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A Witness to Justice

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STUDIES IN LAW, POLITICS, AND SOCIETY

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A WITNESS TO JUSTICE

Jessica Silbey

ABSTRACT

In the 1988 film The Accused, a young woman named Sarah Tobias is gang raped on a pinball machine by three men while a crowded bar watches. The rapists cut a deal with the prosecutor. Sarah's outrage at the deal convinces the assistant district attorney to prosecute members of the crowd that cheered on and encouraged the rape. This film shows how Sarah Tobias, a woman with little means and less experience, intuits that according to the law rape victims are incredible witnesses to their own victimization. The film goes on to critique what the "right" kind of witness would be. The Accused, therefore, is also about the relationship between witnessing and testimony, between seeing and the representation of that which was seen. It is about the power and responsibility of being a witness in law – one who sees and credibly attests to the truth of their vision – as it is also about what it means to bear witness to film – what can we know from watching movies.

In the film *The Accused* (1988), a young woman named Sarah Tobias (played by Jodi Foster) is gang raped on a pinball machine by three men while a crowded bar watches.¹ She seeks to prosecute the three men but the assistant district attorney, Kathryn Murphy (played by Kelly McGillis), cuts a deal. Sarah's outrage at the deal convinces the assistant district attorney to prosecute members of the crowd that cheered on and encouraged the rape.

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This film shows how Sarah Tobias, a woman with little means and less experience, intuits that according to the law, to be a rape victim is to be invisible – without the power to establish or assert a self among others – and how she, nevertheless, sets out to challenge her victimized status.

Despite the fact that after being raped Sarah went directly to the hospital and the police, and despite the fact that the police documented the physical and medical evidence of the rape, Sarah's legal and social powerlessness prevented the gang rape from going to trial. According to the representation of the law in this film, Sarah is a woman who, because of her low economic status, lack of education and tendency to drink and carouse with men, cannot credibly bear witness to her own victimization. Her testimony alone is insufficient proof of her rape. She cannot be a witness because she is not seen and cannot see herself in the terms set forth by the law or the film. She is either invisible (unseen or unremarkable) or she is condemned as unmanageable and alien (incomprehensible) by both the law and the camera. As invisible or alien, she is unbelievable before the law and the film viewers. The legal discourse of *The Accused* demands a certain kind of witness in order to testify to the truth of events. So too, the filmic discourse (a primarily visual medium) either corroborates or undermines the witness' credibility by controlling the mechanism by which one sees or is seen (as present and as credible) in the first place. *The Accused's* story and form demonstrates how Sarah is incapable of bearing witness before the law to her own rape because of the way it imagines her (or "images" her) as either invisible or alien (de Lauretis, 1987, p. 37).

The Accused is a film not only about the search for a witness to a crime but about the right kind of witness – someone who saw the crime take place and who can credibly testify to their "personal knowledge" of it. This witness must be knowledgeable and self-aware in order to affect justice. This film, therefore, is also about the relationship between witnessing and testimony, between seeing and the representation of that which was seen. It is about the power and responsibility of being a witness in law – one who sees and credibly attests to the truth of their vision – as it is also about what it means to bear witness to film – what can we know from watching movies. That the Hollywood-produced *The Accused*, which is based on a true story, is about seeing and bearing witness makes this transfer double-edged – at once diegetic and metafilmic. There are witnesses within the film and witnesses to the film, who may also become witnesses to that which the film is about: being and bearing witness to a woman, to a man, to a rape, to the law and to a film. These many different acts of witnessing in and of this film make it a complicated but rich critique of the relationship

between subject construction, knowledge and representational strategies in film and in law.

Throughout my analysis of *The Accused*, I will refer to these various forms of witnessing in the following terms. The witness to the film is the film viewer, commonly called the film spectator in film studies. (I use the term "viewer" because it lacks the idealized notion of film audience that is embodied in the term "spectator".) The witness in the film, the juridical witness who is called to testify in the film's story of law based on his or her authoritative knowledge, is the filmed witness. As the film viewer engages the film's story of law and is placed in the position of the various filmed witnesses by the play of the film camera, the witness to the film and the witnesses in the film constitute a new kind of witness to film and to the representation of law, what I have elsewhere called the "viewer-subject" of trial films (Silbey, 2001, p. 98). I use this new term because I think it important to highlight that the film viewer has become someone else by the end of the film. The film viewer has been constituted anew by the film into someone with fresh and original knowledge based on experiencing the film.

The viewer-subject straddles a critical position vis-à-vis the film's representation. The viewer-subject is seduced by the film's hegemonic discourse and is made to feel knowledgeable about what the film shows about law and the event being adjudicated, as if experiencing it firsthand. But the viewer-subject is also distanced from the film's story and form because we must exist beyond the film's ontological world, our sociality preceding (however much informing) the film experience as well as enduring long after.² Straddling these two subject positions constitutes a demeanor or habit of thought that reinforces law's authority as based on the promise of the autonomous legal subject. The viewer is subject to (drawn in by and dependant upon) the film form and story to make sense of law and justice. And yet the film's form and story rely on the actual presence and ideology of the autonomy of subjecthood, one who claims independence from the limiting discourses of film and law in order to know the world and judge people freely. The viewer-subject's constitution as within and through the film as well as before and despite it perpetuates law's authority (the subject of *The Accused*, which is questioned by its inability to recognize a brutal rape).³ The following analysis of the manifold relationships of witnessing in *The Accused* (both filmic witnessing and legal witnessing) exemplifies the "trial film effect" whereby the viewer-subject is critical of legal institutions at the same time as participates in them. The recursive, self-reflective structure of both law and film that appears to critique both

representational systems (law and film) as hegemonic ironically sustains (rather than erodes) their respective authority and power over identity and knowledge in culture.

In the case of *The Accused*, the conversation is about gendered violence and credibility before the law. Generally, the film fits the trial film genre by critiquing the incredibility of Sarah Tobias as a rape victim through the constitution of the viewer-subject as both a viewer to the film and a witness of her rape (on film). Sarah needs to be seen to be believed, and yet her presence and testimony in the courtroom has no effect on the merits of a case for the solicitation of rape. Thus, the film, in order to deliver law's promise, tells the story of the development of a man who at first only sees Sarah raped by a man who will bear witness to her credibility as a rape victim. In so doing, the film beckons its audience to experience the same evolution. The viewer is pulled along by the film's narrative and form and is made into a witness of Sarah's rape and a judge of those who watched her raped but failed to see her as a person worthy of accounting for.

This film variously structures the relationship between seeing and representing that which was seen. There is the witness and her testimony, the viewer and the film, the events in film and the event of the film. These many relations of seeing (of which film is primarily made) create divergent identities and subjects whose knowledge of themselves and their world is complex, if not also in conflict. The cinematic gaze is not singular, nor does it singularly define its object or subject (despite its dominant effect (Mulvey, 1989; Baudry, 1992)). It is poly-ocular and constructs a multi-faceted person in a negotiated act of seeing.⁴ The identity constructed by film, despite the story the film tells, is never unified or self-identical, but self-contradicting and complex; it is a subject with many identities. Thus, as the viewer resists the law that requires a witness who is an autonomous uncontradicted subject (a sign of the film's internal production of its own opposition), the viewer is also seduced by the film's narrative and form that cultivates the promise of justice through law as residing in (as it constructs) that autonomous and omniscient subject.

This chapter is divided into four parts to demonstrate these complex acts of witnessing and their relation to legal and filmic authority. The four parts correspond to the four ways the film relates Sarah and relates the audience to her. Each representational analysis follows chronologically from the other, the effect being a slow seduction of the audience in order to work through the problems of bearing witness to events before their eyes which are nonetheless contested as illusory ("only" on film, or "made up"). Section 1 concerns the initial construction of Sarah's identity. What does she

see and how does she see herself versus how do others see her, if at all? This first part establishes the split identity of Sarah as a problem of legal authority (being seen by law as having something valuable to say). Section 2 chronicles her struggle to be identified as her own witness. I explore the kind of changes that must take place in the initial filmic construction of Sarah's identity in order for her to be an authoritative witness to her own rape. Section 3 is a close analysis of the space of the courtroom and the rhetoric of the adversarial trial, showing how the legal ideology that determines whose testimony counts mimics the already-established filmic codes of who sees and who is seen. Section 4 considers the end-effect of the film: the viewer-subject who has now witnessed Sarah's rape through its representation on film and, despite the testimony's representational form (this is not first-hand witnessing, it's filmic witnessing), understands that the legal verdict will be in Sarah's favor but not because of anything Sarah said or saw.⁵ The viewer-subject's constitution by the end of the film as the authoritative witness to Sarah's rape sanctions the legal verdict with its desired legitimacy. Although from the beginning, the film viewer may not doubt that Sarah has been raped, until the film viewer is constituted at the film's end by a culmination of various points of view on the crime, the law's treatment of Sarah remains deeply unsatisfying. Indeed, not until the viewer-subject bears witness to Sarah's rape (rather than to Sarah's testimony about her rape) does the law's treatment of Sarah fulfill its promise of justice. The viewer-subject therefore recognizes the law's potential for partiality and, at the film's end, experiences his participation in law and through the film as an indispensable witness to assure law's successful undertaking. In what manner does this subject exist after the film ends? In what manner does the act of witnessing enabled by the film translate into a mechanism to bear witness to events beyond the film and its filmic courtroom? The question arises as to whether we, the viewer-subject of the trial film, can claim to be witness to the event *in* film, as well as to the event *of* film, or if we are made to tell the difference anymore.

In the end, I hope to show how the film maintains a stake in making its audience both viewers and witnesses, thus preserving the split in the construction of the viewer-subject and sustaining a critique of law and film through claims to autonomy and freedom from the influences of both. Because the film is a story about the prosecution of spectators turned solicitors to a rape, to make the audience of the film passive voyeurs implicates the act of viewing with criminal intent.⁶ The film wants its audience to critique the images we see – we see a rape despite its blurry legal definition and the victim's delinquency, we see solicitors to a rape despite the

radical nature of their prosecution. As a movie that makes political the act of viewing by encouraging spectators to bear witness, it must ask the film audience to do the same (or else be criminal voyeurs). This requires that the audience remain constituted as viewer-subjects straddling the film experience: we both (1) believe in what we see (we believe enough to account for its truth, the truth of the rape); and (2) do not believe in what we see (we are critical enough to recognize it as "just a film," not so real that we are solicitors to the crime ourselves). The result is the film genre's capacity to produce and then recuperate the resistance to its manufactured desire, a desire to be understood as the authority on (a witness to) one's own experience as well as a desire to attest to one's knowledge of the medium's formal features that reveal it as a fiction (the claim of knowledge being an assertion of power).⁷ Comparing the four relations of Sarah makes evident this recuperative critique of both law's and film's authority in society. It also calls attention to the evolution of the film viewer from someone who "just sees" to a viewer-subject who stands up and accounts for what they see (bears witness), a development that occurs more frequently in our ocular-centric culture where images of law proliferate.

1. VISIONS OF SARAH

The first scene in the film is a long stationary shot of the bar, The Mill, where the rape occurs. Music plays and cars drive by. Time passes and day turn to night. Then, all at once, a man is in a phone booth calling 911, and through doors in the distance a woman runs frantically toward the street screaming. The man, a young college student, is shot in close-up and is framed by the dirty glass of the phone booth. He implores the 911 to listen to him even though he refuses to provide his name. "Listen to me, there's a girl in trouble." "Sir, we have to have your name." "Listen to me goddamn it . . ." The man drops the phone and turns around. Behind him, through the grimy glass of the phone booth, the film viewer barely sees the woman screaming, flag down a truck and climb into its huge cab. The man runs directly into the headlights of the truck and watches it drive away. Our first glimpse of Sarah Tobias, then, is only through the eyes of this man, through the phone booth in the dark – and only when their paths cross. He is seen clearly in the light whereas she is out of sight. And yet we believe she has been hurt because of what he says (and what he will say). It is only through him and the camera's focus on him that Sarah's "trouble" is recognized.⁸

The film cuts from the passing headlights to a blinding photographic flash. Sarah is being photographed in a hospital gown. Bewildered by the light, she squints as her bruises are documented by a nurse. When the photographer leaves, Sarah asks "Aren't you going to examine me?" implying that the photographs are insufficient evidence of the crime done to her. Sarah's comment inaugurates the film's own critique of the truth value of "visionary" media, like photography and film. The photograph is of her (as this is a film about her) but she does not trust its ability to represent her as she understands herself.

When a woman from the Rape Crisis center arrives saying "I'm here to help," Sarah turns away and does not respond. It is as if she has not been addressed or has nothing to say. She is mute. Even after a painful pelvic exam during which Sarah winces in discomfort and squints from the misdirected light of the examination lamp, she is silent. People enter and exit the room, oblivious to Sarah and her near naked, fragile state. Sarah, too, considers herself invisible as she does not cover herself up or seem at all self-conscious that strangers surround her as her body – inside and outside – is combed for evidence.⁹ When Kathryn Murphy, the assistant district attorney assigned to Sarah's case arrives with some clothes, "I hope you don't mind gray," Sarah, again, does not respond. Before Sarah leaves, however, she mumbles with difficulty "Have you got any mouthwash?" Clearly, she not only has been made senseless by the rape (without the ability to perceive or to be appreciably perceived), she has also been made mute. She has lost the ability to represent herself or be represented by others. The film abruptly cuts to a showered and changed Sarah saying "And then I heard someone screaming, and it was me." This comment verifies Sarah's loss of self-awareness caused by the rape, a loss of *self* demonstrated in these scenes through the film's manipulation of light.

In the next scene, her senselessness is compounded by being looked *through* instead of looked *at*. When she returns to the bar with Detective Duncan and Kathryn Murphy to identify her attackers with a whisper, both men avoid her eyes. Sarah is not seen directly nor heard audibly. In fact, Sarah disappears from the scene as she leaves the bar to return to the car. Kathryn Murphy's presence, however, is manifest as her voice booms and the camera follows her assertive gestures and towering build around the bar. Kathryn glows in the dark room, while Sarah's borrowed gray sweat suit disappears in the dilapidated wood paneled walls.

Visual and emotional tension increase when Kathryn Murphy drives Sarah home. They have little in common. One is an educated career woman, tough, sturdy and economically secure. The other is a fragile, soft-spoken,

superstitious waitress who lives in a trailer with a neglectful boyfriend (Lucia, 2006, pp. 174–175). As opposed to when Sarah blended into the walls, was overlooked and senseless, now she is singled out as alien, isolated, alone. Her profile is distorted by the rain on the car window and by a blue filter on the film camera. She is seen, but not as anyone recognizable. She is an outcast. As she runs toward her trailer, her body is deformed by the windshield and the car's high beams. And at home, under orange light, she seeks sympathy and support from her boyfriend and her mother only to be rebuffed and misunderstood. Besides her dog, Sadie, the film's story and form leave her alone and unaccounted for.

In these opening scenes, the film establishes Sarah as at once alien and invisible, both uniquely distorted and unremarkable. The film viewer does not doubt her pain and brutalization. The question for the film's story becomes whether Sarah's pain and the crime amount to anything the law can and will acknowledge. This is a challenge because Sarah is not seen directly, but through a haze or a filter – a phone booth, a car window, a blue or orange light – or as unable to see or be seen at all – blinded by light, overlooked or ignored. This pattern continues in the film as she identifies her third attacker, Bob, through a car window. "That's him," she says. The camera then cuts to Bob who looks at the film camera as he is handcuffed. But because Sarah has slumped down in the car, he does not look at or see her. Indeed, the camera angle has changed to make the shot-counter-shot an unsuccessful suturing of eye contact between Bob and Sarah. Bob is not seen from Sarah's perspective. The film viewer is not looking through a car window as Sarah was. When Bob looks at the film camera, he is not looking at Sarah – but at us. Bob's identification by us as a criminal is decisive and inaugurates the film's viewer-subject whose existence and authority are a result of the film's exchange of gazes.

In this scene, Sarah is not seen by someone in the film (like Bob) who can account for the rape. Bob's sneer and misdirected glare confirm this. Sarah remains unable to authoritatively testify to the violence she experienced. Her identification of Bob as a rapist therefore remains incredible. Sarah fights so that she is not seen by Bob as a slut and a liar, and for this she trades the power to see and be seen (as she would see herself, as a rape survivor) altogether (Lucia, 2006, p. 174). The film's viewer-subject and Bob, on the other hand, are identified as having the power to *see* – to see and to point fingers by recognizing and acknowledging each other through the film's exchange of gazes. This scene establishes the film's viewer-subject as a combination of the film viewer (its addressee, the person who watches) and the film's subject (the one who bears witness). At this juncture, the viewer

remains unable to account for Sarah's story of rape, as the viewer's knowledge is limited by the brevity and haziness of the film images so far. The viewer-subject can account for Sarah's bruises and for her emotional state – we believe her when she says she was raped – but we cannot yet testify to it. We have not yet *seen* anything relevant to the crime's adjudication and therefore according to the law we *know* nothing. By contrast, when the film shows at its end the rape, the film has enlarged the experience to which the viewer-subject can account. Moreover, the viewer-subject has throughout the film been made aware of the authority that seeing and bearing witness produces. As such, by the end of the film, the viewer-subject has become the kind of witness who recognizes the importance of bearing witness to rape victims' stories of violence and also as someone who is perceived by skeptics (such as Bob in the beginning) as having the authority to testify to the truthfulness of those accounts.

When, later, Kathryn Murphy explains to Sarah that the defense will ask questions regarding her sexual behavior, her drinking, her drug intake and her general lifestyle, Sarah objects that those questions are not relevant to whether or not she was raped by three men that night at the Mill. Kathryn agrees, coldly, but replies that "it is the defense's job to show you're a rotten witness" thus suggesting that because she is considered by others to be unmanageable and aberrant, the jury will consider Sarah's ability to know whether she was raped or not – to know herself and experience – impaired and unreliable. In addition, however, Sarah is a rotten witness because she is a virtual non-presence both before those she accuses (e.g., Bob) and those available to represent her. When she is not seen through a distorting frame as singular and alien, she is erased, made blind and dumb and thus her ability to identify her attackers – let alone identify and know herself – is wholly thrown into doubt. Here, the film viewer might experience disappointment or anger at the law's inability to account for Sarah's agony, but understands it as one result of the law's (and the film's) partiality.

Sarah finds herself in a paradox – the paradox of witnessing an event to which she is the only survivor. As Shoshana Felman writes, "the burden of the witness ... is a radically unique, non-interchangeable and solitary burden" (Felman & Laub, 1992, p. 9). Sarah experiences the problem of many rape victims who are typically the only witness to the crime (other than the rapist) and who by law are nonetheless required to seek corroborating testimony. (Brownmiller, 1975; Estrich, 1987). They are asked to be self-identical (similarly identified and identifiable by themselves and others) and yet they are also told to be fundamentally different, told

that they must be a specific kind of woman and a specific kind of witness, one they most likely are not (Brownmiller, 1975, p. 375; Bumiller, 1990, p. 133).¹⁰ Not only is this an impossible situation for rape survivors, but it is deeply ironic. Where Sarah, like many women, are put on the defensive – in the spotlight, to be inspected and cross-examined at trial – rape laws are perceived to favor men to the extent of *erasing* the fact of feminine socialization from consideration altogether (MacKinnon, 1987; Lucia, 2006, p. 174; Bumiller, 1990, p. 137). In the film, Sarah is both in the spotlight and completely erased. As such, she has a double identity and therefore cannot be the self-identical, self-assured (read autonomous, unified, uncontradicted) witness the law requires¹¹ (Lucia, 2006, p. 175).

This futile search for such an ideal witness in Sarah culminates in her learning about the deal her lawyer made that sends the rapists to jail for reckless endangerment instead of rape. Sarah learns of the deal from a television while waitressing. "No explanation was given for the reduction in charge [except] ... we expect the woman would not have made a strong witness." Sarah storms into Kathryn Murphy's apartment livid, waving a newspaper. Sarah is disheveled, her short waitress uniform rumpled and falling off, her leather coat and working-class accent out of place in Kathryn's chic, up-scale apartment. To top it off, Sarah barges into a subdued dinner party. Nevertheless, Sarah confronts Kathryn "You sold me out, you double-crossing bitch. I'm a drunk, I'm too fragile, I'm a pot head, I didn't get raped. I never got raped?" Kathryn, stunned, calmly responds, "Of course you did." In a moment of remarkable insight into the capacity of representation to shape reality, Sarah shakes the newspaper "How come it doesn't say that? How come it doesn't say 'Sarah Tobias was raped'? What the fuck is reckless endangerment?" While acknowledging the cruel stereotypes of women like her ("drunk," "pothead"), Sarah also points to her desire to be *seen by the media as she sees herself*: as a woman who was victimized. Admitting that the media (and the law) shape her identity, Sarah also resists their force by criticizing their biased foundations. "If I went to law school and I didn't live in some dump, I'd be a better witness!"

Here, Sarah points to a split in her identity forged between (1) the distorting effect of the legal system and the media of both her presence and her experience, and (2) her desire to bear witness before the law to her own survival through the media.¹² This continues the film's critique of the unified and autonomous person required by law in order for justice to be done. As Sarah articulates her disgust with the law, media and cultural biases, the viewer-subject is self-conscious of the film's fiction and no less its real,

constitutive influence on society.¹³ The film viewer is made to desire the autonomy and authority that will effectuate justice for Sarah.

Sarah's ruptured identity is painfully realized in the next scene through complex camera movements and unusual camera angles. This scene is a climax of sorts, a realization both for Sarah and the viewing audience. Sarah returns home from having confronted Kathryn and cuts off her hair. The camera sits over her left shoulder and looks at Sarah through the bathroom mirror, seeing only Sarah's reflection. This is a difficult film shot. How does one film an image in the mirror without also capturing the filming apparatus that is also facing the mirror?¹⁴ In the mirror, Sarah grimaces and then takes a handful of hair and hacks it off. The film then cuts to Sarah greeting her boyfriend in the kitchen. He is surprised and aroused by her drastic change in appearance. His come-ons repulse Sarah – as if her self-deprecating act was an invitation for sex – and she kicks him out. Sarah returns to the bathroom where the camera again shoots Sarah from behind, as she looks at herself in the mirror. This time, however, the camera is over her opposite (right) shoulder. We see Sarah scrutinizing her new hair-do and crying.

This is the first (and only time) Sarah cries in the film. Despite her crying, her new haircut makes her look less adolescent and tougher than before. ("I needed a change," she tells her boyfriend.) This film sequence marks a transformation in Sarah – both in the way she sees herself and in the way the camera sees her. Instead of being blinded or distorted by angle, lens, light or commentary, Sarah consciously and conspicuously inspects herself, placing herself in the frame (of the mirror) in order to comment on herself and on how her identity is constituted in relation to society's view(ing) of her. Sarah finally seems to take stock of what everyone else sees and tries to control and mold that vision. While the double mirror might recall the distorting mechanism of the camera, the symmetrical camera movement from left to right and the camera's conspicuous absence in the mirror enables isolated and ordered self-reflection. The multiple framing mechanisms at play in this scene (the camera, the mirror, the film screen) manifest the inevitability of representation to shape identity. Sarah's self-reflection is both an acceptance of this inevitability as well as a challenge to it.

"Witnesses ... cannot fulfill their task without passing through the crisis of experiencing their boundaries, their separateness, their functionality, and indeed their sanity, at risk" (Felman & Laub, 1992, p. xvii). Sarah experiences such a crisis in this scene and is thus on her way to becoming a witness the law will recognize. Felman also says that witnessing is about survival, about "accepting the obligation, and the right, to repossess

yourselves, to take, in other words, the chance to sign, the chance to count. (To be a sign, to sign, to make a difference, to be different, to differentiate yourself, to bear witness to such differentiation which is being alive among others, surviving.)" (Felman & Laub, 1992, p. 51). This is exactly what Sarah accomplishes when she looks in the mirror once with long hair, cuts, and then looks again with short hair. In her reflection, she recognizes (as we literally see) a doubleness – a subject-who-sees and a subject-of-seeing – and thus a person both alienated from and in the presence of a self. In this scene, she seems to accept the distortion she experiences through the various social interactions, discourses and media – rape, newscasts, law, legal representation, mirrors and glass – and chooses to assert herself, "to differentiate" herself, "to count." She enacts this differentiation not only by cutting off her hair, but by asserting her strength and autonomy by kicking out her boyfriend.

Sarah's character demonstrates what Walter Benjamin (1968) describes as the lost ritual function of art: the loss of the authority of presence in the face of mechanical reproduction (or media representation).¹⁵ The film's constitution of the viewer-subject as generated in part through Sarah's growing self-consciousness provides a strategy for surviving this loss. As a viewer of this self-conscious scene (both self-conscious in film form and story), the viewer witnesses Sarah's personal struggle and accounts for the beginning of Sarah's transformation by her own hand. As Sarah begins to take control of how she is seen (by the camera and by others), she also takes a substantial step toward being accounted for by the legal system as a rape victim. The viewer of this film about a woman distorted and reconstituted by acts of viewing begins to recognize that the film has a similar effect on its audience. The film's critique of identity as it relates to Sarah expands to a critique (and a revelation) of film's role in the construction of the social world beyond it. The viewer-subject, growing self-conscious of the inconsistency inherent in the demand for autonomy and the inevitability of representation's partiality, also recognizes film's force in shaping judgment.

The critical position occupied by the viewer-subject of the film parallels Sarah's struggle to identify and be identified despite an always already mediated existence in discourse. Diegetically, Sarah assures herself of her own authoritative presence through a display of self-consciousness, even though as a filmed entity, she is not presented as a person to the film audience equal to others. Metafilmically, the display of Sarah's self-consciousness is a filmic moment that is about filmmaking, a *mise-en-abyme* structure (a "house of mirrors" effect) the effect of which is to ask the film

viewers to question what they see and therefore what they think they know. In so doing, the film viewers, becoming viewer-subjects, submit to the construction of identity through the film and begin to take part in the film's meaning making.

This scene and Sarah's character demonstrate that alienation and effacement may be an inevitable condition if we are to rely on visual technologies to signify self and justice. This does not mean she will fail to garner any authority before the law or on film. As someone with only a virtual presence, Sarah eventually and credibly accounts not only for her rape, but also for the rape of real women throughout the world. This is because the film successfully demonstrates how Sarah's problem is a heightened version of everyone's problem: the struggle to be understood as we would like to be in light of the complex discursive systems that we inhabit. Where the legal system adjudicates conflict between competing, credible truths and still promises only one verdict, the process of being seen and heard before the law, of bearing witness to our own experiences and to others', must be realized (and thus resolved) in language (be it film language or otherwise).¹⁶ Sarah's struggle is therefore emblematic and not at all unique. The struggle to identify and be identified despite an always already mediated existence in discourse is indeed the stuff of law.

2. SARAH'S STRUGGLE

Beside a haircut, Sarah undergoes additional changes in the second half of the film. These changes represent a difference mostly in the way Sarah is filmed (and thus in the way she is a filmed witness). As if to fulfill the implication of her aesthetic change, Sarah's material circumstances also change – she kicks her boyfriend out for good, she violently confronts one of the men who saw her raped and she finally finds a partner in Kathryn who decides to prosecute the spectators to the rape. These changes build Sarah's authority so that she may credibly testify to her rape. While she remains split (doubled) – seeing one way and being seen in another – she is no longer isolated but part of a larger group-identified struggle, one which collectively acknowledges the imperative of visibility and thus the very real possibility of erasure and alienation before the law. As part of a group (which will include Kathryn, the film viewer and Ken Joyce), Sarah is validated as an individual among many, with the privileges and strengths that come with participating in a community. Whereas previously, the film viewer

believed that Sarah was victimized, in this part, Sarah's transformation turns sympathy *for* her into knowledge *about* her, which knowledge the law requires for adjudication.

Previously we saw Sarah weak in the hospital, exhausted as an unappreciated waitress, at home drinking in the afternoon "to smooth out the edges." Now we see her stride across a parking lot smacking gum, steady on her high heels and immune to the glare of the sun. In a music store, she briskly and without fear fends off a man's persistent advances. "I've seen you before," he says. "I know I seen you before." Sarah replies: "No, you have the wrong person." Her response acknowledges she is already a different person, reinforcing her new identity. She says: "You're thinking of someone else." When the man catches up to Sarah in the parking lot as she gets into her red car marked with the license plate "SXY SADIE,"¹⁷ he declares: "I do know you. I remember you, Sexy Sadie . . . you're the one from the bar that night." Sarah has refused to give in to this man's advances because she perceives herself as worthy of being listened to and of being taken seriously when she says "you have the wrong person." His unmasking of Sarah as someone he recognizes challenges her (and the film) to confront the warring identities within Sarah.

The man approaches the car window, gawking and yelling "I know you. I do know you . . . Wanna play pinball?" He is menacing. Sarah appears afraid, but the film shows less of her and more of the man. Through the driver's side window, he looks in at Sarah. The camera does not reverse cut from the outside to look in. Instead, the camera remains inside the car, looking out. Through the rear view mirror, from Sarah's vantage point, the film shows the man wave his hands and stick out his tongue making obscene gestures. As the man jeers at Sarah, he jeers at us, the film viewer. At this, Sarah's fear subsides. She clenches her jaw, looks straight out the windshield and plows into the side of the man's truck. Whether this is revenge or attempted suicide, the camera takes her side, reinforcing her position as the locus of vision and action. It is the man who is distorted, isolated and refracted by the many windows and mirrors. Instead of Sarah, this man is alienated by the camera and on the outside looking in. Although Sarah may be trapped by the metal and glass of the car – perhaps a metaphor for her caged condition as a limited and reductive identity evidenced by the man taunts – she is not alone. As the film viewer sees what she sees, we are put in her position and made to identify with her fear, anger and vengeance. In this case (in contrast to many previous instances) the camera is not in opposition to Sarah, not making manifest the *division* in her identity, but in unison with her experience. What she sees and how she is seen is, for once, congruent.

The camera has expanded to include Sarah among its viewers, so although she is filmed alone on screen, we are there with her. This unity of Sarah and the film viewer culminates on her second run toward the truck when she blacks out and the screen goes black as well.

Hearing of Sarah's accident, Kathryn Murphy visits her in the hospital. The room is made blue with a camera filter, evoking the distorting blue light of the night Kathryn dropped Sarah at her trailer. This time, however, the blue filter embraces both Sarah and Kathryn. "You wanna play pinball?" she says to Kathryn. "That's what he said. Wanna play pinball? He thinks I'm a piece of shit. Everyone thinks I'm a piece of shit. Why not? You told them that. I never got to tell nobody nothing. Why did you do that? I thought you were on my side." Sarah slurs her words and she looks weak and small in the hospital bed, especially as Kathryn towers above her. But Sarah's words bite, as they acknowledge how Kathryn and others who look down at Sarah (including the camera) have aggravated the injustice she has suffered. With this, Kathryn realizes that Sarah is not only a victim of a rape but a victim of the legal system, of which Kathryn is an integral part.

Kathryn leaves the hospital room crying and sees the man whose truck Sarah totaled. Chasing after him, Kathryn asks what happened. "Did you know her?" He replies, "Yeah. She's a whore. Last time I saw her she was doing a sex show." Kathryn baits him, saying: "I thought she was raped." He yells back incredulously, "Raped? She fucked a barroom of guys and then turns around and blames them for it. She had an audience. She loved it. It was the show of her life. You tell her next time she has a show I'll be there to cheer her on." As Kathryn follows the man, he never once stops to look her in the eye. His demeanor and his answers prove to Kathryn that the men who raped Sarah, as well as those who watched, are blind to women's humanity. They do not see women as worthy of being acknowledged. They do not see women as women see themselves.

When Kathryn returns to Sarah's hospital room, the camera films the two women in profile. They are both bathed in blue light. As the camera rises over Kathryn's shoulder, we no longer look down at Sarah, but across at her at eye level. As Sarah sleeps, Kathryn sits beside her. Together they share the camera's frame and filter as they now share a common vision. This double profile brings the law and Sarah closer together, as Kathryn is an agent of the law and Sarah desires the law's even hand. Sarah is no longer alone in her struggle to be seen as she would see herself. Kathryn is finally implicated in Sarah's struggle as a woman with common concerns. Sarah now has someone *in* the film (as opposed to the film viewer who is always

outside the film, passive and impotent) to represent her to others and to account for her presence.

When Kathryn tells her boss that she is going to prosecute the men who solicited Sarah's rape, he responds: "I'm not going to let you prosecute a bunch of spectators." Obviously threatened by the implication of case – what would it mean for him or other (film) spectators if those who witnessed violence against women were guilty as well? But Kathryn is quick to make a distinction between being a spectator and being a solicitor. "They're not spectators, they solicited the rape. Clapping, cheering, goading. Getting the rape going and keeping it going." Kathryn knows that most everyone who has watched a crime occur must somehow feel guilty for not preventing it or for being titillated by the spectacle. She also knows that there must be a difference between just watching and participating by watching and that this difference may be the difference between doing nothing and treating what you see as nothing. By cutting a deal with the attorneys for the rapists in order to preserve her winning streak as a prosecutor, she realizes that she was complicit in the perpetuation of violence against women. Were she to fail to prosecute the solicitors to Sarah's rape, she would again be permitting violence against women to endure through their erasure.

The last stage of Sarah's struggle to identify and be identified as a woman the law can represent (as a woman not alone but part of a discourse community through which she becomes intelligible and gains credibility) requires corraling the other witnesses to corroborate Sarah's testimony. Kathryn's best chance of winning her case of criminal solicitation is to find Ken Joyce, the man who made the 911 phone call on Sarah's behalf, a man who witnessed the rape and called for help. At first, Ken's fraternity brothers (especially Bob) convince him to keep quiet. Ken tells both Kathryn and Sarah that he cannot remember anything and that's what he will say if he is called to testify. Angrily, Sarah confronts him: "You saw me have some drinks, blow some grass and then you saw me gang raped. And you think I had it coming. You're just like all the others . . . [no], you're worse." Ken quickly turns around. "No. That's not true. I'm not like that." Ken appears afraid of being alone and of the loss he will suffer at testifying against his brothers. But whenever Ken appeared in the film, he was alone, conspicuously apart from his fraternity brothers – visually "not like them" at all (Lucia, 2006, p. 178). It makes sense, therefore, that when pushed, he verbally and self-consciously distinguishes himself from them. He is not a rapist, he says. More than that, he knows a rape when he sees it.¹⁸ In this way, he is not alone – as he would think – but he has switched sides.

Before Kathryn's conversion and Ken's explicit sympathy, Sarah was isolated and alienated, both by the camera and in the film. She had no supporters. As Kathryn realizes her role in Sarah's victimization and her own stake in the case as a woman, the camera brings the two women together despite their differences. Similarly, Ken realizes that to support Sarah will not isolate him but make him part of a group of people who believe in Sarah and justice. Ironically, only those previously associated with the law or the masculine (Kathryn and Ken) can add credence to a solitary victim of the law and male violence.

Felman explains that a witness's anxiety about testifying, such as Ken's anxiety, is an effect of the struggle between individuality and group association, as simultaneously fearing a loss of autonomy and of community (Felman & Laub, 1992, p. 233). Felman describe this struggle as a radical expansion of the boundaries of the individual, which results in new responsibilities toward the other (Felman & Laub, 1992, p. 233). Although the individual cleaves to her autonomy, when she articulates and identifies herself in speech and in (need of) representation, she is also always in relation to another and responsive to another.¹⁹ Felman asserts that despite the inevitable alienation that is exacerbated by (the need for) representation, and despite the desire for autonomy and independence, individuals will mobilize across differences – will testify to and for the other by expanding their association and identification beyond a singular self – so that their presence can be made known by virtue of another's presence.

By joining Sarah in her representation of her rape to a larger audience, both Kathryn and Ken, who are fiercely independent people, realize they can represent Sarah without losing their autonomy. Likewise, Sarah will remain singular while also gaining authority from her association with others. This is no paradox, but the configured relationship between an individual, her varied social identities and her social circumstance. The film enables this relationship by changing the isolated focus on Sarah to now include Kathryn and Ken in its visual frame. Ken and Kathryn are able to validate and represent Sarah from within a masculine and a legal framework; and Sarah, too, is able to testify to her rape based on her modified and corroborated identity.

Because this part of the film hinges on the formation of a legal community based on the associational ties of spectatorship, it implicates the viewer as a part of that community in Sarah's struggle to belong in (and be legitimated by) a court of law. As the film rushes toward a hopeful courtroom climax, it constitutes the film viewer as a viewer-subject who is similar to witnesses like Ken and representatives like Kathryn who wants to (and will) testify on

Sarah's behalf and account for her victimization. The viewer-subject desires to bear witness in the way Ken and Kathryn do. Like Sarah, the viewer-subject grapples with the fact that a mere desire to bear witness does not translate into a materially effective act in a court of law (we are just viewers of a film, after all). And yet like Ken and Kathryn, the viewer-subject is implicated in a community (is made by the film into someone new) who challenges the law's definition of what counts as an authoritative act of witnessing by supporting the credibility of split-subjectivities and encouraging through desire the transformation of those identities. As a witness to the film and yet not in the film, the viewer-subject straddles the film screen – affected by film but wholly outside it. As such, the viewer-subject begins to understand how watching is not witnessing and struggles to negotiate the desire to bear witness to the film's story within the limitations of spectatorship.²⁰ By the end, this matures into a critique of film's ideology of visual coherence and law's reliance on autonomy and consistency as a precursor to testimonial credibility.

3. BEFORE THE LAW

Sarah finally arrives before the law to tell her story. Through this telling (a relating of Sarah to the law), Sarah comes to court and presents herself to the jury as a legal subject with legal representation. She does not emerge whole, however, as the defense's cross-examination exposes the insignificance of Sarah's story of rape for the issue at trial. Her story only corroborates the rape itself, not the solicitation for which the current defendants are charged. Therefore, Sarah remains marginalized and contradicted, much like her identity from the beginning of the film (Lucia, 2006, p. 178). Her position within the filmic space of the trial and as constituted through its legal rhetoric underscores her singular irrelevance to the verdict of guilty.

During the trial, Sarah is first established as a person worthy of belief and then dismantled, her story left legally insignificant. In this way, Sarah's testimony about her rape, a personal high point for Sarah, is deeply unsatisfying. This is because the trial turns on the credibility of witnesses to solicitation, not on the victim herself. The film might fulfill Sarah's desire to bear witness before the law to her own rape, but the film has cultivated an additional desire in its viewer – not only to see Sarah testify as a person to be accounted for, but to see that about which Sarah testifies. The viewer-subject who desires to bear witness must be independently constituted by

and in relation to the event in question (the rape). Sarah telling us about her rape (as she has been doing all along) is not enough. This desire for additional evidence – not only hearing Sarah tell her story, but hearing (or seeing) someone else tell a similar story – has been Sarah's dilemma all along. The viewer-subject's desire therefore perpetuates the law's requirement for a witness to a rape that few rape victims can be.

When called to the witness stand, the film frames Sarah in a perfectly symmetrical shot as she walks down the courtroom aisle toward the judge, as if toward the groom in a marriage ceremony. She is, in fact, bonding with the law in this scene, proceeding through the rituals of induction to the house of justice. As she takes the stand, she is raised above the courtroom audience, put in the spotlight finally to be acknowledged as she would swear. She states her name and takes an oath to tell the whole truth. She has been waiting a long time, fighting erasure and distortion so that she could stand before the law to tell an audience what happened to her. Upon sitting down, however, she loses the spotlight as the cagey wooden witness box swallows her petite frame. Here she becomes part of the law – as Ann Norton (1993, p. 151) says, subject to the law²¹ – as she becomes part of its architecture.

The film's treatment of Sarah throughout her testimony underscores Sarah's presence in court, fulfilling her aspiration to be acknowledged by the law and its community as having been victimized. When Sarah begins her testimony, the camera focuses, static, on her face. When she admits to having had a few beers and smoked some pot, she demurs to the judge on her right and then the jury on her left. She acknowledges her reliance on her audience for recognition and acceptance. When Kathryn prompts her to continue, the camera returns to Sarah, again head on, but at a closer distance. Sarah tells how she accepted a drink from Danny (one of the rapists), how a favorite song came on the jukebox and how she danced. With each question and answer, the camera draws closer and closer to Sarah, her face slowly filling the screen. In a series of six shot-counter-shots – between the jury and Sarah, Kathryn and Sarah, the courtroom audience and Sarah – the camera draws closer and closer to the witness stand. The effect is of an overwhelming sense of Sarah's presence in the courtroom as well as a close scrutiny of Sarah by the legal community that surrounds her (the attorneys, the jury, the judge, the courtroom audience and the film audience). If nothing else, the camera's treatment of Sarah in this scene establishes that Sarah has finally addressed and been addressed by (been before and seen by) the law.

Nonetheless, the fact of Sarah's presence (her subjectivity) is all that is accomplished because the relevance of her testimony (her knowledge) is

undermined during cross-examination. In contrast to her direct testimony, during cross-examination, the camera films her at sharp angles and from a distance. As opposed to her forceful and steady dialogue from before, during cross-examination Sarah stutters and repeats herself. She is subjected to legal rationale that questions her perception, her ability to remember names and identify the solicitors: "Your eyes were closed. You were being assaulted . . . there is the noise of pinball machines and video games . . . is it fair to say that you cannot tell us who applauded and who shouted?" One defending attorney asks "Can you in any way prove to us that someone in that room, anyone saw you struggle or heard you say 'no'?" In keeping with the rest of the film, this cross-examination makes Sarah irrelevant to the issue at hand: unfocused, off-center and incredible. She is irrelevant because she cannot say who cheered and clapped precisely because it was she who was being raped. The law must look elsewhere (to Kathryn or to Ken) to achieve justice.

The adversarial elements of trial – direct and cross-examination – highlight the fragility of Sarah's identity (indeed, of anyone's identity) before the law. *The Accused* teaches, as Sarah learns, there is no position (no witness stand, no objective film form) from which the truth of the matter will be uncontroversial. "[The] comedy of self-reference satirizes the effort to escape the self by viewing it, the thought that there is a position from which to rest assured once and for all the truth of your views" (Cavell, 1971, p. 126). Paradoxically, whereas law and film both claim to identify and produce knowledge with unprecedented authority in contemporary society, they also each rely on fragile and contestable strategies of representation to stake their claim. Those, like Sarah, who rely on law or film to prove an identity, among other truth claims (e.g., who you say you are – guilty or innocent, a rape victim or an impartial witness), will be disappointed. This does not mean Sarah will not win her case or that she is doomed to be constituted unfairly. To the contrary, because identity and knowledge are never self-identical (or "self-referential" as Cavell says (1971, p. 126) but only meaningful in terms of its relation to others, in a context or as specifically situated), Sarah's testimony gains significance for the legal verdict precisely *because of* her cross-examination and the testimony of all the other witnesses that will come before the law on her behalf.

Although Ken's testimony is not different in content from Sarah's, it is exceptionally different in form. Ken appears at home before the law, steady and calm. In contrast to Sarah, Ken needs no prodding to get his testimony going. Indeed, in his relating of the rape, his voice trails off and in place of seeing him recite the events as we did with Sarah, we see instead the scene at

the Mill. In other words, Ken's words are so authoritative that instead of being necessarily attached to his person, they transport the film audience to the Mill during the night in question (as well as the film jury). The film and its audience are finally able to imagine the rape. Because the camera only infrequently flashes back to Ken on the stand during this scene, it is easy to forget that Ken enables the visions before us. Most often, the film shows the Mill on the night of Sarah's rape presenting for our scrutiny the scene and all its details we have heard about but have not yet seen for ourselves. In this way, the film is complicit with the law in the way it distinguishes between people who are authoritative and those who are incredible.²²

Oddly enough, much of what the film shows of the rape at the Mill thanks to Ken's testimony is not filmed from his point of view. His narration of the event appears to be translated filmically into a multi-perspectival vision. At the beginning, the camera is from Ken's perspective as the film shows Sarah enter the bar, sit with Sally and take a drink from Danny. But then the camera shows Ken sitting in the booth next to Sarah. Ken's vision cannot be the only source of the images. At one point, the film shows the *back* of Ken's head, proving that while the images may be enabled by Ken's testimony, they are, in fact, a conglomeration of many different perspectives coming together through the event of his testimony before the law. Importantly, several shots are from Sarah's perspective – the most crucial ones when she is being raped on the pinball machine and the camera looks up and around at Bob and Danny and Kurt from Sarah's horizontal position. The camera jerks and swings and eventually goes black as if Sarah is moving her head from side to side and finally closes her eyes. At the end of the rape scene and from a different perspective altogether (from behind the pinball machine, where neither Ken nor Sarah has been), the film shows Ken sitting in a corner frowning and staring coldly at his friend Bob, who is laughing at the violent spectacle at the center of the room. In this collaboration of viewpoints, Ken and Sarah, together with the freedom of the film camera and Kathryn's legal representation, realize for the film audience what seems like the complete story of Sarah's rape at the Mill.

The film's different treatment of Ken's and Sarah's testimony rehearses their different status before the law. During Sarah's testimony, the camera remains opposite her, staring her down and solidly affirming her presence. During Ken's testimony, the camera takes his presence and his words for granted, relying only on his initial cues to weave him into the narrative of the event to be adjudicated so completely that his voice is no longer necessary as an explanatory device. We do not hear Ken narrate the rape; we see it unfold before our eyes as if we were there. Sarah's credibility

depends on her being seen as a person who counts and so the film must focus on her during her testimony. Ken is already a reliable witness, his credibility not in doubt. Instead of watching him and evaluating him as he speaks as we do Sarah, the film shows a visual realization of Ken's testimony. When he begins speaking, the film audience does not consider his status before the law (will anyone believe him?) and instead considers the horror of exactly what he tells us. Not until the *end* of Ken's testimony – when the film shows Sarah running out of the bar for a second time during the film, half naked and bruised – do we again see Ken Joyce in the witness stand to be reminded that only his mediation and agency can conclusively conjure Sarah's rape for a just adjudication. In this way, Ken "transgress[es] the confines of that isolated stance [to] speak for others and to others. [He, as a] witness is but the vessel for the realization of testimony . . . the vehicle of an occurrence, a reality, a stance of a dimension beyond himself" (Felman & Laub, 1992, p. 3).

As a previously liminal and nearly invisible person, Sarah is only made visible (known and recognized) by the ritual of the courtroom and the corroboration of another person whose status was not nearly as troubled. Ironically, she does not bear witness to her rape before the law, but instead to the fact of her annihilation by it. Ken fulfills the role of legal witness. As a previously silent, cowardly observer with little will or agency, Ken becomes the vehicle through which Sarah, her rape and the crime of criminal solicitation are put before the law to be judged. The law as represented in *The Accused* shows how the struggle to be identified – to see and be seen – is only the beginning of the fulfillment of law's promise of justice. Seeing (being an observer) does not produce sufficient knowledge or meaning for law or film. Justice emerges from legal process (as social relations emerge from film) and through the combination of manifold perspectives that compete with and at times corroborate each other.

By the end of the trial, the film viewer might feel satisfied. Not only has Sarah won her case, despite her flaws, but also the audience has come to know the truth of the event that night at the Mill. We have seen Sarah's rape caused in substantial part by a crowd of men cheering on her attackers. We feel that we have come to know this as the truth, as a witness who could testify with certainty to our observation. Moreover, the viewer is the only subject who is privy to all the perspectives the film provides on the rape. The film's final form is the culmination of all of these perspectives. This "total" perspective is the testimony that wins the case for Sarah and Kathryn. It is the viewer-subject's complete perspective, therefore, that parallels a just resolution to the trial. At the same time as the film reckons with the inevitable partiality of knowledge on which film and law are made, the trial

film effect appears to be a viewer-subject who experiences transcendence and omniscience with regard to law's promise and film's capacity of revelation.

It is easy to forget, at this juncture, that the viewer-subject's perspective was the combination of so many different points of view, many skewed and naive, others fair but fragmented. It is easy to forget that the film viewer must be a world away, in front of the screen and not in the courtroom; the viewer understands the film's story to enact the witnessing of a crime, but also understands that one only ever bears witness to the formal features of the film. (The sight of Sarah raped on film is not the observation of the fact of her rape, but of the fact of film's representation of it.) Film's formal features do not have insignificant effects, however, particularly when they constitute the viewer-subject as self-conscious of both Sarah's contingent knowledge and her shifting identities in discourse. Bearing witness to the formal features of film means that the film's viewer-subject learns to critique the facets of our society that increasingly rely on the visual sense for knowledge and truth. We rely on our capacity to "bear witness" despite the proliferations of visual technologies that mediate presence and undermine the authenticity on which the force of first person observation is based.

4. BEYOND TRIAL FILMS

The satisfaction of watching Sarah's story be corroborated and of finally seeing the crime attested to is not the end of *The Accused*. The film does not leave the viewer-subject straddling the position as viewer to a film and as witness to trial strategies that demand cohesion and corroboration despite the many perspectives that give the law meaning. Instead, *The Accused*, like so many trial films, tries to close the gap between viewer and witness, tries to enhance the viewer-subject's satisfaction with the representation of law by reaching out of the screen to implicate the viewer in what seems like an act of witness that goes beyond film form to the event the film claims to represent. The finale of *The Accused* tries to recuperate the critique of film and of law by instilling in its viewer-subject a sense of autonomy and agency despite the contingencies of film form and the limitations of legal representation.²³

The film accomplishes this task at its conclusion by marking itself as something more than a film, something beyond representation, something more "real" and with the force of a legal verdict. It performs this feat by constituting the viewer-subject as a jury member, a jury member savvy enough to understand the contingencies of both the trial and the film genre and yet still believe in the possibility of moving beyond them to achieve

justice and recognize truth. The combination of the closing argument in Sarah's trial (that argues for critical spectatorship to distinguish witnesses from criminal solicitors) and the last few scenes of the film that provide statistical data about rape in the United States attempts this transgression.

The trial's closing arguments explain how a verdict in Sarah's favor depends not on her testimony as a witness to her own survival, but on the representation of her survival by a spectator. The filming of the defense's closing statement positions the viewer in the jury box as the attorney asks

Did Sarah name these other men? Could she describe these men? No. Her sworn testimony is nothing and you must treat it as nothing. The people's case depends on Ken Joyce. If you believe him, you'll convict. If you don't, you'll acquit. And I know you don't . . . We must ask ourselves 'Why did he testify?' . . . He testified to purge himself because he watched and did nothing.

Here, the defense attorney articulates the fear of spectatorship, the fear that all spectators (to the rape and to the film) are implicated in the violence of Sarah's rape. Are we guilty of inflicting violence on Sarah since we wanted to see her raped in order to fulfill our desire of seeing with our own eyes the disputed event of the film?²⁴ Did we thank Ken as he took the stand because in his act of witness he made us feel less guilty for our own act of voyeurism? Does this make us solicitors to the film, to the event the film portrays, and to the real world stereotypes and violence that the film perpetuates? Positioned like a juror, but spoken to like a perpetrator, the viewer here is threatened with guilt and alienation. We want there to be a difference between seeing a rape and shouldering the burden of having failed to do something about it.

Kathryn's closing argument appeases our concerns. She wins over the audience who are like jurors (judges both of the film and of the event the film portrays) by endowing the audience with the capacity to make critical distinctions between representations and reality (testimony and the event described, film and the event filmed). Kathryn looks directly at the camera (at the film audience) when she says, "[The defense attorney] Mr. Paulson has told you that Sarah Tobias' testimony is nothing. She was raped and that is nothing. She was beaten and that is nothing. It may be nothing to Mr. Paulson, but it is not *nothing* to Sarah Tobias." Here Kathryn reveals the defense's rhetoric as an attempt at erasing Sarah Tobias as a person because her words are irrelevant for the issue at trial. He is accused of perpetuating a patriarchal law that cannot account for women like Sarah. She does so by conflating Sarah's testimony – that she *said* she was raped and beaten – with her actual experience as a rape survivor – that she *was* raped

and beaten. It is *something* that Sarah testified: it is the signifier of her rape. Kathryn criticizes the defense for failing to understand that we are nothing without language and that Sarah's language, if we hear her, accounts for the truth of her circumstance. In filmic terms, Kathryn is suggesting to the film audience that all we know are the stories we see and hear and we must account for them as they make sense of us. By looking directly at the film audience (and also at the diegetic jury) at this moment, the film makes obvious its attempt to raise awareness of the implication of this critique on the role of the film viewers. The mediating frame of film is blurred here, as the boundary between representation and experience fade. How do we distinguish the real from the illusory if all we have is representation?

Kathryn proposes a solution. "[The defense attorney] tried to convince you that Ken was the only man in the room who knew Sarah Tobias was being raped. The only one?" Kathryn faces the film audience again. "Now you've seen Ken Joyce, does he seem a remarkably perceptive man? He told you he watched a rape and did nothing. That is not a crime. But [the defendants] did worse than nothing. They cheered and goaded and made sure she was raped and raped and raped." By asking if Ken was the only one who saw Sarah raped, Kathryn explicitly calls to the film viewers who, at this point, have also seen Sarah raped. We know the answer to Kathryn's question – "is he a remarkably perceptive man?" – is "no." He saw what we saw. Here, the film not only names its viewers as perceptive but incorporates the viewers' perception into the film's story and moral. Film viewers are used as evidence in the trial, isolated by Kathryn as "the others" who must also have seen Sarah raped. The viewers' experience of the film is made part of the script, part of the prosecution's evidence for why Sarah's testimony and experience are not "nothing" but instead represent a woman seen and heard by an audience and by the law, both of which are learning to critically evaluate what it means to see.²⁵ There is "just watching" and there is what Ken finally accomplished (and what the film audience is asked to do). "Just watching" means giving into the violence without reflecting on your role in it. Ken might feel guilty for watching, but the guilt at least signals that he is self-conscious of his relationship to the spectacle, that he has a relationship to the spectacle. The criminal solicitors did not so differentiate themselves. They had no awareness of their possible implication as spectators and as such considered the line between seeing and doing uncritically stable. Kathryn problematizes this line in her closing statement by articulating, first, the law's criminal distinction between seeing and doing, and then, the spectator's (or film audience's) control over that distinction. Made uncomfortable in our position as viewer (are we a witness or a solicitor?),

we seek to determine our role for ourselves. Kathryn's question forces us to ask whether we are like Ken or the defendants on trial. Are we capable of being self-conscious of our own relationship to the spectacle we see – the film, its referents, its story and its message?

The answer must be "yes" if we are to affect the justice we desire in this case. From the beginning, the film viewer is positioned by the film as implicated and sympathetic. At the film's climax, the viewer is put on the stand with Ken to corroborate Sarah's story, to help determine Ken's authoritative act of witness. At the trial's closing, the viewer is placed in the jury box to render a verdict, to see that justice is done. But this is not all. When the screen goes black signaling an end to the film, the film does not end, but instead posts the following message: "Every forty-five minutes a woman is raped in the United States. One of every four victims is attacked by two or more assailants." Here, finally, the film audience is asked to assert itself beyond the boundaries of the filmic discourse, beyond the story of Sarah and Ken. This frame is part of the film, and yet it is not diegetic; it is not part of the fictional representation. This statistical fact finalizes the film's call to responsible spectatorship, to craft witnesses (critical viewers) who will self-consciously consider the implications of their position with respect to the representation before them. This statistical fact names the diegetic event of the film a rape, as similar events beyond the film have also been rapes. This statistical fact beyond the film's story calls on the film viewers to make sense of a fact in light of a fictionalized film, to make the connection between reality and representation. Failure to connect them results in ambivalence to the violence we saw on screen. Completely conflating fact with fiction results in blindness to the representational frames that make possible our vision (or our identity, or our knowledge or our experience) in the first place. Critical spectatorship requires striking the balance between taking the difference for granted and ignoring the mutual constitution of reality and representation, discourse and identity.

The criticism enacted by the film and as constituted in its final effect – a viewer-subject of the trial film – recuperates the subject of law (Sarah, Ken, Kathryn and the film viewer) from within the discourses we all inhabit. By calling to the viewer to bear witness to the fact of a rape like Sarah's in the world beyond film, *The Accused* reinforces the ideal act of witnessing by a subject of law and film who claims to transcend the mediated frameworks of both. This ideal witness fits the paradigm of the 19th century liberal legal subject who claims autonomy and agency in the face of constitutive social forces, such as law and film. The end-effect of the film is a viewer-subject whose fervor for justice compels an accounting for the abuse of all women

(not only of Sarah). This accounting reinforces the expressive individualism of each liberal legal subject who claims to be indispensable to law's promise of justice while simultaneously independent of law's manipulative reach. The end of *The Accused* transforms the film viewer into a viewer-subject, from a spectator who recognizes a lack of control over the way he sees others and is seen by them to an agent who feels sufficiently free from the filmic and legal discourses (because of his critical engagement with both) to affect change within or despite them.

This is one way to explain how the genre of the trial film constitutes a critical subject whose critique of film and of law is part of their regulating practice instead of their waning influence. By bearing the contingencies of film form and legal authority, the trial film genre incorporates into its meaning making the self-conscious viewer-subject who claims to know the difference between the filmic event and the event of film, the perception of law's authority and the limits of law's promise of justice. Self-reflective film form and legal processes critique the totalizing discourses of law and film and thus enable the viewer-subject to assert his knowledge and demand more justice. This demand for more understanding through film and law recuperates the film's power of illusion and elongates the reach of law's organizing force. The film concludes by constituting a viewer-subject who believes in the power of film to assert important facts about the world and in the promise of law to justly adjudicate conflict. Despite never having been to the Mill or witnessed the crime, the film inscribes a belief in the viewer-subject that we have accounted for Sarah's victimization as a signifier of the victimization of other women like her. Despite never having sat as a juror, the viewer-subject of *The Accused* has learned to rely on and have faith in our refined judgment of legal and filmic practices in order to affect justice.

NOTES

1. *The Accused* is based on a true story of the gang rape of Cheryl Araujo in 1983 in New Bedford, Massachusetts. That crime resulted in the conviction of four of the six defendants. There are numerous differences between the film and the historic trial, which is beyond the scope of this chapter. For more on the trial, see Bumiller (1990). For a comparison of the trial and the film, see Silbey (1999).
2. Throughout this chapter, I will slip between the use of "the viewer" or the "viewer-subject," where appropriate, and the pronoun "we" or "our." This is a deliberate way to describe how the viewer and viewer-subject are necessarily also the individuals who watch the films - us, the audience. The viewer comes to the film,

precedes it, and the viewer-subject is produced by the film, endures after it. Both are embodied by the audience at different times.

3. The liberal legal subject sustains the ideology of liberal legalism: an understanding that law's recursive structure sustains its authority and power, but also an insistence on the possibility of (as the liberal legal subject claims to embody an example of) individual resistance and agency despite the law's engulfing presence. The viewer-subject of trial films, as constituted by the discursive strategies of film and law, is encouraged to expect justice through law by virtue of his unique contribution to the system (the filmic system of meaning the legal system of justice), and yet also to insist that justice as an ideal can reside apart from the law's institutionalized processes.

4. In the volume of essays on film entitled *Viewing Positions*, Linda Williams's introduction explains: "The singular, unitary spectator of what I will, for purposes of abbreviation, call gaze theory has gradually been challenged by diverse viewing positions. Whereas 1970s and 1980s film theory tended to posit ... a unitary way of seeing, contemporary discussions of spectatorship emphasize the plurality and paradoxes of many different, historically distinct viewing positions" (Williams, 1994, p. 3). This responds to Jean-Louis Baudry's western transcendent male subject as construed by the cinematic apparatus and is relevant to law and film studies insofar as it challenges the authority brought to the act of seeing (witnessing) in the first place – who is constructed in and through the film as being able to see and testify to their observations (Baudry, 1992).

5. Beyond this film, I have elsewhere said that this is the "trial film effect" more generally (Silbey, 2001).

6. The violence of spectatorship is a common critique of gendered power (Bumiller, 1990, 1997).

7. Christian Metz describes this viewer position as straddling two poles: "I know these events have been rehearsed and recorded, but I will watch them as if they are happening here in front of me" (Lucia, 2006, p. 181).

8. "As he emerges from the phone book, it is through his point of view that we see Sarah dodging cars on the busy, rain-soaked street, just before a truck slows down to pick her up. Her fear is presented in long shot as spectacle; his distress is presented in close-up as suffering" (Lucia, 2006, p. 177).

9. While the phrase "combing for evidence" seems harsh, these are the words the nurse uses. "I'm combing for hair ... Not yours, theirs ... for evidence."

10. Bumiller writes about the New Bedford case and the construction of the rape survivor by the media and the legal rhetoric at trial. The problem of credibility is pervasive in rape cases, as Bumiller confirms. "Given the focus on [the rape survivor's] innocence, the task was to convince the court of her capability to be cognizant of and explain all that had happened to her. This meant she had to draw a line in her description of her own emotional distress that preserved the credibility of her statements. When subjected to an extensive cross-examination that disputed the version of the facts she gave immediately after the rape, she defended her ability to perceive and report events in a state of mind that was (in her words) *near* hysterical and *slightly* confused" (Bumiller, 1990, p. 133).

11. As Jean-Francois Lyotard (1988, p. 98) has written: "One may make law and submit to it, but not 'in some place' that is, not in the same phrase. In effect, another

phrase (a normative one, the referent and the witness) is needed to legitimate the prescriptive phrase. From this duality alone a suspicion is already born about the identity between one who speaks the law and one to whom it applies."

12. Sarah's conflict is between her desire to be seen and the law's (or film's) visual capacity (which is inevitably partial) to see and identify. As Hayden White (1987, p. 12) writes: "The reality which lends itself to narrative representation is the conflict between desire on the one side, and the law, on the other. Where there is no rule of law, there can be neither a subject nor the kind of event which lends itself to narrative representation."

13. As Bumiller has written about the New Bedford Case and the legal rhetoric employed by the attorneys, "As actors in these roles they live with the dilemma that no language is able to express all aspects of truth – yet all language carries the force and power of the word – and these words that may be employed to condone violence against women carry the force of law" (Bumiller, 1990, p. 131).

14. The absence of the film camera in the mirror might be remarkable to those viewers already attuned to the play of the visible and vision-creating theme of the film. Who or what is enabling our vision at this moment if not a film camera? The omniscient nature of this scene furthers its importance both thematically and formally in the narrative arc of the film.

15. "For the first time – and this is the effect of . . . film – man has to operate with his whole living person, yet foregoing its aura. For its aura is tied to his presence; there can be no replica of that" (Benjamin, 1968, p. 229).

16. "The symbolic power of the law is projected through linguistic attributions concerning the character and motives of defendants, victims, and legal professionals. Because dominant modes of constituting the self (as a woman, criminal, or victim, for example) are maintained through the conventions of legal language, symbolic trials are moments when the rejection of those categories may come about through resistance to legal discourse" (Bumiller, 1990, p. 126).

17. The license plate is important for unmasking the assumptions about Sarah. SXY SADIE does not refer to Sarah, as one might think from her initial characterization by the film. Sadie is the name of her dog. That her dog and her person would be confused and memorialized on her bright red car, which car is destroyed in a pivotal scene in the film, evidences the transformation Sarah undergoes in order to bear witness to her own victimization.

18. When Bob implores Ken not to testify in the criminal solicitation case, he says "Ken, I'm not in [jail] for rape. You didn't see me rape her, did you?" Ken replies, almost apologetically, "Yes, I did Bob."

19. Felman and Laub write that responsibility is about responses, about identifying and articulating a relationship with another as much as it is also "a recognition of the self." (Felman & Laub, 1992, p. 233). "To address another is to appeal to a community" (*ibid.*, p. 55).

20. As Elizabeth Cowie writes from the film spectator's perspective: "I know very well this is only a story, but all the same it is real" (Lucia, 2006, p. 181, citing Cowie, 1997, p. 10).

21. "Those who come before the law in a trial come not as law's authors but as its subjects. They are partial . . . In all cases, they are constructed as individuals, separate from the collective and the law – dependent on the first and subject to

the second ... As citizens are transformed from a collective author to individual subjects, the meaning of speech is inverted as well ... Speech, once the medium of authority, becomes the medium of subjection. Rights once secured by speaking for oneself are here secured by having another speak on one's behalf" (Norton, 1993, p. 151).

22. "In this respect, *The Accused* falls in line with so many other female lawyer films. At the same time as it attacks the gendered politics of the look and of desire – an attack extending fully to the legal system – the film also supports the power of the male voice and look as the singular source of truth and justice. Through his testimony, Joyce has power to restore the proper functioning of the legal system. His articulating what he has witnessed is granted potency, not only by the legal system but also by the film's narrative system, as Clover points out when observing that the rape can be shown in flashback only when he testifies" (Lucia, 2006, p. 179).

23. Some might say the film has already accomplished this critique by aligning the film viewer with Ken Joyce, and in this way promoting male dominance and vision as attributes of justice (Lucia, 2006, pp. 180, 182). I agree with this, except the film's further critique of gender relations as an antidote to patriarchy also rings true. "Like Joyce and the film viewer, the legal system itself seems caught between wanting to maintain the gendered power relations of the look and needing to reexamine the underlying assumptions within those power relations" (*Ibid.* at 181). This is a persuasive parallel to the critical position I claim for the liberal legal subject who wants to have it both ways: recognizes the constitutive power of law (and film) and claims autonomy despite its influence.

24. "As a spectator-turned-witness who watches the crime yet fails to intervene directly, Joyce functions simultaneously to implicate and to validate the gaze of the film spectator. Through his call to the police and his testimony before a court of law, both the film and the law elevate Joyce from passive and voyeuristic to active and ethical" (Lucia, 2006, p. 176).

25. In addition, it is easy to recognize the brutality of Sarah's experience since it is hard not to wince and squirm when she is being raped. Not only do we see and hear Sarah scream, but we are uncomfortable from her pain. The representation of Sarah's pain thus transgresses its fictional boundary and moves us.

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