultaneous existence as a re-enactment of events that have concluded and an enactment of those same events as if they have not yet happened, a temporal duality responsible for the series’ disquieting uncanniness throughout, but also maybe a tacit expression of de Lestrade’s belief that Peterson was wrongly convicted. Although Peterson legitimately talks in the present to de Lestrade’s camera because his trial, at the time of filming, is still on going, the series was edited after his first trial had concluded with his conviction. Maybe this double-layered narrative structure derives from de Lestrade’s belief that Peterson was wrongly convicted. In 2013 (after Peterson’s release from prison) the director commented, for instance, that ‘It has been immensely frustrating that the truth of this story has remained so obscure for so long. I never believed the prosecution’s murder story. The evidence contradicted it’.<sup>10</sup>

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<sup>9</sup> XXX Freud 151 Coll. Works – need Penguin.

<sup>10</sup> See for example de Lestrade’s comment in 2013: “It has been immensely frustrating that the truth of this story has remained so obscure for so long. I never believed the prosecution’s murder story. The evidence contradicted it” (“‘The Staircase’: Director Jean-Xavier de Lestrade on Michael Peterson, Owls, and More”, *thedailybeast.com*, March 4, 2013, <http://www.thedailybeast.com/articles/2013/03/04/the-staircase-director-jean-xavier-de-lestrade-on-michael-peterson-owls-and-more.html>).

This relationship between Peterson and de Lestrade, between protagonist and filmmaker is crucial. De Lestrade is careful not to overtly proclaim his belief in Peterson's innocence, however it does emerge stylistically through his deployment of hand-held, follow-the-subject cinematography, which sits in direct contradistinction to Michael Peterson's own complex and suggestively performative to-camera self-presentation. Despite his inexpressive delivery and his exaggerated chumminess – glass of wine or pipe often in hand – Peterson's interactions with the camera potentially flag up rather than allay doubts over his credibility as the wrongly accused grieving husband. Instinctively, and maybe misguidedly, documentary audiences tend to distrust subjects so at ease with revealing all in front the camera. Narrative tension in *The Staircase* hinges on the dialectical struggle between Peterson's apparent openness with the camera and crew – the outgoing performativity of someone who has nothing to hide – and the frequently graphic documentation presented, principally by the prosecution, which undermines directly his version of events. But it is neither entirely possible to 'read' Peterson's performance nor to detect de Lestrade's implied bias.

Peterson and/or his family and lawyers challenge each 'evidence verité' charge on camera, such as in episode 6, after the male escort Peterson contacted has testified in court. De Lestrade cuts to David Rudolf watching a *Live Court TV* bulletin relaying the day's revelations, including a reporter's assessment that 'this shows the jury this was [emphatic pause] far from a happy marriage'. After this, there is a cut to Peterson's loyal adopted daughters preparing the evening meal while discussing the bisexuality claims. The informal conversation between the sisters and a friend is filmed as a series of relaxed, hand-held close-ups; Peterson enters the kitchen as one asks the other if she 'knew'. He goes to the fridge and jokes, 'Maybe my puppy shouldn't hear this either. Come on!' After Peterson and dog have vacated the kitchen, the camera pans back up to intimate shoulder and head shots of the three young women, Margaret maintaining that she had known about their dad's bisexuality since the start of the trial and remains unshocked by it. Rather like Peterson's loud affability, though, Margaret's nonchalant acceptance and downplaying of his bisexuality, strikes an oddly forced, even pre-meditated note as the sequence begins to feel like a performance rather

than a spontaneous dialogue. This might well be unjust, I hasten to add, and just one of the many dangers of the following-the-action crime series that so often leaves its audience to make up its own mind on questions of veracity and trustworthiness. In truth, Michael Peterson's performance in the film is not consistent; he can appear detached and emotional, frequently in the same scene. Additionally, his lawyers' decision not to put him on the witness stand means that his words outside the courtroom stand in lieu of testimony.

Although there is a visible jury present at the trial of Michael Peterson, spectators of *The Staircase* are, to use a term Jennifer Mnookin proposes in relation to *Paradise Lost*, 'jurified': viewers are invited to judge Peterson's character, the evidence, the conflicting evidence and the verdict. The amount of footage filmed in the Peterson home, the access gained to the family, the relative distance between filmmakers and the prosecution all strongly suggest that, despite its veneer of documentary impartiality, *The Staircase* is mounting the emotional narrative case for Michael Peterson. When, therefore, he is found guilty and the divergence between logical argument (represented by the prosecution's compelling evidence-based case) and character (represented by getting to know Peterson and his team) is exposed, we, the audience-jury, is left doubting where truth and authenticity in this case reside.

*The Staircase* is the obvious starting point for any discussion of the new true crime documentary as it so neatly exemplifies why trials make such riveting screen entertainment while also problematizing the notion that they make the perfect subject matter for documentaries because of their inherent narrative cohesion. It is both tidily linear, in that it reaches a verdict and messily ambiguous, in that we can never know definitively or not if Michael Peterson deserved his conviction. Peter Brooks writes that 'Narrative appears to be one of our large, all-pervasive ways of organising and speaking the world' and emphasizes that the law 'focused on putting facts in the world into coherent form and presenting them persuasively – to make a "case" – must always be intimately intertwined with rhetoric and



narrative'.<sup>11</sup> Trust in the organisational value of narrative, however, usually comes hand in hand with a coherent ending, with knowing what actually happened in a case and understanding a trial's verdict. This understanding holds for Hollywood movies, perhaps, but not for far less stable reality.

### *THE KICK and The 10<sup>TH</sup> DISTRICT COURT*

Although when many recent critics have written about this new true crime genre they have referred most often to series or to mainstream US or UK examples, it is necessary to recognise that the genre extends beyond these. *The Kick* (Andres Veiel, 2005) and *The 10<sup>th</sup> District Court* (Raymond Depardon, 2005) are two one-off films that show both a very different, non-adversarial legal system and a conspicuously non-linear narrative mode of storytelling. These are also two films that do not follow the more common path of one-off true crime documentaries in that they do not reopen a perceived miscarriage of justice as do, for example, de Lestrade's *Murder on a Sunday Morning* (2001), Joe Berliner and Bruce Sinofsky's *Paradise Lost* trilogy about the so-called West Memphis 3 (1996; 2000; 2011), Ken Burns' *The Central Park Five* (2012) and *West of Memphis* (Amy Berg, 2012), also looking at the case of the West Memphis 3. Although it does not call for the reopening of a specific case, Werner Herzog's *Into the Abyss: A Tale of Death, A Tale of Life* (2011) is also tangentially a miscarriage of justice one-off documentary in that it sets out to mount an argument, using as its platform the case of Michael James Perry, whom Herzog interviews eight days before his execution for triple homicide in December 2011. *The Kick* and *The 10<sup>th</sup> District Court* are both discursive and performative films that sit alongside a documentary such as Marc Isaacs' *Outside the Court* (2011) for which the director spent three months outside Highbury and Islington Magistrates' Court in London talking to people coming in and out, waiting for or having just received judgements: they are more discursive ruminations on justice or the legal system.

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<sup>11</sup> Peter Brooks 'Law as Narrative', 14.

Writing in 1995, John Fiske and Kevin Glynne argue that ‘symptoms of postmodernity’ such as truth’s loss of ‘its finality and objectivity’ (505), had already destabilised television and were threatening to do the same to the law. ‘The courtroom’, they suggest, remains ‘a vivid site whereon to trace the struggles of the modern to keep the postmodern at bay’. Although Fiske and Glynn ask ‘in an age of multiple and shifting realities, how can lawyers represent *the* reality of an event to a jury?’, they go on to suggest that the mediarisation of trials and more specifically factual entertainment are to blame in the struggle to retain modernity and the fixity of truth, as ‘the resimulation of these cases on our television screens [in series such as *Final Appeal* and *Trial and Error*] unfreezes the truths that have been made of them’ (506). A decade later, this fear that truth’s finality and objectivity are endangered has, by many documentarians, been embraced. It is maybe not pure happenstance that this spate of trial and crime documentaries has appeared this century. Fiske and Glynne evoke Jean Baudrillard’s notion of hyperreality (as in the pervasive unreality ‘beyond true and false’),<sup>12</sup> which reminds me of B. Ruby Rich’s feeling that ‘the “realness” factor of 9/11 has left me less interested in Baudrillard than I would have ever imagined’ (Rich 2004, 112—13). Although it would be tricky and stupid to argue that they emerged in direct response to the terrorist attacks on the US of 2001, the recent post-9/11 crime and trial documentaries nevertheless present, alongside other films such as drama-documentaries, a collective, pervasive acceptance that representation of ‘the truth’ is fluid and open to interpretation and reassessment through narrative reconfiguration. Documentaries such as *The Kick* and *The 10<sup>th</sup> District Court* reflect the notion that all represented reality is inherently performative, in turn reflecting this instability in their fractured narrative approaches to the court proceedings they feature.

Discussed in its film version here, it should not be forgotten, though, that the German film *The Kick* comes from another tradition, namely that of documentary of verbatim theatre, virtually invented by German playwrights of the post-war period such as Rolf Hochhuth,

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<sup>12</sup> Cf. Baudrillard *Simulations* (transl. By Paul Foss, Paul Patton and Philip Beitchman, (Cambridge MA: MIT Press, 1983): 40.

Peter Weiss and Heinar Kipparht. Their plays frequently adopted the tribunal form, recently revived by the Tricycle Theatre in London to tackle topical subjects such as the murder of Stephen Lawrence, the Bloody Sunday Saville Inquiry and Tony Blair's role in the Iraq War. Examples of tribunal plays, from Weiss's *The Investigation* (1965) or Kipparht's *In the Matter of J Robert Oppenheimer* (1964) to Richard Norton-Taylor's *Justifying War – Scenes from the Hutton Inquiry* (2003), are edited down but verbatim segments of trials are taken directly from the original transcripts. *The Kick*, though altogether more stylised, followed a similar research and writing process. In 2013 a season of experimental films entitled 'Performing Documentary' and curated by Birgit Kohler came to the Goethe Institute in London from the Arsenal Institute for Film and Video in Berlin. Having more in common with theatrical than screen-based antecedents, the rich and varied season comprised a series of experimental films with factual roots. The perceptible relaxation of the boundaries between 'fact' and 'fiction' and the clustering of interest amongst documentary filmmakers around ideas of performance, have led not to a feeling that reality does not exist, but rather an acceptance that reality *does* exist but that it is not fixed, finite or stable.

In 2000, when I wrote the first edition of *New Documentary*, I found it fruitful to acknowledge that all documentary was, at its core, *performative*; a decade and a half later this is not in any way a contentious statement as the innate performativity of so much documentary today – whether about fraudulent subjects such as *The Imposter*, or presenting scripted reality – demonstrates. So much television reality is now scripted (*The Only Way is Essex*; *Made in Chelsea*) or laboriously formatted (*The Apprentice*; *Lose Weight for Love*) that since 2012 there has been a British Academy Television Award for 'Best Reality and Constructed Factual'; so much cinema documentary prioritises reality's performativity over more straightforward observation (*The Act of Killing*; *The Imposter*), that previously recognised boundaries are not simply getting blurred, they are perilously close to being eradicated altogether. Collectively and globally we have become habituated to 'factual entertainment' and no longer feel the need to adjust our perspective or attitude as viewers

depending on whether we are sitting in front of a television, cinema, computer or phone screen enjoying a documentary or a drama.

Slavoj Žižek argued in 2002 that, after 9/11 came what he, termed ‘a return to the Real’, a ‘real’ so ‘traumatic/excessive’ that ‘we are unable to integrate it into (what we experience as) our reality, and are therefore compelled to experience it as a nightmarish apparition’ (19). Although we should not, as Žižek goes on to warn, mistake reality for fiction, post-2001 we are better placed to understand the complexity of the relationship between the two, of which ‘constructed reality’ is one manifestation. The resurgence in fact-based drama and performance-based documentary are others, likewise leading us towards an understanding that ‘truth’ is never completely closed or done with, but is rather always fluid, open to reassessment and re-interpretation.

The ‘performance documentary’ *The Kick* recounts the murder of 16-year-old Marinus Schöberl by brothers Marco and Marcel Schönfeld and their friend Sebastian Fink in the summer of 2002 in Potzlow, a village in Brandenburg and was based on several months of research over the course of 2003, during which time Veiel and Schmidt interviewed members of the families of both victim and perpetrators, and delved into the transcripts and other records related to the case. Veiel and Schmidt discovered, inevitably, that the attitudes if not exactly the truths behind the case were messy. One German theatre academic starts to close his short discussion of *The Kick* by first stating, ‘There was a victim and a perpetrator, that’s a fact; a murder is a murder, no relativism’, before concluding that the piece, not a play ‘in the original sense’, provided a ‘vivid documentation’ that ‘ultimately poses more questions than it answers’.<sup>13</sup> One of the ways in which *The Kick* achieves this is by blurring the hard boundaries between ‘victim’ and ‘perpetrators’, instead using the Schöberl case as a means of exploring and opening up a depressed and marginalized working class community. The original play was performed first at the Maxim Gorky Theatre in Berlin and then around Germany and translated into 9 languages before being made into an 85-minute 35mm film, shown at the Berlinale in 2006. The collage of verbatim interviews and segments from court

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<sup>13</sup> Irmer, Thomas ‘A Search for New Realities’, 27.

transcripts are spoken by two actors, Susanne-Marie Wrage and Markus Lerch, who play 18 different roles of both genders, largely delivered as monologues.

Text at the start of *The Kick* sets out the bare bones of the story – that, on 12 July 2002, Schöberl was beaten to death by the Schönfeld brothers and Fink, although his corpse was only found later that year in November. After actor Markus Lerch has announced in voice-over that Marinus’s mother died of cancer the day after sentencing, the film concludes by relaying, using scrolling text, the verdicts. Marcel Schönfeld was found guilty of murder, serious bodily harm and coercion and sentenced to 8 years 6 months in a juvenile detention centre, while Marco was sentenced to 15 years in an adult prison for attempted murder and serious bodily harm and Fink was sentenced to 3 years of a juvenile term for the lesser charges of bodily harm and coercion.

**Image: *The Kick***

**Caption: Susanne-Marie Wrage and Markus Lerch in *The Kick***

Although the verdicts are not revealed at the outset, *The Kick* is manifestly Brechtian, with its adoption of neutral, basic black costumes, minimalist gestures and character differentiation existing within a brutal, unadorned and monochrome performance space. In *The Kick*, Andres Veiel manifestly elects not to individuate his characters through defined personalities but through stylized facial or body movements, thereby shrinking to a minimum the potentially emotional effect of the subject material. Another mechanism for achieving this is the swift, often seamless, transition an actor makes from one character to another. The two actors are filmed using flat lighting and a largely tripod-mounted un-intrusive camera; they announce which character they are playing before starting to speak their lines and alter their gestures to indicate the transition and, except when filmed in close up, look out beyond the frame to an imaginary audience – or judge. By obstructing easy identification with the individuals involved and their dramas, *The Kick* compels us to listen even more keenly to their words. At times the passage between characters is uncompromising, as when Lerch and Wrage, as the twins’ parents, sit on a bench recalling when Marinus’s body was found.

Looking out in front of them as opposed to at each other, the parents speak about their sons, ending with Lerch saying ‘they are still our children. We didn’t send them up to the barn’ (where the murder happened). Lerch then gets up, glances back briefly, walks to the back of the performance space and towards the illuminated, box-like structure from which most of the trial material is spoken to resume his role as the public prosecutor, as whom he then claims that the 3 teenagers ‘possess a primitive right-wing mindset’ who, in search that night of a Jew or another ‘surrogate victim’, found in Marinus, a Jew who stuttered ‘particularly when excited’, just such an individual. The harshness of having abandoned, as it were, the twins’ mother on the bench is felt as the camera switches from a mid-shot of Lerch through the window of the box to a wider shot – and then a close up – that appears to show Warge silently absorbing the prosecutor’s characterization of her sons. Lerch leaves the box and its lights turned off, returning to being the twins’ father again, offering a comparably antipathetic depiction of Marinus as a petty thief.

It is perhaps too easy, especially in the context of German documentary film or theatre, to evoke Brecht’s ‘alienation effect’, but, like *10<sup>th</sup> District Court*, which I will discuss in a moment, *The Kick* – through its ascetic aesthetic, its use of impassively delivered monologues and its lack of any directly referenced ‘evidence verité’ – actively hinders our identification with actors, social actors or the traumatic narratives they touch upon. As a trial documentary, *The Kick* does not ultimately seek to explain the murder or the teenagers’ motivation for killing Marinus; instead, it invites us to listen and observe, not to fixate upon ‘what really happened’ but rather to ruminate upon what some of the ramifications of ‘what really happened’ might be. As such, using actors to speak the lines of the real people involved in the Marinus Schöberl case, it cements the idea that performance can be both a valid and effective tool in documentary, and in doing so has the effect of intellectualising rather than sentimentalising the criminal case at its heart. *The Kick* exemplifies the notably but not exclusively German use of the dialectical conflict between performance and documentary source material to create a polyphonic, multi-layered representation of Marinus’s murder. With its two performers acting against the sparse backdrop of an empty warehouse, *The Kick*

makes it impossible for its audience to settle into a predictable responsive mode. Brecht would have theorized this in terms of alienation or estrangement, but the restless stylization also speaks to a more contemporary conception of reality's multi-dimensionality and truth being accessible via a number of alternative routes.

*The Kick* is just one illustration of what, in the original 2011 'Performance Documentary' programme, is referred to as 'a new, experimental mode of documenting' to have emerged in the last decade, a group of Austrian and German that 'combine documents, production acting and performance in a unique and artful manner' (Kohler 2011).<sup>14</sup> In the same introduction, Kohler concludes that the point for these films

... is not proximity, authenticity and immediacy, but instead the analysis of social structures, de-dramatisation instead of emotionalisation; reduction and abstraction instead of illustration (Kohler 2011).

*The Kick* is one of a small group of recent true crime documentaries to create intellectual distance between audience and film; on the whole these series and one-off films seek to draw us in, to engage us emotionally in the cases being followed, to make us identify with and/or at the very least invest in and care about them. Although less successfully, Brett Morgen, in his 2007 film *Chicago 10*, also attempts a form of distancing. Morgen eschews re-enactment for animation as he revisits the 1968 trial of the Chicago 8, tried for conspiracy, inciting to riot and other charges related to their protests outside the 1968 Democratic Convention in Chicago.<sup>15</sup> The courtroom sequences are just one strand in a multi-faceted dialectical 'mash-up' of animation, archival collage and music. The film's digital animation style, much like the multi-planing effects used extensively through Morgen's earlier documentary *The Kid Stays in the Picture* (2004, co-director: Nanette Burstein), adopts a complex relationship to the unrecorded authentic courtroom action, but for all its stylistic audacity, *Chicago 10* is chaotic, and that Morgen's catalyst for beginning work on it in 2001 was outrage at the Afghan War is

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<sup>14</sup> Introduction to the 'Performing Documentary: Filme & Gespräche im Kino Arsenal' catalogue, 2—5 June 2011 by Birgit Kohler, transl. Hannah Berghahn-Jennings.

<sup>15</sup> The Chicago Seven were Abbie Hoffman, Jerry Rubin, David Dellinger, Tom Hayden, Rennie Davis, John Froines and Lee Warner. The eighth man charged was Bobby Seale, co-founder of the Black Panther Party. Morgen's title 'Chicago 10' encompasses these eight plus their two lawyers.

entirely lost. Much more accomplished is Raymond Depardon's observational courtroom documentary, *The 10<sup>th</sup> District Court: Moments of Trials*.

Depardon's courtroom documentary is in the non-interventionist observational tradition of Frederick Wiseman (*High School, Hospital, Juvenile Court*); a film not interested in criminal case as narrative but in the fragmented, unstructured workings of a local courthouse. *The 10<sup>th</sup> District Court* is compiled from segments of small-scale cases that, in early 2003, came before Madame Justice Michèle Bernard-Requin, presiding judge in a busy Parisian district court. One stipulation, as stated in the scrolling text at the start of the film, was that Depardon was permitted to show only extracts from cases, not entire trials, once again depriving (if that is the right word) the viewer of emotional engagement or straightforward character identification. I query my own assessment of this, because *The 10<sup>th</sup> District Court* – like *Outside the Court* – is riveting and moving and engrossing despite the absence of narrative linearity. Another rule Depardon had to abide by was that the names and personal details of the 25 people shown in the documentary (out of a total of 169 people filmed) had to be changed. The first court session filmed is May 15, 11.30AM, the last is the 4.26PM session of June 19.

Zoë Druick argues, after citing *10<sup>th</sup> District Court* as a relatively rare example of the trial documentary:

Criminal proceedings may certainly be seen as an essential aspect of democratic social theory, a performative moment whereby the state is kept in check by its citizens.<sup>16</sup>

This sense of immersion in the democratic process is certainly part of what makes Depardon's scrutiny of minutiae so enthralling; another point of interest is that it manages to be affecting while focusing on a non-adversarial system of justice in which the principal dialogue is between judge and defendant, with only incidental or perfunctory (and at times comical) intervention from prosecution or defence lawyers. The very justice system *The 10<sup>th</sup> District Court* features could never yield the cliff-hangers and climaxes around which *The Staircase* is built. True, there are no murders here, just petty crimes, but cases are rattled through one after

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<sup>16</sup> Zoë Druick 'The Courtroom and the Closet', 443.



another, verdicts are passed at the end of each session, sometimes late into the night. Film scholar Carol Clover, in an article written in 1998 and so well before the recent true crime documentaries started to appear, suggested that ‘the question to be asked about the trial movie ... has less to do with the value of particular instances than it does with the fantastic generativity of the form in Anglo-American popular narrative’.<sup>17</sup> Clover’s point is that it is the very procedures of this system that make it narratively appealing, specifically its adversarial and jury components, proposing that ‘real-life trials become movies ... as easily as they do in the Anglo-American world both because trials are already movielike to begin with and movies are already trial-like to begin with’.<sup>18</sup> Yet, although this argument would hold for Hollywood movies or fictional mainstream television, it fails to take account of audiences’ more recent fascination with diverse types of true crime stories. The eclecticism of the documentaries I am discussing here strongly suggests that the Anglo-American adversarial and jury-focused structure does not guarantee cultural dominance.

*The 10<sup>th</sup> District Court* declares its divergence from the standard cultural model from the outset, opening with credits, some explanatory text and several black frames overlaid with courtroom ‘white noise’ such as footsteps ascending stairs, shuffling, the shifting of chairs and the like that signal the start of a court session. Immediately after, the film proper starts mid-action, its visuals opening with a low angle mid-shot of a male defendant, poised in the witness box waiting to be addressed by the judge. *The 10<sup>th</sup> District Court* subsequently ends on another low angle and out of focus shot of the courtroom’s wood panelling and the top of one of its doors as Judge Bernard-Requin’s off-screen voice calls out ‘next case’.

Developmental or linear narrative is summarily dismissed.

Between these two observational bookends a kaleidoscope of extracts from intriguing individual stories are edited together but neither explained nor completed. The full alienation effect of Depardon’s style is completed by the deployment of a rigid, outwardly inexpressive, tripod-mounted camera that commonly lets characters walk into or simply drop out of shot

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<sup>17</sup> Carol Clover ‘Law and the Order of Popular Culture’, 99.

<sup>18</sup> Carol Clover ‘Law and the Order of Popular Culture’, 99.

rather than follow them; likewise cinematographers Depardon, Justine Bourgade and Fabienne Octobre use a limited and repetitive range of framing options throughout: front on or low angle mid-shots, low angle or eye level close-ups. Depardon's minimalist aesthetic neatly accentuates the trust he places in his material. Although many sequences could serve as illustration of this, one case stands out for me as exemplary. Almost midway through there is an edit in *The 10<sup>th</sup> District Court* to a man, Karim Toulbia (not his real name), in the witness stand listening impassively to Judge Bernard-Requin reading out the charges of harassment brought by his former partner, Laura Lekouby (also a pseudonym). Toulbia is filmed in a head and shoulders shot from below as the judge continues to read out, in the same perfunctory monotone, the transcript of a particularly aggressive answerphone message the defendant left for Lekouby, as the image then cuts to a close-up of her. After Toulbia denies all knowledge of other abusive threats, he is asked to step down and Lekouby is called to the stand, framed – using a head and shoulders low angle mid-shot – in an identical manner.

**Images: The 10<sup>th</sup> District Court (x2)**

**Captions: 'Karim Toulbia' and 'Laura Lekouby' in *The 10<sup>th</sup> District Court***

We have become used to the presiding judge's wit and eloquence (Michèle Bernard-Requin truly is the star of this documentary; I could watch and listen to her all day) but rarely to that of those (mildly intoxicated, mumbling, confused, angry) who come before her. Laura Lekouby, with her calm eloquence, is the exception. She stands before Bernard-Requin telling of seven years of abuse, recounting how 'he still beats me in my dreams, beats me every day' and speculating that, if he is given a light sentence today, he will 'be patient, and try again to ruin my life'. *The 10<sup>th</sup> District Court* offers a series of fleeting insights into personal traumas and chaotic lives, but none more powerful than this, a response that is strengthened as opposed to diluted by Depardon's superficially inscrutable visual style. After voicing her concerns that he will persist in trying 'to ruin my life', there is a cut away to Toulbia seated, looking over at Lekouby as she continues: 'I won't give up. He's afraid of the law; that's why I'm here'. Toulbia remains as expressionless as Depardon's camera, but there comes a hint of

desperation (or is it defeat? Or annoyance?) as he glances over briefly towards the bench and, almost imperceptibly, swallows as he looks over again at his former partner reiterating: ‘I need protection, so will his new companion’.

It is not possible to read precisely Toublia’s gestures and looks, but the length and simplicity of these shots allows us to gain a sense of his aggression, to maybe ascertain that he is fighting hard to remain impassive. There is then a brief exchange between the two lawyers (Toublia’s advocate, with his histrionic eyebrow moves, pouts and laboured pauses, is the film’s one anomalous Hollywood actor manqué) and judgement follows at the end of the session: Toublia is found guilty and ordered to serve a 16-month suspended sentence and to remain on probation for 2 years. He is also served with an injunction, which stipulates that he cannot enter Paris’s 11<sup>th</sup> Arrondissement, where Laura Lekouby lives.

In a sequence such as this, the richness of the trial documentary emerges: that narrative and fictive devices do not necessarily augment reality; often reality does not need to be ‘constructed’ or scripted. The fragments of cases brought before this Parisian court are merely stations along a continuum – on other days we would have become equally engrossed in other stories and lives. *The 10<sup>th</sup> District Court* represents the flipside to *The Staircase* – or a more stylised series such as *The Jinx*. Its visual subtlety, tonal detachment and lack of strong formal linearity serve to emphasise that the act of filming is incidental to the court’s business, neither intrusive nor overly disruptive. *The 10<sup>th</sup> District Court*, similar to *The Kick*, films no *Staircase*-like action from beyond the claustrophobic confines of the traditional, wood-panelled courtroom. Presented with no background information and so few dramatic punctuations, *The 10<sup>th</sup> District Court* denies and quite flagrantly fails to feed any potential interest in the motives, character and personal circumstances of those brought before Michèle Bernard-Requin: the drug offenders or the richly bizarre white male apprehended for carrying a knife on the metro who argues it is ‘a family tradition’ to carry one and that he has done so since he was three years old.

Depardon’s obdurate disinterest in affective cinematic devices or additional background information tests to the limit legal scholar Jennifer Mnookin’s assertion in her

discussion of *Paradise Lost* when she observes: ‘That observers affect what they watch is practically axiomatic’.<sup>19</sup> The camera in Depardon’s documentary is not hidden, but that nobody looks into its lens is arguably resonant of something equally axiomatic, namely that courts of law will go about their business and justice be meted out regardless of a camera’s presence. This is one of the many paradoxes or contradictions of the recent true crime genre: these are pieces of hugely popular, artfully constructed entertainment, yet the residual fear remains that maybe the raw, unadulterated proceedings – as we are gifted in *The 10<sup>th</sup> District Court* – are still more powerful. And here also lurks the sense that Mnookin’s truism does not hold for all examples. It remains, in most instances, legitimate, as Mnookin goes on to observe, that ‘If both the trial and the documentary invite ruminations about knowledge and its limits, documentaries *about* trials become a particularly potent site for reflexive examination of the narrative construction of evidence, belief, and knowledge’,<sup>20</sup> but yet, *The 10<sup>th</sup> District Court* offers one of the clearest examples of film’s *lack* of influence on events, the residual ‘truth’ or ‘what really happened’. Depardon’s film is an exemplary illustration of another truism, namely that all a documentary film can capture with any certainty is the truth of the performance in front of the camera – which may or may not correspond to the truth that remains off camera and unobserved, the ‘truth’ that would have unfolded had the cameras not shown up to film. The subsequent, assumed, relationship between that ‘truth’ and the implied truth that would have unfolded had the camera crew not been present can only ever be just that – assumed. Depardon’s documentary is not *about* the truth or otherwise of the defendants’ stories, let alone the judgements; its focus, rather, is the *process of law*, and to this end there is a virtual convergence between diegetic and extra-diegetic narrative and argument. Its incompleteness, perhaps a source of frustration for some viewers who crave a more conventional, individual-focused trial documentary, is precisely the feature *The 10<sup>th</sup> District Court* is happily fixated upon. There is no such thing, Depardon seemingly contends, as complete and indisputable truth, so what is the point in seeking it out? The doubts

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<sup>19</sup> Jennifer Mnookin. ‘Reproducing a Trial’ (2005): 154.

<sup>20</sup> Jennifer Mnookin ‘Reproducing a Trial’ (2005): 158

concerning whether or not a documentary has arrived at the truth is the *stabilising* as opposed to *de-stabilising* force of this mesmerising documentary, and is essentially the trial documentary's inevitable but not always welcome *sine qua non*.

### *THE JINX*

Somewhat paradoxically, a film such as *The Jinx* establishes a similar premise – ‘paradoxically’ because Andrew Jarecki’s more recent true crime documentary series for HBO is the other end of the spectrum to *The 10<sup>th</sup> District Court* in terms of visual style and form: it is overloaded with glossy, highly wrought re-enactments; it has a dominant, intrusive score; Jarecki himself is a major presence in the series; it comes to a jaw-dropping climax (inevitably spoilers to follow). However, at the heart of *The Jinx*, which tells the grizzly, bizarre and as yet incomplete narrative of Robert Durst, New York property heir and one of the most eccentric and creepy protagonists any documentary has thrown out for a while, is Jarecki’s own wrestling match with notions of truth, honesty and how best to represent them. The true crime documentary has increasingly become a key media arena for confronting these questions. True crime documentaries have different relationships to their legal subjects: they follow cases to their legal conclusions (*The Staircase*); they reconsider past cases (*Serial*); they call for perceived miscarriages of justice cases to be re-opened (*Paradise Lost*); they offer retrospective assessments of trials and judgements (*Chicago 10*); they observe law at work discursively (*The 10<sup>th</sup> District Court*). Many, like *The Jinx* (or retrospectively *Serial* and allegedly soon, *Making a Murderer*) intervene directly into the legal process and/or are instrumental in bringing cases to trial or retrial. Among the most infamous instances of a documentary having had a direct impact on a legal case is Errol Morris’s *The Thin Blue Line* (1988), which, in the course of its investigation into the 1976 murder of Dallas police officer Robert Wood, drew a taped confession from one interviewee, David Harris, that led to the acquittal of the another, Randall Adams, at the time of the filming on death row for Wood’s murder.

Morris's work is especially pertinent to *The Jinx*, not only because it altered the course of documentary history, but also because Jarecki's 2015 series is so conspicuously indebted to it. Like *The Thin Blue Line*, *The Jinx* is visually spectacular and sensationalist, makes copious use of stylised, Morris-like re-enactments and, for all its shortcomings, has had a direct bearing on its multi-millionaire subject who, on immediately prior to HBO's transmission of the sixth and final chapter, was arrested on suspicion of murder. Robert Durst was arrested on March 14, 2015 in New Orleans for the murder on December 23, 2000 of his old friend Susan Berman. The disappearance of his first wife Kathleen McCormack Durst (last seen alive on January 31, 1982) remains unsolved. As shown in *The Jinx*, Durst was tried in 2003 for the murder of Morris Black, a neighbour whose body he cut up and threw in the bay near Galveston, Texas, but was found guilty of the lesser charge of manslaughter after his attorney, Richard DeGuerin, successfully argued he had killed (and subsequently dismembered) Black out of self-defence. Police have also begun to investigate possible links between Durst and the unsolved disappearances of three other women.

To begin at the end: *The Jinx* concludes with a shocking audio confession, any documentary maker's dream. This final episode has built up slowly to one final on-camera interview, in which Andrew Jarecki, as subsequently occurs, plans to confront Robert Durst with strong handwriting evidence that implicates him in Susan Berman's murder. Two envelopes, written using similar capital letters and both with 'Beverly Hills' misspelt are, we assume, the director's trump cards and indeed Durst looks shaken by the similarities, though still maintains he only wrote one of them – although which one, he cannot determine. At one point Durst's discomfort is suggested by an involuntary burp, which he tries to mask, a reflex physical response reminiscent of Anwar Congo's repeated retching in the concluding sequence of *The Act of Killing* (Joshua Oppenheimer et al, 2012). Once the interview is over, Durst goes to the bathroom, seemingly oblivious of the fact that he is still wearing a 'hot' microphone. He starts to talk to himself (something he has done earlier in the series, when he was promptly admonished by a member of his legal team) and a bizarre split-persona conversation ensues:

There it is. You're caught. You're right, of course. But, you can't imagine. Arrest him ... [sound of tap running] ... I don't know what's in the house. Oh, I want this. What a disaster ... [shuffling and a soft burping sound] ... He was right. I was wrong. And the burping ... [sound of strangulated retching] ... I'm having difficulty with the question. What the hell did I do? ... [audio of either burp or small wail] ... Killed them all, of course.

Whether or not Durst knew he was being recorded and whether or not such a confession would be admissible in court are both hotly debated. Additionally, there is a sense that Jarecki obtained the confession – unlike Morris in *The Thin Blue Line* – if not fraudulently, then sneakily; in one interview, for example, the director explains: ‘We always leave the microphone on him. He knows that’, although he then maintains that it was not until ‘months later’ (Jarecki claims on June 12, 2014) that he had the bathroom audio transcribed, that is more than two years after the interview was filmed.<sup>21</sup> There is then the question of when Jarecki turned the potential evidence over to the authorities and the concomitant ethical issue of maybe dragging his feet a bit to ensure maximum impact and exposure for the series finale, although again he maintains that he handed over the information to ‘law enforcement some months ago’, and that he had no control over the timing of Durst’s arrest on the eve of transmission.<sup>22</sup> What is not in doubt is that *The Jinx* is one of the most significant examples of the true crime genre, firstly because it has had a lasting impact on the real case of Robert Durst, but secondly because of its overblown style, especially its use of stylised re-enactment.

Andrew Jarecki’s involvement with the case began when he directed the lacklustre feature film, *All Good Things* (2010), a fictionalised version of Durst’s starring Ryan Gosling as the Robert Durst-like property heir, David Marks. Durst saw the movie and, as documented in *The Jinx*, called Jarecki’s office to say he had liked it and to offer the director an interview. *The Jinx* is a documentary rerun of the same events (which in a fictionalised context appear

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<sup>21</sup> Jarecki goes through this material on many occasions. Here, the citations are from: Hilary Lewis ‘*The Jinx* director on Robert Durst’s “Killed them all” confession: “I have no reason to believe that’s not the case”’. *The Hollywood Reporter* (3/16/2015).

<http://www.hollywoodreporter.com/news/andrew-jarecki-robert-durst-killed-781646>.

Accessed 25 August 2016.

<sup>22</sup> Cf. for example: Bruce Fretts, “Director of Durst film says he is ‘relieved’ about arrest,” March 16 2015, *New York Times* [http://artsbeat.blogs.nytimes.com/2015/03/16/the-jinx-ending-robert-durst-andrew-jarecki/?\\_r=0](http://artsbeat.blogs.nytimes.com/2015/03/16/the-jinx-ending-robert-durst-andrew-jarecki/?_r=0).

even less credible), but one that employs the fictive strategies of re-enactment to supplement and swell the drama of reality. *The Jinx* thereby offers a heady combination of style and investigative authority. Although the bulk of the first episode, 'A Body in the Bay', is made up of high production value but nevertheless conventional documentary interviews and actuality footage, the choice to open with what is clearly a reconstruction sets down a marker for how important reconstruction will be to the series' generation of intensity. Hushed, portentous orchestral strains are heard over a pitch-black screen. Soon, some lights become visible in this dark nocturnal scene (it quickly becomes apparent that this is a re-enactment), amongst them the bleeding blue and red flashing of an approaching police car that drives towards and past the camera. The text 'Galveston, Texas, September 2001' appears and, as the car comes to a stop and a police officer gets out and walks into the gloom, the at this stage unnamed voice of a policeman recalls how he received an after hours dispatch call at his house to tell him that 'a young kid had found what he thought was a torso – no head, no arms, no legs, just the torso'. The cop looks briefly into dark, almost black water, before a sharp cut to documentary footage of Detective Gary Jones of Galveston Police driving in daylight and being interviewed by Jarecki as he too drives towards the bay. From here until the opening credits sequence, the material is classically documentary: Jarecki interviews Jones who points to where he found the torso and then describes in gruesome detail how he had to put his hand down its throat to hoick it out of the water. A sequence of explicit police crime scene photographs (plus one segment of video) ensues prior to introductory interview extracts with other key officers in the case. The resemblance here to Errol Morris is already unmistakable; Jarecki places a similar faith in the emotive, immersive powers of heavily stylised re-enactment.

Re-enactment is the element of *The Jinx* to have received most criticism, although in their eagerness to heap scorn on Jarecki's series his critics sometimes forget that these grandiose dramatizations are not the only sort of re-enactment available to documentary filmmakers, nor the only ones Jarecki employs. In an article entitled 'Why Re-enactments Never Work', *New Yorker* writer Richard Brody targets documentary's penchant for re-



enactment, remarking that ‘What’s lost in re-enactment isn’t the logical verifiability of truth but the tonal notion of authenticity ... the actual thing is a relic, a physical connection to the event’.<sup>23</sup> For Brody, re-enactments are disconnected from reality, as opposed to extensions of it – they’re not ‘what-ifs, they’re as-ifs’,<sup>24</sup> he contends. Brody’s dislike of Jarecki’s use of re-enactment is intense; he judges his re-enactments to be ‘insults to the audience’ because ‘they assume that audiences can’t imagine anything ... and they reflect the filmmaker’s own sense of impotence to create’,<sup>25</sup> and he expresses disgust at the repeated simulation of Susan Berman’s body falling in slow motion, shown repeatedly as part of the title sequence, for instance. In the light of such an uncompromising critique, the obvious questions to ask, especially in the context of a true crime documentary, are what do re-enactments add and what roles do they play? Can they, even obliquely, serve an investigative function or are they always ‘flannel’ that merely detracts and distracts from the investigation being undertaken?

**Image: *The Jinx***

**Caption: Bernice Durst’s death (re-enactment) in *The Jinx***

An indicative example of Jarecki’s use of re-enactment is his dramatization of the death of Durst’s mother, which features in Episode 2. The sequence opens with a slow motion pan up a woman’s body, in a nightgown, at night and standing on a roof looking down at the ground. Durst’s response to Jarecki’s opening question, ‘What’s your first memory of that night your mother died?’, narrates what follows. He describes his father fetching him out of bed to come ‘and see mommy’; he recalls looking out of a window and waving at her (a gesture he enacts in the interview against which the reconstruction is intercut) and wondering what she is doing out on the roof; then he describes hearing the maid shouting ‘she’s off the roof’ and concludes his account by remembering: ‘it was a long, long fall’. At the time (as validated by a newspaper clipping), Bernice Durst’s death was reported as an accident by the

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<sup>23</sup> Richard Brody, “Why Reenactments Never Work”, *New Yorker*, March 20, 2015, <http://www.newyorker.com/culture/richard-brody/just-say-no-to-reenactments-jinx-robert-durst>

<sup>24</sup> Richard Brody “Why Reenactments”.

<sup>25</sup> Richard Brody “Why Reenactments”.

adults who were present, so Robert Durst's retrospective account runs counter to the official version. On the one hand, re-enactment in this instance is a disambiguation tool that adds strength to this conclusion, but on the other it serves a more nebulous function. There are four moments re-enacted in this sequence: Durst looking out at his mother before she falls; Bernice's extreme slow motion fall in her undulating white nightdress against the black background; her body on the ground (artfully posed, not bloody and dishevelled) as the paramedics arrive and cover her up; finally, an out of focus track into the back of a boy's head looking on as this time blood-stained paramedics lift her body into the ambulance and slam shut its doors. What these dramatic excerpts do is to illustrate Durst's account; they are neither complicating nor dialectical and as such they offer the viewer a breather, a reflective moment. This does not, though, mean that the re-enactments are vacuous, merely wallpaper, though the fetishisation of Bernice's body is arguably gratuitous. The pace and relative simplicity of these reconstructions also affords us the opportunity to listen to Robert Durst and to make our minds up about what happened.

Re-enactments are not evidence, although it is possible for them to build a convincing narrative about the events they depict. Much of the time Jarecki's re-enactments serve a 'look at me' function and signal the series' sense of its own importance. They also, ironically, validate the plausibility of the otherwise incredible catalogue of gruesomely strange events that make up Robert Durst's life. Writing about re-enactment in documentary film scholar Bill Nichols remarks that, when watching a re-enactment 'the viewer experiences the uncanny sense of a repetition of what remains historically unique. A spectre haunts the text'.<sup>26</sup> The 'historically unique' events Jarecki's re-enactments illustrate are inaccessible through images; they are in that sense unknown. The haunting quality of the reconstruction is that it temporarily renders accessible that 'lost object' as Nichols goes on to call it; it fraudulently takes the place of 'evidence verité' without ever being able to confirm that it depicts 'what really happened'. Errol Morris, in one of his *New York Times* blogs, argues that re-enactments 'burrow underneath the surface of reality in an attempt to uncover some hidden truth' (Morris

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<sup>26</sup> Bill Nichols 'Documentary Reenactment', 74.

2008a).<sup>27</sup> They are not just about looking again; they are concerned with discovery, unravelling and re-examining.

In ‘Life is Not a Dramatic Narrative’, the basis for celebrity US lawyer Alan Dershowitz’s discussion is that life is necessarily more random and chaotic than narrative, and that – whether by writers or lawyers – narratives are constructed and mobilized in order to mask the fact that ‘Events are often simply meaningless’.<sup>28</sup> We continually ‘try to impose order and meaning on random chaos’,<sup>29</sup> despite the fact that life’s narrative seldom possesses the ‘internal logic’ of ‘the narrative of justice’ in which good triumphs over evil. *The Jinx* is not a drama, but through its hyper-stylization it does raise some key questions about the necessary order of filmmaking in relation to life’s chaos. What is logical and plausible is frequently defied in the Durst case, which contains many bizarre and uncontrollable elements such as Durst fleeing to Texas disguised as a mute woman named Dorothy Syner, being convicted not of murdering Morris Black but of killing him in self-defence, despite having cut him up into pieces, being caught shoplifting when he had \$37,000 in the trunk of his car, or contacting Andrew Jarecki and offering to be interviewed after having watched the director’s thinly veiled fictionalization of his life story in *All Good Things*. One of the reasons *All Good Things* is less successful is that some of the verifiable details of Durst’s life come across as, frankly, far-fetched. With their look-at-me high production values of both Morris’s and Jarecki’s re-enactments acknowledge this and confirm the truism that re-enactments only offer ‘a view rather than *the* view from which the past yields up its truth’.<sup>30</sup> Re-enactments never definitively confirm if they are evidence or narrative fiction. One unanticipated paradox in *The Jinx* is that the visual excesses of the re-enactments in particular – superficially at least implying that style takes precedence over content – come hand in hand with the documentaries’ claim to sobriety and seriousness, as their superficial exhibitionism does not

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<sup>27</sup> Morris, Errol ‘Play it Again, Sam’. Accessed 25 August 2016.

<sup>28</sup> Alan M. Dershowitz, “Life is Not a Dramatic Narrative”, in *Law’s Stories: Narrative and Rhetoric in the Law*, eds. Peter Brooks and Paul Gewirtz, New Haven: Yale University Press, 1996, p. 100.

<sup>29</sup> Alan M. Dershowitz “Life is Not”, p. 100.

<sup>30</sup> Bill Nichols, “Documentary Reenactment”, 79.

ineluctably derail their desire to influence directly the events it depicts. *The Jinx* is a consummate example of how entertainment value can complement and support the aims of the true crime documentary.

#### *SERIAL AND MAKING A MURDERER*

I want to conclude this discursive essay on true crime documentaries by examining two of the most recent and most high profile examples – both examples, incidentally, that very rarely deploy re-enactment – the first series of the podcast *Serial* and *Making a Murderer*. The ‘entertainment’ value of both is backed up by their huge popular following and their significant press coverage; they likewise triggered discussions in a variety of online and press fora and they also both quickly proved their cultural significance by becoming the genre’s most frequently cited points of reference and by spawning inevitably imitations – and in *Serial*’s case the hilarious parodies by comedians Paul Laudiero, Zach Cherry and Will Stephen (who gives a pitch-perfect imitation of Sarah Koenig).<sup>31</sup> *Serial* Season One reinvestigates the story of the 1999 disappearance of high school student, Hae Min Lee, whose body was found in Leakin Park on 9 February. Detectives arrested her former boyfriend, Adnan Syed, who was convicted of first degree murder. *Serial* was a media sensation that stayed at the top of the iTunes charts for several weeks and garnered Syed’s case worldwide attention. During the course of the twelve original episodes (there are later updates, such as in February 2016 when three shorter podcasts were made of a follow-up hearing in Baltimore), Sarah Koenig goes over the case evidence in painstaking detail; she fixates on minutiae, such as whether or not there was a public telephone at the local Best Buy store; she interviews as many of the witnesses, friends and suspects she can. Hae Min Lee’s murder is thereby presented to the podcast listeners for re-evaluation, although Koenig’s intention is not to then pass judgement on the case at the end, instead Episode 12 offers a

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<sup>31</sup> Available on *YouTube* at:

[https://www.youtube.com/watch?v=vzk9aC1qh1o&index=4&list=PLWVT5pP\\_19qRjvfpD5LaA5AMC3y4CNgbf](https://www.youtube.com/watch?v=vzk9aC1qh1o&index=4&list=PLWVT5pP_19qRjvfpD5LaA5AMC3y4CNgbf). Accessed 25 August 2016.

recap but not a definitive view of whether or not she now considers Syed to be innocent or guilty.

*Serial*'s effectiveness was that it married seriousness of investigative intent with Koenig's engaging and intimate style; as listeners we became involved in the events and how we felt about the evidence was genuinely important. The opening 52-minute instalment is exemplary in these respects. The first piano notes of the title score music start up, joined after a bar or so by a snippet of archive: a correctional facility stating that Adnan Syed is calling reverse charge. Then Koenig starts her general introduction, as familiar as the musical strains to all avid listeners: 'From *This American Life* and WBZE Chicago, it's *Serial*, one story told week by week. I'm Sarah Koenig'. Then, after a music-only interlude Koenig gets to the specifics of this case and her involvement with it: that for the past year she has spent every day 'trying to figure out where a high school student was on a particular day in 1999 – or if you want to get technical about it, and apparently I do, where a high school kid was for 21 minutes after school one day in 1999'. Koenig's vocal delivery is characterised by a somewhat contradictory urgent informality; she wants to get at the Syed case and is like a persistent terrier when obsessing over and over the same bits of evidence detail. But like any good journalist she also understands the value of meandering. Here in 'The Alibi' (Episode One), before delving into the various versions of where Adnan was after school on 13 January 1999, Koenig asks a sample of teenagers including her nephew where they were Friday night 6 weeks earlier, in order to replicate the situation the school kids in the Syed case found themselves in 15 years earlier. Of course, their versions are all muddled and contradictory: we only recall events on particular days, Koenig concludes, if something significant happened, otherwise responses 'get very general'. Then Koenig switches into investigative mode, starting by bringing in Rabia Chaudry, lawyer and friend of the Syed family who became obsessed with the case and wanting to prove Adnan's innocence from the start. Koenig then questions Jay Wilds, whose testimony it was that got Adnan convicted, and tracks down Asia McClain, whose version of events could have furnished Adnan with an alibi – except that his original lawyer, the dead and now discredited Cristina Gutierrez, did not call her. When, in

February 2016, 16 years after the original trial, the case is initially reopened and Asia testifies, Koenig's podcast updates to her producer Dana Chivvis observe that the atmosphere in the courtroom was 'intense'.

**Image: *Serial***

**Caption: The podcast *Serial***

Koenig's style is to draw out inconsistencies and doubt (Asia McClain, for instance, has given very different versions of events on the night of Hae Min Lee's murder) and to use long chunks of archive material, such as Jay's testimony or her conversations with Asia once she had tracked her down or Adnan's regular phone calls from jail, to flesh out the story. The other notable aspect of Koenig's style is her interaction and interpretation of the material she accumulates, her choice of words, her humour and her self-criticism. After playing one of Adnan's phone calls from jail, for instance, Sarah Koenig sums up that everything becomes 'mushier' when he is asked about the day of Hae's disappearance. 'Mushier' is a classic Koenig word, at once informal, chatty and highly suggestive. *Serial* possesses a tonal richness as well as an investigative rigour that many of its subsequent imitators lack; amidst the formidable collation of detail and the reluctance to ever reach definitive conclusions about what the evidence means, there is always Koenig's relationship to the evidence and with her witnesses. For example that she admonishes herself for being 'idiotic' as she asks how a man with 'dairy brown eyes' could kill, or that Asia's audible sigh at the end of her taped testimony, replayed late in the episode, summed up what Koenig herself felt like 'a lot of the time' – that Adnan 'just doesn't seem like a murderer'. Koenig, however, does not adopt a consistent position *vis a vis* Syed and concludes 'The Alibi' by voicing the possibility that he could simply be 'a sick bastard' trying to get out of jail.

*Serial*'s finale, its twelfth episode, is entitled 'What We Know'. Koenig recaps the story and her evidence. The series is insistent, very wordy and somewhat breathless, so interludes are meaningful. After a longish pause during which a thin strain of tentative music sounds, Koenig resumes: 'So, back to Adnan's question: do I have an ending?' She plays

archive from Adnan, who always sounds so reasonable, advising her to ‘just go down the middle; I don’t think you should take a side ... you could leave it up to the audience to determine’. After deliberating, airing her ambivalences (‘If you ask me to swear Adnan Syed is innocent I couldn’t do it; I nursed out ... ‘most of the time I think he didn’t do it – for big reasons, like the utter lack of evidence, but also small reasons’) Koenig, after the credits music starts up for one last time in this series, concludes:

When Rabia first told me about the case, certainty seemed so attainable ... now, more than a year later I feel like shaking everyone by the shoulders like an aggravated cop ... just tell me the facts, man, we didn’t have the facts 15 years ago and we still don’t have them now ... [stretch of credits music, followed by credits].

In Koenig’s voice there is a tinge of exasperation, even anger, at this lack, which makes her uncertainty all the more potent. *Serial* both highlights the significant difficulties of reaching a definitive verdict and poses the question of us the listeners: ‘what do you think?’ *Serial*, like so many of these true crime series, is orientated first and foremost towards the juror, towards what it is like to have to reach a decision on muddy and frequently conflicting evidence. An important cultural shift has taken place, exemplified more clearly in *Serial* than in many other series discussed here, which is that a vital ingredient in the new true crime genre recipe is what we the audience/jurors/people on the street think about the facts and narrative presented for us. Carol Clover, after Alexis de Tocqueville, writes that ‘bringing common people to the law, the jury brings the law to common people’, and consequently brings the ‘relentless juror orientation’ of the adversarial system to ‘trial derived popular culture’.<sup>32</sup> We all start to think that we, and not the experts and lawyers, might know best. As *Serial*’s listeners, the position we adopt is not merely passive; we, like Koenig, find ourselves ‘jurified’ and being asked to adopt the juror perspective in relation to the evidence unravelled before us.

In one way this is a very contemporary attitude as we live in an era when factual television is forever asking us to decide, vote, make up our minds on whether someone is a good singer, which celebrity should leave the jungle. Conversely, this format recalls much older courtroom narrative conventions in which cases are brought juries made up of members

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<sup>32</sup> Carol Clover ‘Law and the Order of Popular Culture’, 103.

of the public: in Granada Television's *Crown Court* (1972—1984), for example, a fictional case was played out over several afternoons, and although those involved in the case were played by actors, the juries comprised members of the general public; in 1986 London Weekend Television produced *On Trial: Lee Harvey Oswald* in which real surviving witnesses to the President Kennedy assassination were called before real attorneys, Vincent Bugliosi and Gerry Spence, to testify in front of a jury made up of real Texans to decide whether or not, had he lived to be tried, Oswald had indeed killed Kennedy.

*Serial* is part of a much more variegated media world in which true crime documentaries come in so many forms: short episodes or long, to be downloaded or streamed online, watched via (and sometimes funded by) subscription viewing services such as Netflix or Amazon Prime, not just to be watched but also scrutinized in tandem with continually updated webpages and breaking news stories. It is likewise becoming ever increasingly apparent that the contemporary media viewer does not uniformly pigeonhole their watching or listening into sharply delineated boxes such as 'documentary', 'fiction', 'television', 'radio' or 'download' but flip between them with alacrity. Exemplifying this is the fact that *Serial* has spawned many imitations, from podcast such as *Untold: The Daniel Morgan Murder* (2016), also an iTunes hit, to various true crime series on both web-based and broadcast television. The BBC3 series *Unsolved: The Boy Who Disappeared* (2016) is just one fairly slavish *Serial* imitator in which a pair, this time, of female investigative journalists reopen an unresolved disappearance and potential murder case, released online as a series as short 10-minute episodes. This is also the pattern followed by another BBC3 series, *Love Triangle*, the fourth instalment of *Life and Death Row*. Whereas previous *Life and Death Row* episodes had been more conventional one-hour documentaries, *Love Triangle*, which follows the case of Florida death row inmate, Emilia Carr, accused of helping her partner, Joshua Fulgham, kidnap and murder Heather Strong, also comes in the form of 10-minute chunks that end on a cliff-hanger. *Unsolved* is ultimately unsatisfactory, not only because its central case remains ... unsolved but also because it feels like we are watching another example of 'constructed reality'. The two women reporters in *Unsolved*, Alys Harte and Bronagh Munro,



appear to be performing pensiveness as they stake out potential interviewees on a dark Isle of Wight night or add pieces of evidence to their case ‘wall’, sequences that, in turn, echo female-centred primetime crime dramas such as *Silent Witness* (1996 on, BBC1) or *Marcella* (2016, ITV).

Made by Moira Demos and Laura Ricciardi, the globally successful Netflix series *Making a Murderer* is similar to *Serial* in form as well as being similar in terms of generic and audience impact. It covers comparable terrain of a potential miscarriage of justice in which chance and poor legal representation played major roles. The sense that the television audience is once more being ‘jurified’ is especially strong, but not in the same way as *Serial*’s listeners are, in large measure because *Making a Murderer* much more definitively takes sides: its filmmakers have followed the Steven Avery murder case for a decade and their series is driven by an implicit though strong sense that they believe he and his nephew Brendan Dassey are the victims of a miscarriage of justice. Having served 18 years in prison for a rape and attempted murder of which he was fully exonerated by DNA evidence, Avery was later arrested – while his civil lawsuit for damages related to the previous case was still pending – for the murder in 2005 of the murder of Wisconsin photographer, Teresa Halbech. Halbech disappeared on 31 October 2005; her last known appointment had been at the Avery property to photograph a car. Dassey, nervous and of below average mental capacity, was charged as Avery’s accessory to murder following a confession he made under lengthy police interrogation. The series was released on Netflix in January 2016 as ten hour-long episodes.

*Making a Murderer* contains a similar mix to *Serial* of archive and interviews and offers a sense of the filmmakers’ perspective, although in this case Demos and Ricciardi are not heard explicitly. This lack of direct and overt authorial presence sits in dialectical juxtaposition to the fact that Demos and Ricciardi believe Avery and Dassey to be innocent, a bias that emerges implicitly throughout the series. This attitude emerges in spite of the flat, sometimes rough and ready style *Making a Murderer* adopts, that to look at it is a far more conventional documentary than *The Jinx*, for example, from which it took over in the viewing public’s consciousness. But just as *Serial* suggested that foregrounded authorial presence does

not necessarily denote bias, so equally the relative absence of authorial presence in *Making a Murderer* does not, in turn, signal ambivalence or neutrality. The repeated sequences of Steven Avery's prematurely aged parents, Allan and Dolores, sitting in their humble kitchen or working in their scrap car yard or limping hand in hand over the road in the final episode to visit their son in his new prison, are formative elements in the series' construction of its case in support of Steven Avery; even the repeated reference in subtitles etc to Avery as 'Steven' connotes familiarity and sympathy.

The tenth and final instalment of *Making a Murderer*, 'Fighting for their Lives', leaves little doubt that what has been mounted over these 10 hours has been an impassioned case for an appeal. Episode 10 opens with a series of silent shots of Steven Avery's deserted, now leaking trailer, to be replaced by archive footage of Calumet County Prosecutor, Ken Kratz, one of the principal figures in the case, saying to the press on 18 March 2007, the day of Steven's verdict, that he knew what type of an individual Steven Avery was. The story, Demos and Ricciardi repeatedly imply, is one driven by prejudice; the flip side of which is a victimised family whose name, as Allan protests, has now been knocked 'right down to nothing'. The spokespeople to back this up include Steven's girlfriend, Sandy Greenman and members of Northwestern University's Center on Wrongful Convictions of Youth unit, who act as Brendan Dassey's attorneys at the January 2011 Post-conviction hearing around which this final episode revolves. The evidence is insistent and the interviews compelling; justice would not be served, *Making a Murderer* seems to be saying, by balancing out this point of view. Instead, 'Fighting for their Lives' piles evidence upon evidence of collusion between prosecution and defence – against Len Kachinsky, Brendan's original defence trial lawyer who assumed his client's guilt; against the defence advisor, Michael O'Kelly, who appears to be filmed working hard to coerce Brendan into a confession. Towards the end of this concluding episode, television news archive then recounts charges of harassment brought against Kratz, the series' most prevalent hate figure.

From a documentary perspective, the ordinariness of the Avery family, coupled with the ordinariness of the filming style complements the defence's firm conviction that the

miscarriage of justice in this particular case points to endemic problems within the US legal system and Jerry Buting's (Avery's defence lawyer 2006—2007) closing hope that it 'doesn't take another 18 years' to 'right this wrong'. The 'wrongs' of this case, the series' straightforward and ostensibly transparent visual style seems confidently to assert, are there for all to see. We, the series' jurified viewers, *Making a Murderer* seems to be saying, would have reached a different verdict, although the accumulated view of the true crime documentaries taken all together seems to indicate instead that it is never that easy to determine the truth or what really happened. *Making a Murderer*, though, stays true to itself and ends with Steven Avery's words: 'When you know you're innocent, you keep going. The truth always comes out sooner or later'. The music at this closing juncture is rhythmic, decisive and as insistent as the confident track along the piles of broken cars in the Avery yard and the final defiant cut to black.

As I am writing this article, *Making a Murderer* is due to return with more episodes and updates,<sup>33</sup> Wisconsin's attorney general is still deliberating whether or not to retry Brendan Dassey, while Avery's new attorney, Kathleen Zellner, has just filed a motion to have DNA evidence retested using new technology.<sup>34</sup> There is definitely strong momentum behind Demos and Ricciardi's case. The after-life of the cases on which these true crime documentaries are based is swiftly becoming one of the genre's most enthralling features. As far as *The Staircase* is concerned, Michael Peterson continued to protest his innocence. On September 19, 2006, the Court of Appeals rejected arguments that he had not received a fair trial, although another appeal was heard almost exactly a year later, on 10 September 2007, which was this time upheld. A motion for a new trial was filed on 12 November 2007. In August 2010, Attorney General Roy Cooper suspended blood/forensic analyst Duane Deaver, one of the principal witnesses against Peterson at the original trial, and on 16 December 2011,

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<sup>33</sup> Claire Rutter 'Where is Steven Avery now?', *The Mirror*, 25 July 2016. <http://www.mirror.co.uk/tv/tv-news/steven-avery-now-latest-news-8472332>. Accessed 25 August 2016.

<sup>34</sup> Rachel Cruise 'Making a Murderer Season 2 Latest News', *Parent Herald*. <http://www.parentherald.com/articles/63871/20160829/making-murderer-season-2-latest-news-steven-avery-lawyer-seeks.htm>. Accessed 25 August 2016.

just over nine years after Kathleen's death, Peterson was released from Durham County Jail on bail and placed under house arrest. His bond restrictions were lifted in July 2014 and in October 2014 Mike Kinkosum replaced David Rudolf as Peterson's attorney, Rudolf having stuck with the case working *pro bono* until that point. De Lestrade in working on a follow-up documentary, announced at last year's IDFA Festival in Amsterdam.

*The Jinx*'s Robert Durst is currently being detained in a Louisiana prison on federal firearms charges, having been arrested in a New Orleans hotel room on 14 March 2015 after a Los Angeles judge had issued a warrant for his arrest over the murder in 2000 of his lifelong friend, Susan Berman. Durst, registered under another false name, was allegedly found armed and believed to be preparing to flee the country. He was due to be extradited to the state of California to stand trial, but there is no update as yet on this. In the case of *Serial*'s Adnan Syed there have also been significant developments, as it was announced on 1 July 2016 that he will, in the end, be re-tried. Both these developments are 'triumphs' (as *Guardian* journalist Zoe Williams wrote in response to the Syed news) for their respective creators; they suggest that trial by documentary can lead to cases being reopened. In Adnan Syed's case, a Baltimore judge has said 'categorically that the original guilty verdict, handed down 16 years ago, lacked foundation', and as Williams adds, 'devotees' of *Serial* will

... whatever their reservations, unite in celebration. We will not – all 80 million of us – have the same interpretations of the characters in *Serial*, nor even all think that Adnan was innocent. But the consensus must surely be unanimous that the evidence used to convict him wasn't enough.<sup>35</sup>

True crime documentaries, such examples appear to attest, are part of a dynamic legal process. The conclusion to *The Jinx* is especially interesting in terms of the potential tensions between filmmaking practice and the frequent messiness of legal truth. The series ends with Robert Durst's incendiary taped confession, which blows the case right open, and yet what are the connotations of the visuals Andrew Jarecki puts alongside these words? In a static tripod-mounted wide shot of the room used for the last interview, filming lights are turned off one by one. As a documentary sequence, this suggests formal and narrative finality,

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<sup>35</sup> Zoe Williams 'Adnan Syed retrial', 1 July 2016.

connotations conspicuously misaligned with Durst's ambiguous and tantalisingly inconclusive 'confession'. We have come to accept, ultimately, that it is never quite simply a case of ... case closed, part of this genre's dynamism is that it remains resistant to closure seeking instead to keep its cases alive and open.

### *CONCLUSION*

My premise for this article has been that these true crime series and documentaries, though eclectic and emerging from diverse and distinct national and stylistic traditions, constitute a genre. To probe this a little further, I want to end with what is essentially an aside, but one that reinforces this generic identity, namely the construction of this identity via the design of similar title sequences. The genre's 'packaging' is clearest when it comes to *Making a Murderer*, simply because the series' slick and overwrought title sequence does not flow seamlessly in and out of the episodes' intrinsically craggy observational style.

**Images: *Making a Murderer*, title sequence; *True Detective* title sequence**

**Captions: *Making a Murderer* title sequence; *True Detective* title sequence**

There are striking echoes between the titles for *Making a Murderer* and those introducing *True Detective* (2014 and 2015), a crime drama series centred on the reopening of a cold homicide case, starring Matthew McConaughey and Woody Harelson, echoes that are not coincidental considering that *Making a Murderer*'s title sequence is directed by Ahmet Ahmet for Elastic, whereas *True Detective*'s a year earlier is by Patrick Clair for Antibody – a sister company to Elastic. They share the same executive producer, Jennifer Sofio Hall, as well as sharing a discernible style, one that can further be tracked to Brent Bonacorso's conspicuously similar title sequence for *The Jinx* (unrelated, though, in terms of its production house origins). What is interesting about these synchronies is how they, first and foremost, forge a sense of corporate identity and flag up each of these quite different series as sitting alongside each other – and alongside other contemporary crime-related television. The glittering title sequence of the recent BBC 1 John Le Carré adaptation, *The Night Manager*

(2016) come, for instance, from the same ‘stable’, having been directed by Patrick Clair for Elastic.

The common factors in the title sequences of *True Detective*, *The Jinx* and *Making a Murderer* are their uses of double exposure and exaggeratedly slow cross-fades between enigmatic and poignant images that will later feature in the series, a graceful moving camera and an intrusive musical score. *The Jinx*’s titles are, for example, casually cut, like a music video, on the beat to the track ‘Fresh Blood’, performed by the Eels and written by E & Koolhaas. *Making a Murderer*’s titles are, for example, cut on the beat to the track ‘G Murder’. The two documentary series also integrate factual images into their respective titles – the iconic black and white photograph of Steven Avery as a cheerful boy, Robert Durst staring into Jarecki’s camera flanked by police officers – and both close on the series title against a black screen. All three titles are grandiosely and exaggeratedly stylised; they are atmospheric, not merely functional. The mood-building resonances are perhaps most strikingly deployed in *Making a Murderer*. The simple violin and strumming score by Kevin Kiner starts subtly but portentously, accompanying a montage of desolate landscape shots, eerie tracks along the rusty side of an abandoned car before building in pitch, dynamics and momentum. Music and visual intensity build in tandem as real photographs start to be interspersed among the expansive, evanescent aerial and travelling shots just as there is a crescendo towards the score’s strangulated, screeching final bars. What suggests that this homogeneity was, in *Making a Murderer*’s case, an afterthought and part of the series’ marketing strategy, is that such a monumental style does not, unlike in the case of *The Jinx*, sit naturally alongside the series’ overall style.

However, the familiarity of the title sequence for *Making a Murderer* is not merely illustrative of what is in vogue now in terms of programme making and titles style; it also recalls the series’ earlier generic antecedents, in particular the visually far less resplendent but equally layered introduction to *The Staircase*. Here, a montage comprising entirely of factual images of Peterson’s case – the accused being accompanied to court, the crime scene, images from news reports that figure in the series – are pixelated then put back together, culminating in a haunting image of Peterson standing in a doorway looking out at a garden and a flight of

external stairs, not those on which his wife Kathleen met her death. In composer Jocelyn Pook's tense, strained and again high-pitched single violin score there is a clear musical antecedent, which, in turn, adds credence to the idea of generic homogeneity as well as plentiful diversity.

Straddling television, web broadcast, podcasts and cinema, the true crime documentary is gaining in cultural prominence and resonance. The genre raises significant issues about the representation of the law in the digital era, perceptions of justice, narrative and evidence, the increased 'jurification' of audiences and the instability of truth. However, are we in danger now of fragmenting or eliding the distinctions between documentary and the law? Between filmmaking and evidence? Sarah Koenig is intent on reminding *Serial's* listeners that she is *not* a lawyer, not even a crime reporter, although the podcast was most likely the primary catalyst for the Syed case being finally reopened. Documentary can clearly serve justice, just as the law can provide riveting entertainment; it is important, perhaps, to remember not to blur the two.