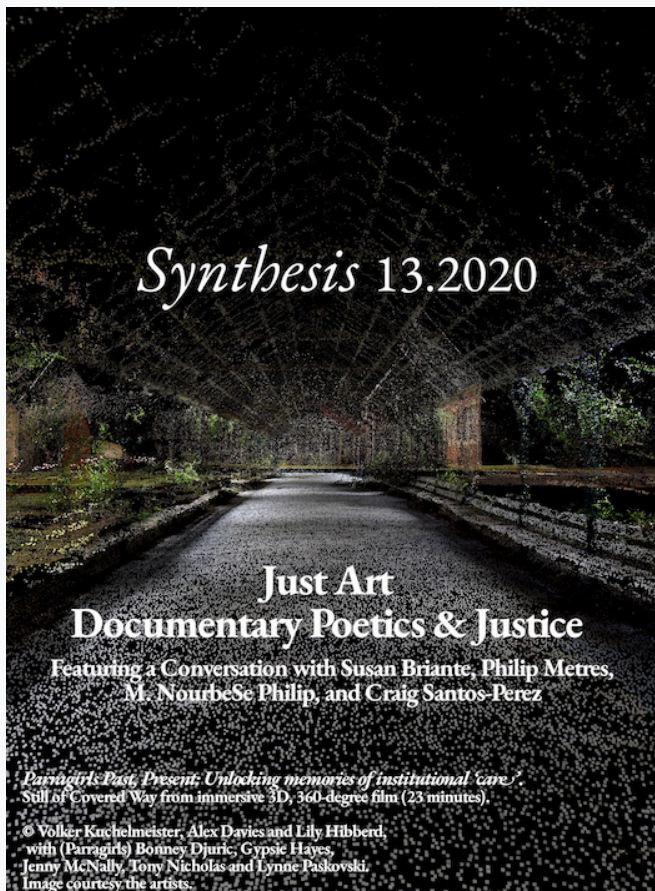


## Synthesis: an Anglophone Journal of Comparative Literary Studies

No 13 (2020)

Just art. Documentary Poetics and Justice



### Rebalancing the extra-judicial scales: Documentary aesthetics and the legacy of the Central Park Five

Sofia Baliño Rios

doi: [10.12681/syn.27562](https://doi.org/10.12681/syn.27562)

Copyright © 2021, Sofia Baliño



This work is licensed under a [Creative Commons Attribution 4.0](https://creativecommons.org/licenses/by/4.0/).

## **Rebalancing the extra-judicial scales: Documentary aesthetics and the legacy of the Central Park Five**

Sofia Baliño

### **Abstract**

The Central Park jogger case has returned to news headlines with the 2019 Netflix mini-series *When They See Us*, a dramatised account of the original trials. It has reignited debate over the injustices faced by the Black community in the United States, and led to lawsuits and job resignations on the part of former police investigators and prosecutors. Since the case's inception, issues of race, media reporting, economics, and the identity of New York City have influenced the trial and its aftermath and have inspired documentaries, books, and the landmark 1990 essay "Sentimental Journeys" by Joan Didion. In this article, I argue that the creators of two of these works, by testing the boundaries of narrative, demonstrate that the case was inexorably tainted by a pervasive feeling of social precarity and racial prejudice which cost five young men several years of their lives, and offer a productive line of enquiry for acknowledging such factors and their influence, if not resolving them.

### **Introduction**

In March 2020, Linda Fairstein, a writer of crime novels and the former head of the sex crimes division of the Manhattan district attorney's office, filed lawsuits against Ava DuVernay, Attica Locke, and the Netflix film studio, claiming that their new mini-series had defamed her by portraying her as a "racist, unethical villain who is determined to jail innocent children of color at any cost" (*Deadline* n. pag.). A year before, Elizabeth Lederer, a law professor at Columbia University

and career prosecutor, resigned from her teaching post after public uproar following the release of that same mini-series—an event that, in a rarity for academia, made headlines from *The New Times* to the BBC (*NYT*, n. pag.). At issue in both situations was *When They See Us*, a four-part television series that focused on the trials known collectively as the “Central Park Jogger” case, in which these two women were key players in the prosecution of five teenage boys now known as the Central Park Five. The trials led to the wrongful convictions and incarcerations of Antron McCray, Kevin Richardson, Yusef Salaam, Raymond Santana, and Korey Wise<sup>1</sup> for the rape and brutal assault of a young woman out for an evening run in Central Park in 1989.

McCray, Richardson, Salaam, Santana, and Wise faced a battery of charges, including assault, attempted murder, sexual abuse, rape, and sodomy of the jogger, as well as charges related to separate attacks on other individuals who were also in Central Park that night (*Supreme Court of the State of New York*, 5). The adolescents were tried in two groups, with the indictments issued in 1989 and the trials themselves held over several months in 1990. The cases culminated in sentences that varied between five to 15 years. Four of the five adolescent boys were sent to juvenile detention, while the fifth, Korey Wise, was tried and convicted as an adult and sent to a maximum-security prison. The convictions were only vacated in 2002, after Matías Reyes confessed to being the sole perpetrator while already serving a lifelong sentence for other crimes that included rape, assault, and murder (Dwyer n. pag.). In 2014, the five men were awarded a settlement of USD 41 million by New York City (Stratton 282). While the main events of the case took place three decades ago, the years since have seen legal scholars, non-fiction authors, film directors, presidential candidates, journalists, social psychologists, legal analysts, and public officials all revisit the trial and the circumstances that led not only to the erroneous guilty verdicts, but to the story’s lasting notoriety.

As recently as 2020, some of the main players in the Central Park Jogger trial itself, namely those who acted on behalf of the prosecution, have disputed the innocence of the Central Park Five, despite the Reyes confession, the physical evidence involved, and the New York State Supreme Court decision to vacate the convictions. During his election campaign in 2016, the future U.S. President Donald Trump also issued a statement proclaiming his belief that the Central Park Five were guilty, sparking intense criticism (Sarlin n. pag.). The comment served

as a reminder of Trump's role in stoking the media frenzy in the late 1980s and early 1990s over the trials, when he famously took out full-page ads in his capacity as a private citizen to call for the return of the death penalty in New York and gave several media interviews to that effect (Sarlin n. pag.). His 2016 statement was one of many instances that prompted concerns that a Trump presidency would see racial tensions worsen even further in America.

Over the past two decades, there has also been in-depth research on the role of the media in the convictions, and on the longer-term impact of these events on the lives of McCray, Richardson, Salaam, Santana, and Wise. "The case of the Central Park jogger provides an opportunity to investigate how media selectivity combined with justice system errors can form distinct narratives that shift with time," according to Greg Stratton, who undertook an extensive analysis of *The New York Times'* reporting on the case from 1989 until 2014 (282). Ultimately at issue in the case was how to construct a narrative for the courtroom, one that would inevitably be influenced by issues of race, crime, economics, class, fear, and nostalgia. This prompts the question of whether narrative, if reimagined and reconstructed to incorporate a more comprehensive spectrum of voices—rather than trying to simply reconcile competing elements and reach one overarching conclusion—can also be a forum that allows for greater scope for debate and therefore more just outcomes.

Similar questions have been raised not just in the sphere of criminal and civil justice, but also in the realms of foreign policy and American approaches to war reporting, especially in the twenty-first century. Writing about the post-9/11 context, Judith Butler notes: "[t]he ability to narrate ourselves not from the first person alone, but from, say, the position of the third, or to receive an account delivered in the second, can actually work to expand our understanding of the forms that global power has taken" (Butler, *Precarious Life* 8). That statement lies at the core of this article, where I undertake a close reading of DuVernay's mini-series, which she co-wrote with Julian Breece, Attica Locke, Robin Swicord, and Michael Starrbury, and Joan Didion's essay "Sentimental Journeys." In the process, I will also bring in examples of analyses undertaken in the fields of sociology and media studies, while referring to other examples of reportage and documentary aesthetic works associated with the case. Among the numerous and varied films, non-fiction prose, and new media articles, these two works have been chosen because they each shed light on different ways documentary aesthetics played into the judicial

process itself and into our understandings of the trials' repercussions. They are also examples from different mediums and genres, and they were released at different time periods, ranging from the immediate aftermath of the trials to its legacy nearly thirty years later. Despite their differences, they also share important commonalities. They both emphasise the various actors involved in the case, aside from the victims, prosecutors, and defendants, so as to include extra-judicial elements into their account of the trials, the convictions, the exonerations, and aftermath. They also both draw our attention to the role of narrative and how it can be used and manipulated to achieve various ends.

This article will therefore ask how narrative was used in the construction of the original Central Park case trials, going beyond the courtroom to the tensions facing New York City in economic, racial, and urban terms. It will do so by first analysing Joan Didion's use of the essay form to create a space for testing out different approaches to narrative construction in relation to the case, along with other dynamics at play in the city, using the ambivalence of the essay to highlight the manipulation of narrative in the presentation of current events and the justice system. It will then consider how narrative has been treated in subsequent reconstructions of the case, weighing 1990 against the late 2010s, given the developments seen in discussions on race, class, and urban space. To do so, it explores how DuVernay's use of television as a medium in the late 2010s allows us to examine the opportunities and limitations of the plot-driven nature of narrative, even as it brings in other extra-judicial elements into the depiction of the trial: details about the adolescents' family lives, for example, or the attempts that McCray, Richardson, Salaam, and Santana made to reintegrate themselves into society after they served their respective sentences. These issues and the possibilities opened up by the reconstruction of the case are reviewed both in relation to the justice system and the original narrative involving the trials, along with the contemporary context of the Black Lives Matter movement and the need for criminal justice reform.

### **“Sentimental Journeys” and the energy of New York City**

Joan Didion's 1990 essay, “Sentimental Journeys,” published in *The New York Review of Books*, was among the first in-depth articles to question the rush to judgement over the convictions made in the 1990 trials, even as she avoided

commenting on whether she herself thought the five adolescents were guilty. Didion, an essayist, novelist, and memoirist, had at that point established herself as part of the “New Journalism” wave that began in the 1960s and also featured the likes of Tom Wolfe, Truman Capote, and Norman Mailer.<sup>2</sup> Through her extensive canon of fictional and non-fiction works, Didion established herself as a writer concerned with how narrative can fail us by providing a particular sense of place and community that is not only false, but can have devastating consequences. In so doing, she makes reference to literary archetypes, to past narrative traditions, and to other mediums such as film and theatre, while also making clear that New York City was the site of contrasting and conflicting narratives that made a shared sense of community impossible in 1989/1990.

At the time that Didion was writing, the trials were well advanced, and more than a decade would pass by before the Reyes confession that ultimately exonerated the Five. While she does not weigh in on the Five’s guilt or innocence, she does charge the city of New York with a series of faults: the sentimentalisation of narrative, the simplification of events into tropes, the reduction of the case’s main individuals into stock characters, and the use of names to create a closeness and distance, depending on the motivations of the storytellers. This article will look at the latter first, arguing that the issue of naming was a primary cause of the other three problems, though the use of names was also shaped by a powerful drive for narrative certainty in the face of disorder. The children’s names were conflated with concerns ranging from increasingly entrenched class divides to high crime rates, with the Five used as proxies for other ills by all sides of the public discussion—a conflation that is reminiscent of the sort of “interpellation” described by Louis Althusser, where “ideology hails or interpellates individuals as subjects” and where the “existence of ideology and the hailing or interpellation of individuals as subjects are one and the same thing” (Althusser 119, 118). Such a situation can lead to harsh consequences, as Didion shows in her essay, and yet there is no escaping some sort of manipulation, since, as Althusser notes, we are surrounded by ideology: “ideology *has no outside* (for itself), but at the same time *that it is nothing but outside* (for science and reality)” (119). There is, however, the possibility of exploring alternative formulations. The essay, as Didion practices it, is a form that creates its own space for moving between competing narratives or ideologies and their component parts, highlighting their inherent contradictions without the burden of having to resolve them: as Theodor Adorno

notes, the essay's "elements crystallize as a configuration for their motion" without the need of achieving any sort of "indubitable certainty" (38).

The use of names in the Central Park jogger case is one of Didion's primary preoccupations throughout the essay, as she establishes the contradicting narratives that New Yorkers constructed to approach their city, Central Park, and their affective experiences, as part of their search for the sort of "certainty" that Adorno warns against. Didion begins the essay by referring to the victim, who later confirmed her identity as Trisha Meili, stating that "[w]e know her story, and some of us, though not all of us, which was to become one of the story's several equivocal aspects, know her name" (253). This tension over the naming of Meili, Didion argues throughout the essay, is what allowed New Yorkers to ascribe to her the attributes of their choice, fitting her into whichever narrative or literary archetype that suited their preferred view of New York, as Meili herself was too injured to establish her own attributes in the eyes of the media or the public:

In other words she was wrenched, even as she hung between death and life and later between insentience and sentience, into New York's ideal sister, daughter, Bacharach bride: a young woman of conventional middle-class privilege and promise whose situation was such that many people tended to overlook the fact that the state's case against the accused was not invulnerable. (Didion 258)

The malleability of Meili as a character also allowed for an emotional connection to be established between the public and the victim, and Didion remarks that the same took place with Central Park itself, which was both the setting for the crime and an actor in the narrative in its own right. The park served as "an artificial pastoral of the nineteenth-century English romantic tradition," which obscured the park's actual use since its initial construction as a means of facilitating graft and crime (280). With regards to how Meili was treated by news reporters, similar concerns have emerged in media studies: for example, Greg Stratton notes that the "mediated witness" style of reporting used by *The New York Times* and other newspapers, where other people who shared some of the jogger's characteristics—their own interest in running, their gender, their experiences, react to the event—was one of many factors contributing to "moral panic" during the weeks and months that passed between the attack itself and the trials (Stratton 288). At a time of high crime rates and drug use, and during the economic and social aftermath of the 1987 financial market crash, New York was in a heightened state

of alarm, according to politicians, journalists, and Didion herself. Facing the public perception of New York as a “lawless urban dystopia,” as described by Jelani Cobb, the prospect of naming that dystopia and giving it a solution through the justice system had an overwhelming appeal (Cobb n. pag.).

There is in Didion’s essay another notable tension around naming: the Five. When they are referred to, it is to note the media’s insistence on naming all five of the defendants publicly, despite their age and the fact that their guilt had not yet been confirmed, and on ascribing them traits that were often racialised, such as the claim that Yusef Salaam, while in the courtroom, “carried himself ‘like an African king’” (266, 302).<sup>3</sup> The question of naming and characterising the accused extends beyond the teenagers to their families, as Didion demonstrates with the example of Yusef Salaam’s mother, whose name was repeatedly misspelled by reporters and whose occupation was the source of intense speculation (308). Didion also notes that “naming” has historical connotations in discussions of race that were well-known at the time, as well as in conventions on how to refer to rape victims and alleged juvenile attackers in the press (264-266). The issue of naming—how the victim was and was not named, how the Five were or were not named—extends even to the way the case has been described over the years, according to Stratton. Since the Five were exonerated, the media has transitioned from referring to the case as one of the “Central Park jogger,” and now are more likely to use the term the “Central Park Five” or the “Exonerated Five,” recasting the focus of the incident and its aftermath on the five adolescents as victims, rather than perpetrators, and shifting the emphasis even further away from the rape victim, the “Bacharach bride” that Didion describes (Stratton 292; Didion 258). This push to reconsider the naming of the case and its protagonists does not entail an easy resolution of the underlying dynamics that led to the erroneous verdicts and to the myriad cases of police brutality against Black men and women in America, a reality that is pervasive and impossible to escape. But it does hint at the possibility of holding multiple, competing narrative lines in a shared space in order to explore them more fully:

So fixed were the emotions provoked by this case that the idea that there could have been, for even one juror, even a moment’s doubt in the state’s case, let alone the kind of doubt that could be sustained over ten days, seemed to many in the city, bewildering, almost unthinkable: the attack on the jogger had by then passed into narrative, and the narrative was about confrontation, about what Governor Cuomo had called “the ultimate shriek



of alarm, about what was wrong with the city, and about its solution. What was wrong with the city had been identified, and its names were Raymond Santana, Yusef Salaam, Antron McCray, Kharey Wise, Kevin Richardson, and Steve Lopez. (Didion 270)

In “Sentimental Journeys,” Didion shows that not naming the jogger in the bulk of the related newspaper articles made her a particular type of “subject,” allowing some media outlets to claim that the city “matched her energy level,” after highlighting her role as a finance professional, as someone valued in her field of work, as an attractive woman who regularly ran in the evenings in the Park (Didion 260,291). The question of naming, which continues throughout the essay, is put in dialogue with the question concerning what narrative could and should be constructed about New York—so that the city itself could be moulded around that narrative, rather than the inverse. This is imbued with the recurrent themes of nostalgia for a glorious and lost past, disappointment, loss, and myths around place and progress—familiar ground for Didion in her prior writing about California, but now adapted and updated in its application to her adopted city of New York. For example, Didion writes that the trial began to reflect a desire for a more prosperous New York of years past, one focused on “getting and spending rather than about having and not having”—while Meili was described in terms that painted her not as “the actual victim of an actual crime but a fictional character of a slightly earlier period, the well-brought-up virgin who briefly graces the city with her presence and receives in turn a taste of ‘real life’” (272). Didion notes that the public naming of Meili was distorted by public figures to restore her anonymity, making her into an ideal, one that was easily relatable for many New Yorkers, yet which also set her apart. Identifying Meili, either by name or background, allowed for creating a contrast between victim and attackers, while setting up an “idealization” of “The Jogger,” rather than Trisha Meili, as someone who could show New York what it meant to exhibit “courage and class” under fire (Didion 271, 272).

Didion had to revise her approach to documentary aesthetics with this essay for practical reasons. Unable to witness much of the courtroom drama for lack of a press pass, she said she was “forced... into another approach, which turned out to be a more interesting one,” allowing her to transition from being a reporter on events to a reporter on story, though those two types of reportage have long been interweaved to some degree in Didion’s work (Als n.pag.). Her outsider status is

reinforced in other ways: Didion's long-held approach of inserting herself into her reportage is relatively absent in "Sentimental Journeys," barring one passing reference: a scene where she and her husband, upon seeking refuge from an attempted mugging in a store, are reminded that despite having lived in New York for decades, they will never truly be considered New Yorkers (290). Didion uses this as yet another example of how easy it was in 1980s New York to make character assumptions and then alter them as needed to suit the storyteller's preference. The vast canon of Didion's writing has been devoted to how the construction and manipulation of narrative around conflicting images can and should fail, and thus demonstrate the inescapability of those images and their associated disorder. It also focuses on communities that lack connection, a failure of the "imagined communities" described by political theorist Benedict Anderson in the 1980s, who claimed that Americans could develop a shared sense of kinship with their fellow citizens by having "complete confidence in their steady, anonymous, simultaneous activity" (26). New York, with its "energy" levels, had no absence of activity, but a unifying "imagined community" was noticeably absent in the 1990s context in which Didion was writing. The case itself, albeit briefly, provided a unifying element that was, paradoxically, reliant on discord: "this case had held the city's febrile attention, then it offered a narrative for the city's distress, a frame in which the actual social and economic forces wrenching the city could be personalized and ultimately obscured" (Didion 300). She then qualifies that statement, referring to "two narratives, mutually exclusive" that are divided primarily along racial lines, but both of which managed to capture the city's collective attention (300). The "mutually exclusive" nature of these narratives is further highlighted by Didion's use of the essay form, a space that she uses to prevent any single narrative from becoming totalising. It thus serves as a reminder of how the push for a stern, conclusive outcome from the New York criminal justice system led to a loss of valuable nuance, with devastating costs for the Five, their families, and for New York itself, in trying to resolve too quickly a conflict that needed to be addressed out in the open. The city held "8 million stories and all the same story," Didion says, noting that these individual and common stories together managed to hide the social tensions that underpinned life in New York City in that time period, as well as "the civic and commercial arrangements that rendered those tensions irreconcilable" (280). The push to bring these stories into one may have been the inevitable drive to plot resolution, but when applied to the

justice system, it failed to reduce the underlying tensions, leaving a city divided amid a search for a better, more ordered future, drawing on nostalgia for an idealised past.

Didion's essay involves a fragmentary, discontinuous presentation of a series of "set pieces" to highlight some of the perils of plot-driven narratives when they are used to explain current events and link them to a lost past. This approach is indicative of her style throughout her work, from her early 1960s essays about California to her later essays in the 2000s about the Washington political scene. The plot-driven quality of the trial and the wider community dynamics were remarked on by Didion decades before the case was dramatised by DuVernay or presented in documentary form by Ken and Sarah Burns and David McMahon. It also has links to critical theory, as noted earlier in the discussion of "interpellation" developed by Louis Althusser (118-120). For example, Didion makes references to how easy it was to "cast" the Central Park Jogger as a proxy for "what makes this city so vibrant and so great," shortly after referring to another case in New York, of a woman who died and where the explanations did not make sense, saying this "is worth re-running" (275, 274). Didion describes the Central Park jogger trial as one that led to the "imposition of a sentimental, or false, narrative on the disparate and often random experience that constitutes the life of a city or country"—an imposition that inevitably meant that the events included in that narrative would be "rendered merely illustrative, a series of set pieces, or performance opportunities" (Didion 297). The essay itself is structured as illustrative combination of "set pieces," deliberately unable to capture New York in its entirety, and thus demonstrating the failure of the Central Park Jogger narrative—in media, in the courtroom, in the common vernacular—to do the same (Didion 296-297). While the essay makes use of its ability to develop its "contour by its substance," in the manner Adorno describes, it deliberately moves away from the plot-driven approach of film, which often seeks a firm conclusion and narrative resolution (Adorno 41). These brief uses of terms ostensibly linked to film, to rewinding the video and replaying a scene, to casting a character, are also evocative of a familiar claim of Didion's that she made several years before in "The White Album." In that essay, published in her 1979 collection by the same name, she explains her frustration in being unable to draw a clear, "narrative line upon disparate images" she witnessed in Los Angeles at that time, especially in the face of "flash pictures in variable sequence, images with no 'meaning' beyond their

temporary arrangement, not a movie but a cutting-room experience” (11, 13). A notable claim that Didion makes in that same essay, referring back to that “cutting-room experience,” was that her realisation that “one could change the sense with every cut was to begin to perceive the experience as rather more electrical than ethical” —a realisation that, she says, made her doubt the possibility of crafting narrative from those elements, of finding a clear line through (13).

### **Revising the plurality of voices in *When They See Us***

The DuVernay mini-series is a dramatisation of the original events from both the attack itself and subsequent trials, along with the Central Park Five’s incarceration and eventual release, culminating in the overturned convictions. It was released in 2019, five years after the Central Park Five were awarded a settlement of USD 41 million from the city of New York, amid the growing influence of the Black Lives Matter movement and intense concern over myriad examples of police brutality against Black men and women in the United States. The mini-series, whose episodes run at over six hours in total, undertakes a dramatisation of the attack, the arrests, interrogations, and confessions of the supposed perpetrators, the trial, and aftermath, and in so doing appropriates the same elements of storytelling that it means to criticise and reworks them, drawing in new voices that, while present during the original events, were not given priority. The dramatisation of the events also demonstrates the theatricality of the trials themselves, and how extra-judicial elements were brought in as performance elements, imposing meaning on characters and events that contradicted witness accounts, the Five’s actual behaviour and nature, and the trial evidence itself.

The first two parts of the mini-series are devoted to the round-up of the Five, their forced confessions, their family situations, the trial itself, and its impact on them and their families. These children, once strangers, are shown developing friendships, while some family members find the trial too difficult to witness. In a scene that could not have been included in any documentary, and that reporters, including Didion, could never have witnessed, much less recounted, the final moments of Part One show the Central Park Five being put into the same room after their confessions. They introduce themselves to each other and apologise for having falsely implicated each other in their statements. They are shown to be unaware of each other’s names and nicknames, learning only then, for instance,

that Antron McCray preferred to be called “Tron” by his friends – an additional indication to viewers that the children’s forced confessions under custody were inherently flawed (57:29-57:37). The scene demonstrates not only that the boys, for the most part, did not know each other previously, but also how the cacophony of voices involved in trying to craft a narrative around the jogger’s attack on April 19, 1989, had drowned out their respective voices and unique selves. That approach, while difficult to achieve in non-fictional works such as Didion’s essay, is possible in fictionalised accounts, allowing the space for re-imagining events while purporting to render them more truly.

DuVernay, in her rendition, seeks to harness the plurality of voices that was at play in the trial of the Five and reconstruct them, showcasing their inherent conflict but also highlighting opportunities for greater cohesion, which in turn allows for the stories of individuals to be shown more clearly. Adriana Cavarero notes that “a unique being is such only in the relation, and the context, of a plurality of others, which, likewise unique themselves, are distinguished reciprocally—the one from the other,” drawing from the work of Hannah Arendt in her analysis (43). DuVernay, in her depiction of the Central Park Five, could be said to be aiming to elucidate the nature of that “unique being,” bringing together dramatised perspectives from the parents and siblings of the Central Park Five, their defence lawyers, their friends and girlfriends, and also the police officers, judges, and prosecutors who pushed for the Five’s incarceration. These are, in a Cavarero-style reading, the vast constellation of voices that together help form the story of one individual’s life, that of each member of the Five. By definition, a single person cannot know all the various influences that shaped the trajectory of his or her life, from the moment of birth that he or she could not witness, to the precise moment and aftermath of death, and thus Cavarero argues that it “is necessary to go back to the narration told by others, in order for the story to begin from where it really began” (39). Considered alongside Didion’s claim that the Five’s names were used to stand in for many of New York City’s problems, DuVernay’s fictional account of the case undoes this operation, placing the emphasis on drawing out the multifaceted personalities of the young men and also the unstable nature of the events themselves. It also allows for considering the Five as beyond just “the Five”: Asante Blackk, who portrayed the young Kevin Richardson in the series, notes that his approach to that character after meeting the real-life Kevin Richardson, was designed to show that “pain and sorrow isn’t

all that he is... there's so much more to him, to who these five men are" (Ritchie 13:30-13:35).

While there are various scenes in DuVernay's mini-series that exemplify this approach, a significant one is her decision to focus Part Four of the mini-series almost entirely on Korey Wise, the eldest of the Five. While the first two parts of the series showed all five perspectives in nearly equal measure, Wise is referred to only by name in Part Three. That episode instead focuses on the other four as they spend their time in juvenile detention, which DuVernay presents briefly, and then on their release and their subsequent efforts to reintegrate into their families and communities, while grappling with the difficulties they face in obtaining jobs due to their criminal records as felons and the requirement that they register as sex offenders. The actors portraying those four change through that episode, from child actors depicting the boys in the trial and early years of juvenile detention, to adult actors to play the men who had served those sentences and were now trying to understand the families and societies they were re-entering. The sharpness of the transition between actors, which takes place from one film frame to the next, is deliberate. The absence from the film of many of their incarcerated years withholds from the audience what the boys themselves failed to have: their final years of childhood.

The director's choice to omit Wise in Part Three demonstrates how the absence of a character does not mean that their story fails to advance and affect the stories of others, even as the storylines of these others move forward. In Part Three, Wise is referred to only in passing, with some of the other Five hoping to track him down upon release, and Wise's mother reaching out to other parents of the Five asking for their sons to contact Wise. The most that is known then is that Wise, still incarcerated, is in solitary confinement (Part Three, 23:49-24:45). As becomes clear in Part Four, Wise, the only one of the five who was 16 years old at the time of the crime, was forced to spend the subsequent 12 years moving between various maximum-security prisons, including Riker's Island, Attica, Wende, and Auburn, most of these hundreds of miles away from Harlem, where his mother lived. The decision to leave his story until the end of the mini-series, after showing how the rest of the world has moved on in his absence with little knowledge of his fate, highlights the concern that Butler has raised over "[w]ho counts as human? Whose lives count as lives? And finally, What *makes for a grievable life?*" (Butler, *Precarious Life* 20). Butler asks this question in response

to the war in the early 2000s in the wake of September 11, 2001, but it could be applied to cases of far more specific violence, such as the kind done to Wise, which demonstrates what Butler describes as the “social vulnerability of our bodies—as a site of desire and physical vulnerability, as a site of publicity at once assertive and exposed” (20). Wise is an example of the violence that society can enact on one another, often by depriving a person of the right to be acknowledged and grieved once they have been exiled from daily public life.

DuVernay uses numerous devices to depict the impact of the Five’s conviction through her presentation of Wise: she incorporates Wise’s hallucinations of his family members; his brutalisation by fellow inmates, forcing him to opt for solitary confinement to avoid the worst of the torture; and the rare kind prison guard who tried to protect him and give him opportunities to read and work within prison. Unlike the casting of McCray, Richardson, Salaam, and Santana, there is no change in actors from when Wise is an adolescent to when he is an adult, still in prison. Jharrel Jerome plays Wise throughout, with changes in his hairstyle and attire being used to demonstrate the passage of time—notable especially given that Wise spent the most amount of time incarcerated, and under agonising conditions. It also demonstrates that the other four, while facing their own challenges, had only by virtue of age and chance missed out on an even harsher experience in prison, one that they were not able to witness first-hand despite having been members of this shared experience of being the Central Park Five. It reinforces the separate, individual nature of each member of the Five, showing that this identity of the Five, as DuVernay herself has noted, was “put upon the real men by the press, by the prosecutors, by the police” (Ritchie 6:51-7:06). Even amid the elements of this shared experience that unified them were other factors that also keep them distinct.

Along with separating the Five into individuals, the depiction of Wise in Part Four also contrasts with how the jogger, Trisha Meili, is presented much earlier in the series, and is evocative of the “naming” tension that Didion refers to in “Sentimental Journeys.” The first time the jogger appears on screen is 35 minutes into Part One, which is also the first time her name is heard. By then, DuVernay has shown how the adolescents rounded up for questioning had been coerced, assaulted, and ultimately forced to sign false confessions on the pretence that doing so would ensure their freedom. The jogger is shown almost solely in flashbacks: only once, during the trial itself, does she appear within the same story

time as the other characters, where the camera pans up from her shaky legs as she walks down the length of the courtroom, then focusing on her face and her strained speech as she takes the witness stand and recounts that she remembers nothing of her attack (Part Two, 32:42-34:38). The relative absence of Meili throughout the mini-series, relative to the Five's presence, is also a reminder of how the narrative constructed to explain the case in 1990 had very little to do with the crime itself, and exemplifies the distance between the protagonists and their depiction in the media. Despite the few lines of speech given to that character, the statements that DuVernay includes, juxtaposed with flashbacks from the night of the crime, contradict the narrative advanced by the prosecution and policy officers. Meili thus shares with the Five the experience of having others assign meaning to her actions and words. Meili's location in the park, the type of headphones she had on, her statement on the witness stand that she had no recollection of the attack itself, are all included to demonstrate the reasonable doubt that should have been pronounced by jurors, while at the same time rendering the victim herself nearly anonymous. While DuVernay grapples with the familiar drive of film to balance plot and a search for resolution, she also draws on some of its other elements to highlight the potential for ambivalence even in such a form, and its potential to ascribe new meanings to seemingly established events and subjects. These decisions are evocative of Judith Butler's claim in her analysis of hate speech and interpellation of the "possibility of disrupting and subverting the effects produced of such speech," which James Loxley describes as a contribution to a wider debate involving the relationship between the legal system and harmful uses of speech (Butler, *Excitable Speech* 19; Loxley, 131). Rather, Butler presents the possibility of "other kinds of response to the social subordination sought, enacted or confirmed by hate speech," demonstrated through the use of "resignification" that allows for assigning, performing, and testing out new types of meaning (Loxley 131, 132). It is, to paraphrase Didion's statement concerning film-making in "The White Album," a practice that is ultimately "more electrical than ethical" (13).

This assignation of new types of meaning is not the only approach that DuVernay uses. Like the "cutting-room floor" that Didion refers to in "The White Album," DuVernay's approach includes the decision to omit many of the situational elements of New York City in the late 1980s and early 1990s. While DuVernay addresses concerns over crime and racial tensions, she largely ignores



any references to the economic situation in the city at the time, such as the fall-out of the 1987 financial market crash, or the party politics at play within New York City. Part One of the mini-series does refer to an “epidemic” of crime in New York City and captures some of the racial tensions of that time through the language used by law enforcement. It also shows the assumption made by prosecutors that the people allegedly involved were of colour, and, in the dramatised Fairstein’s discourse, were “animals.” Fairstein tells New York District Attorney Robert Morgenthau that “[w]e are not in control. And we can be” as she urges him to give her control of the case and round up as many young Black men as were in Central Park that night (Part One, 19:12-19:13, 18:24-18:39). However, the economic dimension is practically absent. DuVernay’s decision to make the story of the Five her focal point did involve leaving some of the dynamics that affected the trial outside of the film, not necessarily because they were unimportant, but because the crafting of any film requires making the same sort of decisions that are made in a courtroom: which evidence to include and which to withhold.

DuVernay’s dramatisation has come under fire by Fairstein for its aestheticisation of actual events, including the use of fictionalised dialogue to complement known events and statements. Among Fairstein’s complaints was that some of the dialogue attributed to her character in the film did not match her exact statements, or was hyperbolic, or did not accurately reflect when and where she made a particular comment or committed a certain action (Dentons 13-21). Her lawsuit against DuVernay and Netflix highlights the potential risk of blending fiction with fact, even as that same distinction was lost during the trial and media reportage itself in 1989-1990. An excerpt from a recent submission by lawyers for DuVernay and Netflix acknowledges this point, while also arguing that viewers should be capable of making the necessary distinctions in light of their understanding of form:

In the context of a “dramatic interpretation ... of events and dialogue filled with rhetorical flourishes” viewers will be “sufficiently familiar with this genre to avoid assuming that all statements within them represent assertions of verifiable facts.” ... The context is obvious: not every scene and piece of dialogue is a transcription of actual conversations but involves “the selective editing of real history not only for time but also for clarity, flow, and emotional impact” (Dentons 8).

The mini-series itself makes reference to this same issue of dramatic interpretation: an early voiceover in Part Two, set against scenes depicting the growing frenzy over the attack and forthcoming trial, has the voice of a reporter stating that “details didn’t matter because there was no script.” The same voice claims that these boys were fatherless and lost, “driven by a collective fury”—an interpretation of the “details” that, as shown in DuVernay’s extensive depiction of the parents in Part One, was far from accurate (Part Two, 0:47-1:01). The role of interpretation used is also acknowledged, albeit implicitly, by DuVernay’s decision to intersperse actual media clips from 1990 with the dramatised account, using these as media clips on television sets that the characters would see and hear as the trial unfolded, including interviews of billionaire property developer Donald Trump claiming he wished he had the advantages of a “well-educated Black” (Part Two, 7:47-8:06). This interaction between fictionalised depictions of actual events with real archival footage again highlights the ambivalence of narrative and has the viewer ask what is real, and whether it is possible to escape it, or whether we are, as Althusser says, facing a world where “individuals are always-already interpellated by ideology as subjects,” always in dialogue with a whole host of elements that shape them (119). While it may be difficult, or even impossible, to avoid this all-encompassing ideology, where individuals are always-already manipulated, narrative can also be reimagined away from the ideological quest for clean conclusions or a totalising definition of a subject: narrative can instead open up spaces where various definitions and subjects can exist and interact, even those that are painful or uncomfortable, in order to enable a fuller and ostensibly fairer system for all.

### **Conclusion**

The case of the Central Park jogger was notable in various respects, not least for bringing together in one stark example how race, politics, and fear can intersect and converge in the judicial system, with the potential for devastating repercussions. It also provided the public with a distraction from their individual and collective troubles, to the point of almost serving as lurid entertainment. The nationwide frenzy over the case’s developments served as a foretaste of other high-profile cases that would touch on similar themes, including the O.J. Simpson trial just a couple of years later on the other side of the country. Some scholars argue that these cases do not just bear thematic similarities, but also influence one

another, even across time and geography. Referring to the impact of the Central Park jogger trial, Lynn Chancer notes that after “verdicts that recognize only one side or the other’s symbolic legitimacy, lingering dissatisfactions often draw attention to new and thematically related high-profile crimes through a combination of journalistic, public, and legal reactions” (39). Chancer makes this link with the O.J. Simpson criminal and civil cases in 1994 and 1997, respectively, as well as the federal and state trials associated with the Rodney King beating by police officers in Los Angeles in 1991.

This suggests that there is the potential for the judicial regime of proof to be affected not just by its immediate context but by the debates and dynamics surrounding other legal rulings whose factual circumstances may differ widely, setting a type of extra-judicial precedent—yet another example of extra-judicial elements influencing the legal system. In the United States, the burden of proof that must be met for a criminal conviction is the following: the defendant must be found guilty “beyond a reasonable doubt” of the crime for which they have been accused. This is a tougher standard than that required of civil law suits, where there must simply be a “preponderance of evidence” that the plaintiff was “more likely than not” responsible, and where the question is therefore about liability rather than guilt (Kaplow 741). Proving guilt or innocence against the criminal standard in a courtroom is not just a function of how well trial lawyers manage the facts of the case, the law, and legal interpretation. As Alice Ristroph notes, it also depends on the criminal procedures used by the police force before a case makes it to trial (308). Ava DuVernay’s mini-series draws attention to failings occurring in the arrest, forced confessions, trials, and incarceration of the Five by dramatising the events themselves and, where needed, providing some of the missing details herself. Sometimes this involves reworking parts of the dialogue, either to summarise it or for hyperbolic effect; in others, it involves the pacing of the story itself, combined with extradiegetic elements such as the mini-series soundtrack and score. As noted by the lawyers who defended DuVernay’s mini-series against the civil suit brought by Linda Fairstein, “this dramatization has a distinct point of view: that of the Five” and thus asks viewers to re-examine whether “the prosecution was just and the evidence supported the conviction of the Five” (Dentons 2, 3). While DuVernay sets out a fuller presentation of the case to show that the burden of proof was not matched by the evidence brought to trial, Didion’s essay sheds light on another set of facts that did make it into the case,

and which were unrelated to either the police proceedings or the judicial manoeuvrings. Her essay shows that the Five were being forced to answer not just for whether they had attacked Trisha Meili, but also for whether New York City's judicial institutions could resolve the contradictions between what the city was and what its residents wanted it to be. This was an entirely different sense of justice, one that fell far outside the theoretical scope of the legal system, but that made its way into the courtroom nonetheless. This was a question of multiple New York narratives competing for dominance—familiar territory for Didion, whose fictional and non-fictional works repeatedly consider whether a place can live up to society's expectations.

The use of narrative to ask these questions of the justice system and society at large should be handled with care, but can have immense value, especially in an America that continues to see brutal attacks on Black men and women, including several recent cases of white police officers exerting excessive force that is lethal or even fatal. At the time this article was being written, riots were breaking out in Minneapolis and protests taking place across the United States following the death of George Floyd, a Black man who was apprehended and then suffocated by non-Black police officers. Much of the uproar over the case has spread online, with social media campaigns highlighting the importance of knowing George Floyd's name and that of so many other Black men and women who were attacked or murdered, whose stories were not heard in their own defence. Some members of the Five famously joined in painting the words "Black Lives Matter" in front of Trump Tower in New York City in July 2020, in an image that presents the latest stage of the continuous reconstruction and re-examination of narrative around the original case and its impact (Moorwood n. pag.). The works of Didion and DuVernay on the Central Park Five show that the aestheticisation of events carries with it a dangerous power: that of being able to construct and propagate narratives subject to distortions, with names twisted and reworked to present all manner of significations, amid the draw of powerful forces such as nostalgia for an imagined better time, which may be appealing on the surface but can be used to hide the true causes of tension and pain, leaving individuals with little form of protection against actual harm. By virtue of the same elements, however, this aestheticisation can also be a force for the continuous reconstruction of narrative, reclaiming the names and stories of those individuals who have been wrongfully accused, providing a counterbalance of sorts to those same distortions and the violence

they engender and opening up a more complex conversation that does not privilege one contradiction over another, but rather engages with them all directly. It may even get us one step closer to acknowledging our shared vulnerability and therefore our connection to one another, which Butler rightly argues is “one precondition for humanization” (Butler, *Precarious Life* 43). It is far from sufficient. But it is one way to start.

---

<sup>1</sup> Korey Wise is also referred to in some sources as Kharey Wise, which was reportedly the original spelling of his name prior to his exoneration and which he then changed (Tron, n. pag.). In the interest of consistency, this article uses the “Korey” spelling, with the exception of direct quotations which use the “Kharey” formulation.

<sup>2</sup> Didion’s earlier crime reporting has recently been examined through the lens of documentary aesthetics by Daniel Worden. His analysis is based on one of her essays from the late 1960s about another crime in California, which is the subject of a chapter in his book *Neoliberal Nonfictions: The Documentary Aesthetic from Joan Didion to Jay-Z*.

<sup>3</sup> The question over whether to make the names of minors who are facing legal charges public has a long history. A 1979 Supreme Court ruling, *Smith v. Daily Mail Publishing Co.*, deemed unconstitutional a West Virginia statute that made such public naming illegal unless the newspaper in question had “written approval of the juvenile court” (U.S. Supreme Court, n.pag.). The case weighed, among other considerations, the First Amendment rights of newspapers relative to the need to ensure these young people’s privacy. The Supreme Court also considered whether publicly naming these young people would hinder their eventual reintegration into society.

### Works Cited

- Adorno, Theodor. “The Essay as Form.” *Notes to Literature*. Trans. Shierry Weber Nicholsen. New York: Columbia UP, 2019.
- Althusser, Louis. “Ideology and Ideological State Apparatuses: Notes towards an investigation.” *Lenin and Philosophy and other essays*. Trans. Ben Brewster. New York: Monthly Review Press, 2001.
- Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso, 2016.
- Burns, Ken, and Sarah Burns, David McMahon, dir. *The Central Park Five*. 2012. WETA. Film.

- Butler, Judith. *Precarious Life: The Powers of Mourning and Violence*. London: Verso, 2004.
- . *Excitable Speech: A Politics of the Performative*. New York and London: Routledge, 1997.
- Cavarero, Adriana. *Relating Narratives: Storytelling and selfhood*. Trans. Paul A. Kottman. Abingdon: Routledge, 2000.
- Chancer, Lynn. "Before and After the Central Park Jogger: When Legal Cases become Social Causes." *Contexts*, 4.3 (2005): 38-42. <https://journals.sagepub.com/doi/pdf/10.1525/ctx.2005.4.3.38>. Web. 10 April 2020.
- Cobb, Jelani. "The Central Park Five, Criminal Justice, and Donald Trump." *The New Yorker*. April 19, 2019. <https://www.newyorker.com/news/daily-comment/the-central-park-five-criminal-justice-and-donald-trump>. Web. 3 August 2020.
- Dentons Law Firm. "Defendant Netflix Inc.'s motion to dismiss for failure to state a claim, and incorporated memorandum of law, and joinder in motion of defendants Duvernay and Locke to dismiss for improper venue or to transfer venue." *Deadline*. 18 May 2020. <https://deadline.com/wp-content/uploads/2020/05/028-netflix-motion-to-dismiss-with-exhibits-a-and-b-wm.pdf>. Web. 20 May 2020.
- Didion, Joan. "Joan Didion: The Art of Nonfiction No. 1." Interviewed by Hilton Als. *The Paris Review*, Issue 76 (2006): n.pag. <https://www.theparisreview.org/interviews/5601/the-art-of-nonfiction-no-1-joan-didion>. Web. 10 April 2020.
- . "Sentimental Journeys." 1992. *After Henry*. New York: Vintage Books, 1993.
- . "The White Album." *The White Album*. New York: Farrar, Strauss and Giroux, 2009.
- . 2003. *Where I Was From*. London: Harper Perennial, 2004.
- DuVernay, Ava, dir. *When They See Us*. 2019. Netflix. Film.
- Dwyer, Jim. "Convict Says Jogger Attack Was His 2<sup>nd</sup>." 5 October 2002. *The New York Times*. <https://www.nytimes.com/2002/10/05/nyregion/convict-says-jogger-attack-was-his-2nd.html>. Web. 13 May 2020.

- Jacobs, Julia. "Elizabeth Lederer, Prosecutor of Central Park Five, Resigns From Columbia Law." 12 June 2019. *The New York Times*. <https://www.nytimes.com/2019/06/12/arts/elizabeth-lederer-central-park-five.html>. Web. 2 May 2020.
- Kaplow, Louis. "Burden of Proof." January 2012. *The Yale Law Journal*. 121.4: 738-859. <https://www.jstor.org/stable/23079341>. Web. 12 February 2021.
- Loxley, James. *Performativity*. New York: Routledge, 2007.
- Moorwood, Virginia. "Members of the Exonerated Five help paint Black Lives Matter mural in front of Trump Tower." 10 July 2020. *Revolt*. <https://www.revolt.tv/2020/7/10/21319889/exonerated-central-park-five-trump-tower-mural>. Web. 9 August 2020.
- Patten, Dominic. "Ava DuVernay & Netflix Want 'When They See Us' Suit From Ex-NYC Assistant D.A. Dismissed." *Deadline*. 18 May 2020. <https://deadline.com/2020/05/netflix-ava-duvernay-lawsuit-response-when-they-see-us-dismissal-linda-fairstein-1202937865/>. Web. 24 May 2020.
- Ristroph, Alice. "The Thin Blue Line from Crime to Punishment." *The Journal of Criminal Law and Criminology*. 108.2: 305-334. <https://www.jstor.org/stable/48572849>. Web. 14 February 2021.
- Ritchie, Mark, dir. *Oprah Winfrey Presents: When They See Us Now*. 2019. Netflix. Film.
- Stratton, Greg. "Transforming the Central Park jogger into the Central Park Five: Shifting narratives of innocence and changing media discourse in the attack on the Central Park jogger, 1989-2014." *Crime Media Culture: An International Journal*. 11.30: 281-297. <https://journals.sagepub.com/doi/abs/10.1177/1741659015592794>. Accessed 15 May 2020.
- Supreme Court of the State of New York, County of New York, Part 58. "The People of the State of New York against Kharey Wise, Kevin Richardson, Antron McCray, Yusef Salaam, and Raymond Santana. Affirmation in Response to Motion to Vacate Judgment of Conviction. Indictment No. 4762/89." *Williams College*. 2002. <https://web.williams.edu/Psychology/Faculty/Kassin/files/CPJ.Morganthau.motion.12.5.02.doc>. Web. 8 August 2020.
- Tron, Gina. "'I Wanted To Go Home': Korey Wise's Heartbreaking Testimony In The 'Central Park 5' Case." *Oxygen*. 5 June 2019.

- <https://www.oxygen.com/martinis-murder/i-wanted-to-go-home-korey-wise-heartbreaking-testimony-in-central-park-5-case>. Web. 29  
May 2020.
- U.S. Supreme Court. “Smith v. Daily Mail Pub. Co., 443 U.S. 97 (1979).”  
<https://supreme.justia.com/cases/federal/us/443/97/>. Web. 14  
February 2021.
- Worden, Daniel. *Neoliberal Nonfictions: The Documentary Aesthetic from Joan Didion to Jay-Z*. Charlottesville: U of Virginia P, 2020.