

Listening to White Supremacy on Trial

Introduction

In October and November 2021, the trial took place for the case of *Elizabeth Sines v. Jason Kessler*. The plaintiffs had all suffered injuries during the deadly 2017 ‘Unite the Right’ rally in Charlottesville, Virginia. The defendants were a who’s who of white supremacists, Christian nationalists and neo-Nazis in the United States. This civil case was the first time many of them had faced charges for their actions, as most of the orchestrators of Unite the Right had until that point gone unprosecuted. *Sines v. Kessler* was a case designed to bring them to accountability and to raise broader public awareness about the ideology and activities of American hate groups.

Open justice – or, allowing public access to judicial proceedings – was key to this aim. Due to COVID-19 restrictions at the time, public spectators were greatly restricted from attending trials in person. Instead, the US federal courts in 2020 temporarily authorized the use of teleconferencing for public audio access to proceedings. *Sines v. Kessler* represented a novel way for members of the public to engage with federal cases in the United States. As a result, up to 500 callers each day could dial into a public access line to listen to the process as it unfolded live. From the range of voices audible during jury voir dire to the long silences of jury deliberation, dial-in audio access allowed listeners a distanced yet intimate engagement with the trial.¹

Technologies such as teleconferencing and audio livestreaming have generated new practices for open justice in recent years. While contemporary debate often centers on televised trials and the use of cameras in the courtroom – as discussions of Donald Trump’s state and federal trials show – the main form of public access to many legal proceedings in the US is through audio technologies. The US Supreme Court ruled in 1981 that televising trials is constitutionally permissible, yet neither it nor the majority of federal courts allow their own proceedings to be video recorded or broadcast. Over the past several years, however, they have authorized the use of audio recordings, and more recently, teleconferencing and live audio.

Remote audio access to trials raises questions of what it means to listen to the law, as audio mediates and, in some cases, transforms expectations and experiences of open justice. Who is the public in a public trial – who has access and who listens? How does audiovisual technology change their role and impact? And, as *Sines v. Kessler* leads us to ask, what does it mean – for the law and for ordinary people – to listen in the context of white supremacy and hate?

As new technologies have transformed courtroom proceedings, the courts often assume the reliability and fidelity of tech, imagining a seamless swap from analog experiences to digital ones. Computer and digital evidence, for example, offers the mirage of “a largely unmediated truth of what transpired” but is in fact always introduced and mediated by humans, with their own interpretations and judgments (Clarke & Kendall 112). In the case of audio, recording technologies have ushered in the “radical reconstruction of the previous relation between sound

¹ Throughout the trial, my colleague Bonnie Gordon and I led the students in our ‘Amplified Justice’ undergraduate course at the University of Virginia through a six-week listening exercise through the public access line.

and source” (Weheliye 2005: 20). Through remote audio access, a space that is otherwise scrupulously designed in its physical architecture and décor becomes transformed into a more amorphous field of sound and voice.² The courtroom is dispersed, and agency is redistributed to hundreds of listeners far beyond the courtroom walls. As I show below, the effects of this redistribution play out in anticipated and unanticipated ways. Audio remote access draws attention to the limits of law’s truth-determining aims by reminding us that listening always depends on the listener. In Sines we find that what some listeners may hear as courtroom evidence of racist and violent hate, others may hear as a rallying cry.

An ear to the law

Since Court TV broadcast the criminal trial of O.J. Simpson in the 1990s, the mediatization of legal proceedings in the US has only become a more hotly contested issue.³ Proponents hold that recording and broadcast technologies create transparency and accountability for the justice system, ensuring the rights of defendants while allowing the public to scrutinize and learn about the application of the law. As Jeremy Bentham argued in 1790, publicity “keeps the judge himself, while trying, under trial.” But the use of technology has also raised concerns about the risks of open justice – concerns of sensationalism, voyeurism, violation of privacy rights, and the media frenzy that high-profile trials generate. Even while authorizing the practice, the US Supreme Court has described the televised display of defendants as modern-day public pillory,⁴ a phrase that evokes Michel Foucault’s analysis of the political spectacle of historical public punishments (1975: 47-8).

Trials can also be commodified. Remarking on the television coverage of the trial of Adolf Eichmann in 1961, for instance, Hannah Arendt observed that “the American program, sponsored by the Glickman Corporation, is constantly interrupted – business as usual – by real-estate advertising” (1963: 4).⁵

Prospects of the (TV) show trial and violations of privacy have led some jurisdictions to restrict the use of video. In its 1981 decision in *Chandler v. Florida*, the Supreme Court ruled that televised trials do not violate constitutional rights.⁶ Yet while video broadcasts are now authorized in nearly all state courts, neither the Supreme Court nor most of the federal courts

² For instance, Virginia’s Courthouse Facilities Guidelines detail the specifications for courthouse planning, design and construction, including acoustic design. See also Mulcahy (2008: 483).

³ There are many other examples of high-profile mediatized cases in the US before *The People of the State of California v. Orenthal James Simpson*, including the Lizzie Borden case and the Scopes trial. But the O.J. trial generated an unprecedented level of media coverage at the time due to the presence of video cameras in the courtroom.

⁴ *Chandler v. Florida*, 449 U.S. 560, 580-1, citing Justice Harlan’s concurring opinion in *Estes v. Texas*, a 1965 case that found televised criminal trials to be a violation of a defendant’s Fourteenth Amendment right to a fair trial.

⁵ Justice Harlan, in his concurrence in *Estes*, similarly observed such banality of retail, noting the “[c]ommercials for soft drinks, soups, eyedrops and seatcovers” interspersed during broadcast. 381 U.S. 532 (1965), 571

⁶ Writing for the majority, Chief Justice Warren Burger addresses the Florida Supreme Court’s 1978 authorization of electronic media coverage of trials and concludes that “Dangers lurk in this, as in most experiments, but unless we are to conclude that television coverage under all conditions is prohibited by the Constitution, the states must be free to experiment.”

allow cameras in their own courtrooms.⁷ The majority opinion in *Chandler* reveals the Court’s ambivalence to this technology, recognizing its “mischievous potentialities for intruding upon the detached atmosphere which should always surround the judicial process.”⁸ This ‘detached atmosphere’ may be what Chief Justice John Roberts had in mind when he recently stated that “The [Supreme Court] is a very special place ... maybe part of what makes it special is that you don’t see it on television.”⁹

While video is not currently possible, since 1955 the Court has permitted audio recording of its oral arguments. For decades, these recordings were made public at the National Archives at the beginning of each new term. Digital technologies meant that, starting in 2010, sound recordings were posted at the end of each week to the Court’s website. The COVID-19 pandemic imposed its own exigencies, with a raft of restrictions on the functioning of public life. In response, in May 2020 the Court allowed oral arguments to take place via teleconferencing, as well as live audio to be publicly broadcast for the first time. By some estimates, hundreds of thousands of people tuned in to listen within the first few weeks (Sullivan & Feldbrin 2022: 42). Advocates, journalists and members of the Supreme Court Bar urged the Court to make its policy permanent,¹⁰ and in September 2022, the Court confirmed that it will continue providing livestream audio of oral arguments.¹¹

The federal courts have also authorized audio access in recent years. The Judicial Conference of the United States, which establishes policies for the federal courts, undertook an Audio Streaming Pilot project from March 2020 to March 2023. The project determined that live audio can be permitted for proceedings or civil cases that involve issues of public interest.¹² Audio livestream is defined as “real-time broadcast of audio from a courtroom or virtual proceeding to a media player that is accessible to the public online.”¹³ In addition, during the pandemic, the federal courts allowed judges to authorize the use of teleconferencing and dial-in access over telephone lines, enabling members of the public to call in to listen to proceedings remotely. Some countries, such as India, Canada, and the Netherlands, had already adopted telephone hearings before 2020, but in many others, including the US, this was a new development.¹⁴

⁷ The Ninth and Second Circuits are the only federal jurisdictions that have authorized the use of video technology for access to their proceedings, while the Third Circuit provides video of some oral arguments.

<https://crsreports.congress.gov/product/pdf/IN/IN12220#:~:text=In%20addition%20to%20the%20Ninth,video%20of%20some%20oral%20arguments>

⁸ Chief Justice Burger again citing Justice Harlan’s concurring opinion from *Estes*.

⁹ “Chief Justice John Roberts on Cameras in the Supreme Court”, 29 June 2018, C-SPAN,

<https://www.c-span.org/video/?c4793324/user-clip-chief-justice-john-roberts-cameras-supreme-court>

¹⁰ In March 2022, a group of forty members of the Supreme Court Bar published an open letter to the Court pushing for this change. <https://fixthecourt.com/wp-content/uploads/2022/03/Practitioners-live-audio-letter.pdf>, accessed July 11, 2022.

¹¹ Nate Raymond, “U.S. Supreme Court to continue audio live stream of arguments”, *Reuters* September 28, 2022, <https://www.reuters.com/world/us/us-supreme-court-continue-audio-live-stream-arguments-2022-09-28/>

¹² Such cases include those that have received media attention, involve a civil rights claim or may impact the public. <https://www.uscourts.gov/about-federal-courts/judicial-administration/audio-streaming-pilot>, accessed 3 November 2021.

¹³ Footnote 1 in <https://www.uscourts.gov/about-federal-courts/judicial-administration/audio-streaming-pilot#guidelines>

¹⁴ International Bar Association (2022) “Covid-19 and Court Procedures”, <https://www.ibanet.org/document?id=Rule-of-law-forum-covid-court-procedures>; see also, “CMS Expert Guide to Digital Litigation in The Netherlands”, 11 May 2023, <https://www.ibanet.org/document?id=Rule-of-law-forum-covid-court-procedures>

The US courts' gradual and pandemic-precipitated embrace of audio provides insight into how they perceive this technology.¹⁵ For John Roberts, the limits of sound – the fact that it does not interfere with the ‘very special’ aura of the Court – justify its use over video. This reasoning figures sound and listening as indeterminate, partial, enough but not too much. In his work on *Acoustic Jurisprudence*, James Parker notes that sound matters to the law because it is a practice premised on listening (2015). The very notion of the ‘hearing’ in Anglo-American law derives from centuries-old oral formats in which competing parties testify out loud. But as Parker notes, legal institutions often strain to recognize the nature and impact of sound. While sound studies scholars understand listening, as opposed to hearing, as a “deliberate channeling of attention” (Rice 2015: 99), the courts seem to conceive of listening as passive and limited, incomplete and therefore – according to Chief Justice Roberts – acceptable.

Listening to the law thus becomes hierarchical and domineering, as the court addresses a passive and reverentially / fearfully silent audience. The judge and parties to a trial may speak – although the speech of lawyers and witnesses is strictly regulated – but members of the public may only listen. Listening is a form of disciplining. Linda Mulcahy observes that in 19th century Britain, spectators to a trial were not only noisy but implicitly encouraged to be so, as the judiciary reasoned that their participation would expose them to the mighty authority of the law (2015). Reforms over time meant, however, that spectators are now required to be silent.¹⁶ Simon Stern notes that the only public vocalizing permitted at the US Supreme Court is laughter in response to judicial jokes, an exchange that the justices not only tolerate but eagerly cultivate (2025). Listening through technological mediation challenges and radically reshapes these practices by creating physical distance between the courts and the public. As audiovisual technologies slip beyond their grasp, the courts relinquish a degree of control they otherwise cherish (Dave 2025; McKay 2020).¹⁷ Unexpected consequences and meanings follow.

Audio remote access in Sines

Sines v. Kessler was a 2021 civil suit in the US District Court for the Western District of Virginia. The case was brought by the non-profit Integrity First for America (IFA) on behalf of nine plaintiffs, all residents of Charlottesville, Virginia who were injured during the Unite the Right rally and attacks on August 11-12, 2017.¹⁸ The defendants included fourteen individuals and ten groups, charged with conspiring to plan, promote and carry out acts of violence, intimidation and harassment against citizens of Charlottesville.

¹⁵ The courts have only indirectly addressed why they have authorized audio rather than video, apart from the Ninth Circuit case, *US v. Allen* (2022), which found that audio-only violated a defendant’s Sixth Amendment rights. As noted, the Ninth Circuit is one of only three federal jurisdictions that now allows for video.

¹⁶ Writing about changes in public audition in the 19th century, Martin Stokes notes that fears of unruly, violent mobs led to new practices in concert halls, opera houses, and other public spaces so that “the crowd [could be] tamed and civilized in the act of listening” (2023: 18).

¹⁷ Mulcahy notes that in virtual hearings, courts similarly lose their “control of setting and ... ability to set a tone” for the proceeding (2008: 480).

¹⁸ IFA ceased to operate in 2022, but trial transcripts and other documents from *Sines* can still be found on its archived website, <https://www.integrityfirstforamerica.org>.

Audio access in *Sines v. Kessler* allowed remote listeners to follow these arguments and the entirety of the trial through a public dial-in line. Dial-in lines can be used for teleconferencing by lawyers and parties in a remote hearing, but COVID-19 standing orders also authorized judges to allow the use of a public access line during in-person proceedings.¹⁹ In *Sines*, while a small number of individuals beyond the parties were allowed access to the courthouse each day, up to five hundred more tuned in daily through the phone line.

Audio access draws attention to the limits and possibilities of listening without seeing. Voices acquire an intimacy when one listens with a phone held close to the ear – an intimacy that can be humanizing but also unwelcome. Listening without seeing forces us to recalibrate our senses, as we try to fill in gaps of visual information and tune in closer to sound. We gain new information: about the audio technology, for instance, as we notice who is mic'd up properly (the judge) and who is not (almost everyone else).²⁰ We pay close attention to the regulation of sound and noise in the courtroom: the fact that the judge cannot be interrupted, or that parties must be recognized to gain the floor. In another example, following the emotional testimony of a young witness early in the trial who recounted her terror on the night of August 11, 2017, Judge Norman K. Moon instructed the jury that they were not permitted to take her feelings into account, as she was a non-party witness. The relied-upon fiction here is that a jury member can un-hear the witness' voice or un-hear statements that have been struck from the record. For the law, listening is a passive act that must be shaped and guided by the court.

Sines v. Kessler highlighted the thinness of this idea. The case had been engineered to generate publicity, with IFA, the non-profit that backed it, describing it as a “[o]nce in a generation” trial that “fundamentally changes our nation.”²¹ Throughout the trial, IFA regularly sent emails and held Zoom briefings to keep the public engaged (and to raise funds). Their aim was to inform the public about the violent tactics and ideologies of hate groups, and audio access made it possible to hear their arguments and evidence firsthand. But as IFA's director noted, the defendants were also aware of the “platform” that *Sines* provided for them.²² As part of the process, the defendants in this case were able to mobilize sound to circulate and amplify their hateful messages and ideology. This amplification occurred through performance and evidence and raised difficult questions about what open justice through audio access may enable in a public trial against hate.

Listening to hate

Accessing *Sines v. Kessler* through the dial-in line necessarily drew attention to certain aspects of the process and muted others. Listeners on the call were not able to see who was speaking or always understand what was happening in court. But the dial-in line conveyed a remarkable amount of information and proximity to the proceedings, shedding light on the legal arguments and positions of the plaintiffs and defendants. Moreover, audio access illuminated the stakes of

¹⁹ Standing Order 2020-12, issued May 1, 2020

²⁰ The Chief Deputy Clerk of the Court told me that the technology was managed by their own staff, who placed microphones depending on where the parties sit. Personal communication, September 6, 2022.

²¹ <https://www.integrityfirstforamerica.org>

²² Director Amy Spitalnick during a Zoom briefing on the case, November 12, 2021

open justice by showing how both sides in the case were appealing to audiences beyond the courtroom.

The defendants in *Sines* chose to represent themselves *pro se*, arguing on behalf of themselves rather than through the representation of lawyers. Was this simply a financial decision, reflecting the fact that they could not afford counsel? For University of Virginia law professor Anne Coughlin, *pro se* representation in *Sines* meant that listeners heard from the defendants more directly than we otherwise would have.²³ The defendants gave their own opening and closing arguments, they cross-examined witnesses, they interrupted the judge and the lawyers, they were continually and audibly present throughout trial.

This audible presence allowed the defendants a greater degree of control in how they presented themselves to the public. Throughout the trial, for instance, they sought to cultivate plausible deniability for their actions. Expert witness for the plaintiffs, Dr Peter Simi, testified in trial about the strategies of deniability employed by white supremacists, such as the use of double-speak, layered references to historical violence and the tactic of claiming that their statements are simply jokes. As Farhan Samanani and his collaborators show, white supremacists and other rightwing extremists use “peculiar linguistic registers, which share an emphasis on instability, subversion and the denial of responsibility” (2023: 198)²⁴ Listening to *Sines*, we continually heard these registers made audible through courtroom testimony. For example, my notes on Monday November 15, 2021 record the following:

“Jason Kessler called to the stand. His voice is very studiedly nonchalant. [Plaintiff’s counsel] Karen Dunn asks Kessler, “Do you believe that Jewish people are not white?” He replies, “Yeah, probably” in a very casual, matter of fact way. He’s deliberately keeping it light ... He laughs.”

The defendants performed plausible deniability through laughter, attempting to frame their hateful violence as nothing more than innocent joking. In fact, evidence from their Discord server showed that they were affirmatively couching their violence as harmless “racist banter”. In trial, they repeatedly referred to their statements as jokes, spelling the strategy out in real time. Some also made sardonic jokes as a tool of distraction during trial, attempting to shift the mood imprinted by their presence. When cross-examining a witness on her experiences as a University of Virginia student on the night of August 11, 2017, for instance, defendant Christopher Cantwell dwelled on the fact that she testified not being able to leave her room to use the bathroom. “There’s no bathroom [in the building]? The only way to use the bathroom is to go outside?” Cantwell asked. “Wow, that’s harrowing.”

Other vocal strategies of plausible deniability included the use of a calm, articulate voice to suggest that ideologies of hate are reasoned and fall within the acceptable spectrum of political discourse. The sound of these calm voices was often startling to hear, recalling Jonathan Sterne’s analysis of Osama Bin Laden’s audio tapes in the 2000s. As Sterne notes, the public expects and

²³ Personal communication, August 1, 2023

²⁴ Samanani et al. describe irony as a “double-edged sword” for its capacity to generate meaning, communities and “charged intensities” in contemporary movements across the political spectrum (2023: 197, 203).

wants their enemy to look and sound straight-forwardly bad, as an “icon of enmity” (2008: 81). Anything else is confusing and cognitively dissonant.

In *Sines*, this dissonance was strategically deployed at trial, with the defendants often speaking in contained and unemotional voices. Vocal strategizing was particularly apparent in the case of defendant Richard Spencer, who frequently employed a professorial tone in his testimony, in line with his longstanding attempts to portray himself as a public intellectual, the respectable brains behind the movement. Spencer – who incidentally (or not) happens to be a graduate of the University of Virginia²⁵ – deployed a measured voice and carefully chosen words to reference Beauty, Plato, and the “metapolitical manifesto” that he has written. During his closing statement, when Judge Moon attempted to reel him in as he waxed lyrically about “Newtonian justice”, Spencer shouted to the judge, “You can’t cut me off when I’m using poetry!”

This is a cultivated, deliberate performance delivered through voice and it has largely worked for these defendants. As one of the plaintiffs, Devin Willis, later said, “Our society is predisposed to thinking well of people who can put on a suit and speak well and hide behind their whiteness.”²⁶

Willis points to the optics of dress as well as the sound of speech that serve to reinforce larger social ideologies about whiteness and maleness. Standing outside the courtroom, sidewalk observers could see the defendants coming and going each morning and evening, in their trademark clothing of button-up shirts, khaki trousers, in some cases suits and double-breasted coats. This appearance of normality, even civility, is highly curated, a “means of camouflage” for white supremacists, as the academic and expert witness Deborah Lipstadt points out.²⁷ Similarly, the plaintiffs’ counsel Roberta Kaplan noted that Spencer brought with him to court each day a stuffed green dinosaur, which he would performatively place in a different position around him. As Kaplan commented, “This was a way to say to the jury that he’s just an ordinary guy who brought in a kid’s toy. He’s normal.”²⁸

For the remote listeners, such optics were not visible during trial, but the tactic could be heard through voice. But courtroom audio also revealed how these tactics were undone, by both the defendants and the plaintiffs. For one, much of the defendants’ testimony underlined the intense rivalries and animosity between individuals and groups. As the researchers and activists Emily Gorcenski and Molly Conger note, the defendants’ strategy during trial involved significant attacks against each other, including Spencer at one point accusing his co-defendant, Jason Kessler, of labeling him a “sociopathic narcissist.”²⁹ In a bizarre exchange, Kessler retorted with

²⁵ Spencer graduated with degrees in Music and English. As UVA musicologist Bonnie Gordon notes, not only was the University of Virginia built by enslaved people and founded by slave-owner Thomas Jefferson, but the Music department has long ties with composer and eugenicist, John Powell. As a student, Spencer was immersed in the study of German opera and years later wrote that he wanted to be Trump’s Minister of Culture and “spend millions of dollars on Wagner.” <https://musicologynow.org/in-the-aftermath-of-charlottesville/>

²⁶ Panel discussion, “Inside *Sines v. Kessler*: A Case Holding White Supremacists Accountable,” January 25, 2022, Center for the Study of Race & Law, UVA School of Law

²⁷ Ibid.

²⁸ Ibid.

²⁹ “What Will Jurors Make of Charlottesville Trial Defendants’ Incoherent Defense?” *Slate*, November 22, 2021, <https://slate.com/news-and-politics/2021/11/defendants-in-charlottesville-rally-trial-had-no-coherent-strategy.html>, accessed December 1, 2021

a long reply, in which he called Spencer “slimy”, a “robot” and a “serial killer”. Audio access conveyed the chaos of the defense and the chasms in their strategies of respectability.

The use of audiovisual evidence of the defendants – introduced by the plaintiffs and the defense – also served to detonate any image of genteel civility they attempted to cultivate. The court and listening public heard audio of Christopher Cantwell on his Radical Agenda podcast, in which he ranted in senseless anger, shouting that Black people are “a fucking problem to me. They’re a threat to my identity.” There is no evidence of joking banter here and the contrast to the measured, at times ironic persona Cantwell attempted to portray in court could not be more striking, or disturbing. Similarly, we heard the juxtaposition of sounds from defendant Matthew Heimbach, speaking in even, neutral tones on the witness stand yet then heard raging uncontrollably in video evidence from the 2017 rally. Another line of questioning referred to previously leaked audio of Richard Spencer screaming in apoplectic fury in the aftermath of Unite the Right, incensed about media coverage of the violent events. While the defendants claimed that their speech and actions may be offensive to some but are nonetheless protected by the First Amendment, they have nonetheless long invested in a palatable image of normality. Audiovisual evidence did not allow these two realities to easily co-exist.

Evidence and testimony in trial revealed the centrality of sound and voice to the work of white supremacists. Of course, an audio-only dial-in line meant that remote listeners could not see the videos, photographs and other forms of visual evidence presented in court. At times, it was difficult for those following remotely to make sense of the proceedings, as it was unclear who was speaking and what was being shown.³⁰ But the sounds presented, even though often garbled and low-quality, were nonetheless distinct and audible proof of hate. Audiovisual evidence was suffused with chanting, such as calls for “Race War Now!” or the horrific incantation of “Roof, Roof, Roof”, in solidarity with the Charleston shooter who killed nine Black people at the Emanuel African Methodist Episcopal Church in 2015. The angry, low cadence of male voices, proclaiming that “Jews will not replace us!” – the first word pitched down and sharp as a weapon. Recordings testified to the use of screaming and loud, rhythmic grunting as white supremacists rallied; or of cheers, laughter and whoops in response to racist, misogynist, antisemitic and homophobic messages. Recordings conveyed the importance of mass gatherings and broadcast media for white supremacists to cultivate their collective. Innumerable speeches played in court aired the threats and violent rhetoric that fuel white nationalism. Recorded voices resounding through the physical and mediated space of the courtroom at times turned the trial into a long broadcast of hate.

Listening, however painful at times, provided a necessary window into the workings of white supremacy. If the key goals of open justice are to make the proceedings accessible while educating the public, particularly in trials of public significance, the dial-in line did that by immersing the jury and listening public into the world of hate. Vocal techniques in trial unveiled the tactics of the defendants, while sound recordings recreated moments of violence and spoken or shouted declarations of virulent bigotry and animus.

³⁰ Intrepid activist journalists such as Molly Conger filled much of this gap on social media, by live-tweeting and live-annotating the proceedings and posting images of courtroom exhibits and other information. Conger has since also conducted a series of investigations into the afterlives of the Sines’ defendants, which she publishes on her newsletter, *The Devil’s Advocates*, and broadcasts on her podcast, *Weird Little Guys*.

A paradox of the law is that, when speech is being litigated to determine if it is permissible or not, it necessarily must be spoken in court. Reporting on trials can thus multiply the effects of the legal violation in question, in cases involving defamation or incitement of racial hatred (Jaconelli 2002: 265). Statements made within trial are subject to privilege, however, and in this context, speech inciting violence can and indeed must be broadcast as evidence of the issues at hand.³¹ Veit Erlmann describes the problems here as they relate not just to speech and words, but to the sound that mediates them (2020). Building on Judith Butler's work on injurious speech, he draws attention to sound in hate speech as a means to understand the very nature of the legal violation. What does it mean to *listen* to hate? As Erlmann notes, the law makes use of sound – and more precisely, of sound's instability – when determining how to juridically manage the problem of hate speech (ibid: 277). In Sines, as noted above, this use was premised on an understanding of courtroom listening as passive and contained. Yet it was sound's instability, its slippery meanings, that became evident at trial, as open justice and remote audio access enabled the proceeding itself to become a megaphone for messages of hate. Cantwell, for instance, played video from Unite the Right in his own defense, using the court as a vehicle to produce for listeners the sounds of the day. Which raises the question of who exactly was on the other side of the dial-in line.

Who is listening?

For many distanced listeners, the most disturbing example of listening to hate occurred not in the courtroom, but through and because of remote audio access itself. On the afternoon of November 8, 2021, as testimony resumed following a lunch break, a glitch on the audio line meant that the sounds from the courtroom were suddenly cut off. As the dial-in listeners sat quietly waiting for the trial audio to resume, it became apparent that we could not hear the courtroom, but we could hear each other – the other remote listeners on the line. After several long minutes of quiet on the audio line, a male voice with a thick Southern accent suddenly broke through the silence. “Make America great again”, he said.³²

After this, others were emboldened. For the next forty minutes, a series of disembodied male voices proceeded to spew hateful and vitriolic speech on the public call-in line. The phone line here provided both platform and cover to hate speech, allowing speakers' voices to be broadcast and amplified while keeping their faces invisible, their identities concealed. As Nina Sun Eidsheim notes, listening to voice involves the central acousmatic questions, Who is this? Who is speaking? (2018). Jean-Luc Nancy remarks that “When one is listening, one is on the lookout for a subject” (2007: 18). In the Sines dial-in line, the audio glitch abruptly tilted the focus of this search for source and meaning, from the sounds of the courtroom to the sounds of the line itself. Unable to see each other, the hundreds of people listening on the line were confronted with each other's presence and position. ‘Who is this?’ was coupled with the question, ‘Who am I with?’

Such questions become all the more urgent when listening to the disembodied voicing of hate. The detachment from a body gives license to the speaker and creates disorientation, even fear,

³¹ It should be noted that hate speech in the U.S. is constitutionally permitted under the First Amendment, although speech that incites “imminent lawless action” is not protected. *Brandenburg v. Ohio* 395 U.S. 444 (1969).

³² The use of Donald Trump's iconic slogan is notable, particularly since Trump in/famously said two days after Unite the Right that there were “very fine people on both sides”.

for the hearer. Arendt remarks on the experience of listening to the “curiously disembodied” voice of Eichmann played over tape-recorder as evidence for the prosecution during trial (1963: 90). In that case, Eichmann was present – as Arendt writes, “doubly disembodied” in his glass-walled chamber – so listeners could hear Eichmann’s taped voice speaking out against his visible but silent body. This experience also figured in Sines, as the plaintiffs played recordings of the defendants. Both in the courtroom and through the dial-in line, listeners were confronted with the dissonance between the defendants’ cultivated courtroom personae and the frothing rage audible in evidence against them. As Arendt notes, the courtroom and the public are asked to reconcile their knowledge of the horrific facts of the case with the spectre of the vacuous, and at times ridiculous, defendant before them.

The dial-in line added an extra, invisible dimension to this experience. For older listeners, the act of disembodied listening may have recalled the ‘dial-a-hate’ lines of the 1960s and 1970s, through which white supremacists would use telephone lines to disseminate voice recordings of hateful messages.³³ Yet while the identities of those speakers were known, those on the dial-in line were not. It is impossible to know exactly how many listeners were white supremacists and how many were not, but the voices dominating those long minutes were clearly backing the defendants. Some repeatedly used the n-word, while others abusively singled out Molly Conger, a Charlottesville journalist and anti-fascist researcher who has spent years investigating hate groups in the US. Emboldened by their anonymity, they used words and phrases that would have seen them thrown out of court for contempt. The experience of listening to them was a painful reminder that trials are performative ‘on both sides’ – to paraphrase Trump’s own comments on Unite the Right – and that open justice can create new opportunities and audiences for these performances. The glitch in the public access line made clear that white supremacists were and had been listening in to the trial all along. Were Cantwell, Spencer and others performing for them from the beginning? Is it a validation and rallying point for these supporters to hear their perspectives aired in court?

Given the nature of the acts being adjudicated here, public access allows harms to be further inflicted. As Alexander Weheliye writes, “sound cannot be screened out or ignored as can visual objects; instead, it forces subjects to bear witness to its occurrence and duration” (2005: 111). Sound is collective, but also personal, as “the listener is forced to hear the sound of others, which in turn dissolves physical and mental boundaries” (ibid.) Listening can thus involve a sense of violation, as one is “penetrated” by sound (Nancy 2007: 22). For remote listeners in Sines, the only way to not listen would have been to disengage from the trial altogether, a choice contrary to the principle of open justice and therefore one that most listeners on the line did not want to make. Moreover, the audio line created physical but not temporal distance. Listeners were not physically with each other, but we remained on the line because events were unfolding in real-time. The glitch added startling unpredictability, and even as the experience of listening was distressing, listeners stayed tuned in to know what would happen next.

In the book, *Country of My Skull*, South African journalist Antjie Krog details the consequences of listening to the proceedings of the South African Truth & Reconciliation Commission (TRC) in the late 1990s. As Krog notes, many victims experienced bitter pain and frustration as they

³³ Steven Melendez, “Before Social Media, Hate Speech and Propaganda Spread by Phone”, April 2, 2018, <https://www.fastcompany.com/40541251/before-social-media-hate-speech-and-propaganda-spread-by-phone>

realized that the perpetrators of apartheid violence were not going to express any remorse for their actions. Alongside the victims' accounts, the TRC also became a platform for apartheid perpetrators to perform their version of events, unyielding and unbending to the larger social and political narratives the institution purportedly stood for. Krog describes the perpetrators' testimony as the "second narrative", the counterpoint to the victims' testimony which was supposed to complete the truth and create the possibility of reconciliation. Yet, it quickly became apparent that this would never happen. As she writes of the former South African president, "De Klerk isn't there to look the past in the eye. He's there to minimize damage and to play to the sentiment of his voters" (1998: 165). Krog describes the moment when it became clear that F.W. De Klerk and other members of his National Party would not accept responsibility for apartheid-era deaths: "De Klerk and his hostile delegation leave. The room and passage are filled with rage. People swamped with fury and desperation" (ibid: 168). In its inability to make perpetrators accept their guilt, the process reopens and deepens wounds.

Of course, proceedings against hate, such as *Sines v. Kessler*, the South African TRC, the trial of Adolf Eichmann, and others, also involve the experience of listening to victims and survivors, alongside the vitriol of the defendants. Arendt describes the "hush [that] settled over the courtroom" when a witness for the prosecution testified and the courtroom listened in rapt attention (1963: 231). Krog writes that for her, "The Truth Commission microphone with its little red light was the ultimate symbol of the whole process: here the marginalized voice speaks to the public ear; the unspeakable is spoken" (1998: 311).

In *Sines*, listeners heard directly from nine individuals in Charlottesville who suffered debilitating psychological and physical injuries from the Unite the Right mob, as well as from other witnesses who testified to the violence. In contrast to the assertive, bright voices of the defendants, the plaintiffs often sounded quiet, sad, tired, their voices at times fading into whispers. Under cross-examination from Christopher Cantwell, plaintiff Marcus Martin responded in increasingly flat, terse tones, his affect low, his voice almost inaudible. Plaintiff Seth Wispelway delivered a hollow laugh when asked about Unite the Right's ongoing impact on his life. "I used to be an extrovert", he said as his voice trailed away, but now "I don't know what I am anymore."

While listening to the defendants raised difficult questions about open justice – with the trial at times becoming a platform for them to amplify their hate and perform directly for their supporters – listening to the plaintiffs underlined why trials of public significance are broadcast and publicized. The live testimony of the plaintiffs, heard not just through their words but also through the sound of their crying, the grief and exhaustion audible in their voices, is critical to proving the personal and collective injury. This proof must be delivered not just to the court but to the larger listening public. While open justice can lead trials to become spectator sports, trials of public significance actively seek to widen the circle of spectators as much as possible (Jaconelli: 348). The jury and the listening public in *Sines* heard recordings of gospel singing at Charlottesville's First Baptist Church on the morning of August 12, 2017, or of counter-protesters calling out later that afternoon, "Whose streets? Our streets!" Alongside audio evidence of hate, these recordings provided context and a fuller sense of the human battle that took place that weekend. Juries are instructed not to take into account emotional testimony, but

the listening public has no such restrictions – and pained voices and the sound of hopeful singing added necessary elements to help understand what took place and why.

While the example of gospel singing or grief might suggest some catharsis, Krog nonetheless asserts that public trials of hate may leave catharsis unfulfilled and restoration or reconciliation impossible to achieve. Trials are meant to recreate a conflict, which is then resolved through the impartial rendering of judgment. Listeners and spectators invest in the drama of the courtroom because it is often configured as a space of transformation – where wrongs are objectively unveiled and recognized by all. But of course, the courtroom is an extension of society and like other social spaces, it is a place where a million different narratives and viewpoints meet and collide. The judge and jury may arrive at a decision, but the decision is formal – it is part of the form of the process; but it is not necessarily transformational, shared or felt. Shoshana Felman describes this outcome as the “abyss”. In her work on trials of historic significance, such as those of Eichmann and O.J. Simpson, Felman notes that despite publicity and open justice, trials are not able to heal collective traumas or create catharsis or closure, instead revealing an unbridgeable abyss between two or more discordant worldviews and belief systems (2002).

In Sines, the defendants were all found guilty, but the judgment has not been enforced because most of them have claimed bankruptcy and are unable to pay damages.³⁴ Has the case achieved justice? In a recent article, University of Virginia law professor Risa Goluboff argues that it is not “clear whether formal or material outcomes should determine the answer of who ultimately prevailed, especially where the victory of a conviction is juxtaposed against the weakness of the prescribed punishments” (2023: 124). But, as she continues, “law operates within and on, and is operated in and on, the rest of the world” (ibid). In this view, it is clear that the effects of the trial far exceed the verdict and sentence. The problem, as we have seen, is that the effects of the trial are multiple depending on who is listening.

Molly Conger notes that audio access in the trial allowed at least some of the defendants to amplify vocal practices they have been cultivating for years.³⁵ Defendant Spencer has long positioned himself as an orator, while Cantwell is a professional podcaster. In Conger’s words, audio allowed him to “put on a show, an episode of his podcast, in that courtroom.”³⁶ Audio was a medium that he and some of his co-defendants were already well-versed in, and that allowed them to speak directly to their followers. And their listeners consumed it with vengeance. Conger notes that people regularly tell Cantwell how much they enjoyed listening to the trial. On the recent anniversary of Unite the Right, one supporter publicly released audio that he had secretly, and illegally, recorded from the dial-in line. Supporters post this material online as a celebration and a vindication of their ideology and actions. Many white supremacists also clamored for Cantwell to recreate and broadcast his opening and closing remarks from trial, and Cantwell recently gratified them by doing exactly that. According to Conger, this recording has received more hits and likes than anything else Cantwell has ever produced.

³⁴ The verdict was upheld in an appeal, in which a 2024 federal appeals court ordered that the defendants pay \$2 million in punitive damages. Hawes Spencer, “Court orders United the Right planners pay millions in damages,” *The Daily Progress*, July 2, 2023, https://dailyprogress.com/news/local/crime-courts/court-orders-unite-the-right-planners-pay-millions-in-damages/article_d536851c-37f2-11ef-85ec-935cccf98a7.html

³⁵ Personal communication, July 8, 2023

³⁶ Ibid.

As Frantz Fanon wrote in 1959, broadcast allows for the “intensification and extension of sensorial or intellectual powers” of the speaker (73). Through recording technology, speech becomes decontextualized and recontextualized, highlighting its “fundamental iterability” (Weheliye 2005: 31). White supremacists are well aware of these capacities. The courts invest heavily in regulating sound and speech, but remote audio sends sound elsewhere and beyond. Contrary to Foucault’s description of the invisibility of modern modes of power and punishment, it is the public here who is invisible and who holds power through its invisibility – the power to interpret and exert influence. Popular discourse often figures listening – particularly collective listening – as a benign or even therapeutic and cathartic practice. Yet, as Sines shows, it is difficult, if not impossible, to control listening once sound leaves its source. How collective can listening, in that case, be?

The legal meaning of the glitch

In her book, *The Juridical Unconscious*, Felman, asks if “moments of disruption of convention and of discourse – moments of unpredictability that take the legal institution by surprise – nevertheless contribute to the formulation of a legal meaning?” (2002: 131). Her analysis helps us understand the meaning of the Sines audio glitch as an event in itself.³⁷ The glitch amplified voices that spoke outside of the courtroom, that were not included in the official trial transcript, but that nonetheless made themselves heard and shaped the proceedings for hundreds of members of the listening public.³⁸

Sines v. Kessler did not succeed in capturing public attention in the US, or even in Charlottesville, as the non-profit who backed it had hoped. Despite the aims and efforts of IFA, with their publicity and fundraising, Sines did not garner significant media coverage or generate much conversation around the country. As Conger argues, perhaps what it did most successfully was to bolster white supremacists who were able to listen in and broadcast to their others.

But this fact is precisely why the audio glitch has legal meaning. The glitch reminds us that public trials take place before an audience, that the audience has a role to play in securing not just a decision but a longer-term cultural or political outcome of the trial. Stern (2025) notes that, in well-established conversations about law as performance, the focus is most often on the performers themselves – the lawyers – and on their efficacy. But what about the public in a public trial? As Mulcahy asks, how do we understand those who “sit at the margins of the court” and thereby make justice ‘open’? (2015: 54). Mulcahy notes the law’s ambivalence towards its audience. The public are figured as noble guardians of the “moral integrity” of the trial, with their presence ensuring that open justice can occur (2015: 57). Yet the law intends for the public to be involved as recipients and followers, so that they may be awed and intimidated by its power and reach (ibid: 54). The law conceives of the public as passive conduits of open justice without probing into their agency or subjectivities. As Arendt and Krog describe in their work, however,

³⁷ Carolyn McKay has developed the notion of the audio glitch in criminal justice, contrasting the edgy aesthetics of experimental music with the frustrations and communicative obstacles created by unintentional glitches in courtroom audio (2020).

³⁸ The trial transcript from November 8, 2021 only makes brief reference to “technical difficulties” that led to a delay in resuming after recess.

and as Stern observes in his, audiences “participate, emotionally and bodily, in the drama being staged”. The public are agents and active participants in a trial. They can make things happen.³⁹

They are also not a monolith. In *Sines*, the meaning of the audio glitch lies precisely in the collision of narratives we hear, making real for all sides the conflict and adversarial process at play. As in the Eichmann trial, the prosecution in *Sines* named certain defendants, but what was really on trial was white supremacy and hate itself. The audio glitch is evidence of the ubiquity and power of this ideology – a proof to the listening public that these beliefs exist and have sway. The glitch provided evidence and testimony in the world beyond the formal confines of the trial.

What outcome did it therefore shape? For the plaintiffs in *Sines*, the trial seems to have allowed some closure years after the horrific events of August 2017. For the larger public, however, the audio access line and its glitch serve as a reminder of deep divisions, of how the first narrative and the second narrative – the people ‘on both sides’ – seem irreconcilable. Stern writes of the production of a “shared, communal sense of involvement, in real time, as the audience members affirm and encourage each other’s reactions” in a public trial (2025: 7). But the audio glitch highlights that a shared, communal experience is aspirational, that in reality the experience may be bitterly fragmented. The public is multiple and so are its understandings.

Reconciliation, then, may not be possible, but perhaps all is not lost. In their analyses of the Eichmann trial, Felman’s interpretation is ultimately less cynical than that of Arendt. While Arendt is largely critical of the trial as a legal failure, Felman celebrates its success in foregrounding the victims of the Holocaust. By allowing them to testify, they became, for the first time, authors of history (2002: 126-7). According to this view, the act of speaking – and of listening to those who speak – is crucial, even if one side and its supporters refuse to or cannot hear the other. Antie Krog cites the Chilean philosopher José Zalaquett, who says of truth and reconciliation commissions, that it is sometimes necessary to choose between truth and justice – between the facts and testimonies that have been long buried, and a sense of fairness or resolution. As Zalaquett argues, “We should choose truth. Truth does not bring back the dead, but [it] releases them from silence” (1998: 32). Or, to quote *Sines*’ plaintiff Wispelway, “I believe in truth as something that sets us free.” *Sines* and its audio glitch give us a vivid display of two competing truths, both of which that have been uttered, and it is up to us, the public in all our multiplicity, to decide which one to follow.

³⁹ Within communication studies, Denis McQuail notes that active audiences are often considered to be “more resilient and resistant ... to persuasion, influence, or manipulation” that are passive ones (1997: 22). He also observes that today’s audiences tend to be organized in smaller, multiple, virtual communities than the larger-scale mass audiences of the past. Audiences are actively make choices about their identities and the content they consume.

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