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**Day 2 | 19th December 2019 | Jan Sunawayi / People`s Court – Testimonials as
Documentary Practice | Zuleikha Chaudhari | Sameena Dalwai | Arvind Narrain |
Moderator: Soumyabrata Choudhury**

Soumyabrata Choudhury: - Yesterday, which was such a great day, at night, when I went to my room and I switched on the TV for my sort of daily fix of television news, I was immediately confronted with something extraordinary, which was Ravish Kumar's program on NDTV with around seven or eight women students from Jamia Millia Islamia, who were basically talking about what happened to them, when the police beat them up, on one of the demonstrations that took place recently. So, it was in a television studio, eight or nine students, not all of them from the minority community, but most of them, but some, also from the majority community of Hindu women students, speaking about what happened to them, which really made me think that there are two things going on here. One is something extremely factual, which is on a particular date at a particular time in a particular site of the capital city of the country: what happened? What really happened in all the versions, and all the evidences that have been proffered through the media, because the court has not taken up anything else yet. And the other thing that also struck me as a question, because they were speaking right then and there, is: what is happening? So two questions: what happened? In the sense of something factual to be forensically investigated. But also, in so far as the very protagonists of an event are speaking here and now, the second question is: what is happening? So both the event, and its consequences as the event continues through our lives, which it is, at this moment that I speak. Since, just before you all started this, we were, you know, listening to news coming from Bangalore, from Delhi, people are getting arrested and so on and so forth. So anyway, the reason I'm saying all this, all this belongs evidently to some sort of form of speech and form of representation, form of performance, if you will, which could be called in a very general sense, and immediately we change the register from the English language to an Indian language: *Jan Sunawayi*. So I have great pleasure in welcoming all of you to this panel on *Jan Sunawayi* and testimonial practices in the theater. And the three panelists who are going to speak today are: Arvind Narrain, who is from the Alternative Law Forum in Bangalore and who's been a founding member of it; Sameena Dalwai, who's work we have already seen yesterday and who is also from the legal studies, but also from the theater, and has written a book as we know, on the ban of bar dances; and then Zuleikha Choudhury, who's a scenographer and a lighting designer and a director from Delhi, whose work I've been fortunate to have seen. So, we will go in that order. I will dispense with any further introductions, the best introduction is to hear the people. So with these initial remarks, I would like to invite Arvind to make his presentation, for 15 minutes if that's all right.

Arvind Narrain: - Thank you, Shomo [Soumyabrata Choudhury]. I come from a slightly different background, so I wasn't quite sure if what I'd have to say would resonate with all of you over here. Coming from the tradition of thinking about the law, what is the idea of a

people's court, or as Shomo put it, the *Jan Sunawayi*? Why does a people's court become relevant or why does it become necessary? And, I think the simple point really is that a people's court only becomes relevant or necessary when there's a continuing state of injustice, impunity, which is allowed to function by the state. And this is something which is an experience, not just in the Indian context. But, really, globally. If you look at it in a global sense, the origin point of a people's court, I think, will really come from the Russell Tribunals on atrocities in Vietnam. What the United States did in terms of committing the crime of aggression, committing the crime of genocide, committing war crimes against the Vietnamese people were never a serious subject for determination by the tribunals at the international level. It's in that context that Russell at the time established the people's tribunal on Vietnam, in which the United States was tried for these particular crimes. From the idea of the Russell Tribunal, emerged the idea of, what came to be called, the Permanent People's Tribunal. And I think, it's worth looking at their website and seeing the range of issues, which affected the world in terms of the issues of global injustice, for which the answer has been the attempt of a people's tribunal.

The issues ranged from the violation of the rights of the Kurdish people to socio-economic violations, to the rights of migrants to a whole range of other issues. The latest tribunal was really on the issue of what's called fracking, or unorthodox means of extracting oil and natural gas. Why have a people's tribunal? You have a people's tribunal in terms of the mandate of the Permanent People's Tribunal: One is to provide a level of visibility and the right to speak of the rights of people exposed to severe human rights violations. Second could be, it's an instrument of what do you call explication or verification of the existence, severity and the kinds of violations, which have happened. And finally, it also aims at filling those gaps in international law at a normative level: how do you conceptualize the kinds of violations which have happened? I want to refer to the issue of fracking, more in the context of the last point, which is about the explication of the gaps in international law. Of course I mean, if you read the report, you get a very powerful sense of how the range of health and environmental rights of people are affected by fracking. For example, to just give you one fact from the report: During the process of fracking over 240 chemicals are released, and 157, or 65% of them are endocrine disrupting chemicals, which are associated with developmental problems in infants, and the other 83 chemicals, there's apparently no data, whatsoever. And yet the process of fracking continues without any kind of a legal stop to it. But the point the tribunal makes is an important point in terms of the issue of normative development. We talk about crimes against humanity, like genocide, war crimes, aggression, etc. But, you don't have a conceptualization of what happens when nature itself is targeted. So the point the tribunal moves towards, is asking that: Can we look at the idea of crimes against mother earth or to crimes against nature? Can rivers, can mountains be petitioners in terms of protecting their right to integrity? So it looks at the crime of ecocide or it evaluates how much a crime is different when humans are the subject matter of this particular crime.

I'll just leave with that and say that's one dimension of environmental crimes, which obviously, we need to think of in the Indian context as well. But, when we come to the Indian context, of course, there are so many issues we can speak about, but I'll speak about one dimension of rights violation, which is what we would call the issue of a mass crime. When we refer to a mass crime, one means a state of impunity, in which the state allows or facilitates crimes, ordinary criminal crimes, of say, murder or rape or destruction of property

to happen on a mass scale. And again, when we say mass crimes, the important point to acknowledge is, it's impossible for a mass crime to happen without the level of state complicity or state facilitation of these crimes. And for the Indian context, I think again, we just saw yesterday's presentation of *December 1992*, the crimes could be based on the grounds of cast, could be on the base of ethnicity, it could be on the basis of religion. I want to refer briefly to the issue of crimes, on the grounds of religion.

We're familiar with it in India, starting from partition downwards, we have the '83 Nelly massacre, '84, the Delhi pogrom. We have 1992 the Babri Masjid pogrom, 2002 Gujarat. And the important point to make is in most of these cases, apart from few cases in Gujarat, there's been no conviction for any crime committed in the course of these literally mass crimes. Part of the gap might be normative, in the sense that Indian penal code does not conceptualize the idea of the crime against the collectivity. That's one kind of a gap, but I think that's only one kind of a gap. The larger gap, of course, is the failure of the Indian state to move, to try and ensure conviction, for even the ordinary crimes, of murder or rape or criminal conspiracy to commit these crimes. I want to refer to the 84 riots. Again, I would say that we'd be very careful in the language we use and "riots" is not a language one uses. Paul R. Brass has a very interesting distinction where he talks about riots and pogroms, and he says, riots might be when two communities are in conflict with each other. In India, what we have a history of since 1983 onwards, are pogroms: when you have the targeting, the intentional targeting of a particular grouping on grounds of religion or on grounds of caste, with the facilitation of the state allowing it to really happen. By turning our attention towards the 1984 report of the People's Union for Civil Liberties (PUCL) and the People's Union for Democratic Rights (PUDR), we're getting to the issue of people's testimony, to the issue of people's court now. Their important report came to the finding that if you look at the way the entire thing has unfolded, it is quite clear, that it happened with direct complicity from the very top. These crimes, this crime of the intentional attempt to eliminate an entire grouping in Delhi, based on religion, would not have happened without the complicity of the state. If you read the report you get a sense of a different truth from the truth which was put forward. And of course, we have the famous statement by Rajiv Gandhi at that time, who said that if a big tree falls, the earth will shake. That was his understanding of why the Delhi pogrom happened. The PUCL and the PUDR report in painstaking detail shows you the level of complicity, and the level of state involvement in this particular crime-- and again, why we want to talk about this? Because it's a mode of remembering what is often been forgotten. You want to remember what happened in 84. In a very similar sense we can talk about 2002 Gujarat. 2002 Gujarat again is in the foreground or comes to light, only because of the fact that the Nanavati Mehta report has just come out. And again, if you look at the range of fact finding reports you get a sense of the truth of what actually happened during these crimes as it were.

Maybe one historical point, I will make in terms of the entire issue of fact finding, what is the history of fact finding in the Indian context? It does not really trace back to the Permanent People's Tribunal or the Russell Tribunal, it traces back to a man called Mahatma Gandhi in post Jallianwala Bagh. Again, in my estimation, perhaps one of the best fact finding reports ever written was authored by Gandhi on behalf of the All India Congress committee. And why it is one of the best reports is because the Jallianwala Bagh massacre happens and in the context of the massacre, the British set up the Hunter Commission, which Gandhi says is a completely biased and unfair commission. We will not appear before it, we will do our own

fact finding. And he does, they do their own fact finding post Jallianwala Bagh. And two points which the report does, which are really, which are very, very important. Firstly, the report makes the point that the massacre is really an outcome of a conscious British colonial policy over many years: the way in which the British have increased the pressure among the Indians and General Dyer's final firing was only a logical culmination of British colonial policy. So what he disputes or disproves, is the idea which is put forward by Winston Churchill, which is the idea, there is couple of bad apples. You know, a couple of bad guys, General Dyer is a bad guy, he did it. Gandhi's viewpoint is: no, that's not the case! It's a case of a conscious evolution of British policy, which has resulted in this particular massacre. The second thing Gandhi does, which is very, very important is: he coins the terminology of crimes against humanity. Before Nuremberg, he calls what happens in Jallianwala Bagh as a crime against humanity. So in the sense, if you're looking at the entire issue of fact finding, or taking forward the people's truth about what happens, we really have to go back in a sense to Gandhi. Again, the issue of people's truth is an important one, because who are the people and what truth do they speak? That's a very, very important question. And again, here, the Gandhi report is important, because what he also does in the course of the report, is to pull up the kind of violations to happen on the British by the Indians. When you're talking about a people's truth, you could also be speaking the truth against the people. And I think that's the important kind of a moral dimension, ethical dimension, which Gandhi brings to a fact finding report. In a sense, we are all inheritors of that tradition of speaking, of putting forward a truth which is different from the truth of the state in the colonial era, and the truth which is different from the truth of the state in the post-colonial era. And I think, I want to refer to one report in the contemporary era. When we talk about a people's court or people's tribunal, it's not only about the past, it's also about the present, and that's an important point we also need to keep in mind.

Very recently, we're all aware of what happened in Kashmir, in terms of the revocation of Article 370 and Article 35 A, and the imposition of a total communication blockade on the entire state and its people. A group from across the country went there for creating a fact finding report, it's called *Imprisoned Resistance. Fifth August and its Aftermath*. I have a couple of copies of this, people who want to read it-- I'm more than happy to share this with people. But the important point the report makes is, that it says, that this report is written as an act of solidarity with the people in Kashmir and its meant to bring out facts which might not be generally available in the media, in the media blackout which has happened. And among the couple of the points the report makes, is the one that when you're talking about a communication blockade, a communication blockade which is so overwhelming that people have no access to any forms of communication, and particularly the internet, what happens is you're not just impairing a people's right to receive information. You are also intervening into their social rights, economic rights and a whole range of rights which are now dependent upon your online access as it were. And the question one really needs to ask, the legal question one really needs to ask is: is this within the frame of international law? Does it fit the framework of necessity and proportionality? Surely, whatever your problem might be, there must be a proportionate response. How do you impose a communication blockade in an entire state for over three months? And that's a question which we really need to ask ourselves-- and again the idea of a people's truth.

A people's truth is not necessarily the issue of majority opinion, but the truth which is in conformity with the ideals either of international human rights law or the ideals of the

Constitution. What allows for the state to produce this kind of violation on an entire people? That's a question which we really need to ask ourselves. In a sense, when we are referring to the issue of a human rights report, or people's truth, or the people's testimony. I think what is also important: How do you in a sense recover the voices of hope in some way? How do you find a space which is between reckless optimism and reckless despair? We can't completely give up hope. Documentation of violation, the people's truth can't be about narratives of abject horror, which it is. There are stories of horrific violence that you encounter while reading the Kashmir report. I read it. But some parts of it were almost disturbing for me. There was the fact that you had children as young as 11 or 12, who've been arrested or picked up by the Indian military. And again, some of the truths which emerge through the report is its shocking testimony of sexual violation, even on young boys by the Indian military. I think these are larger questions than the question of autonomy and self-determination which can be debated, but then these are what you would call non-negotiable elements of human rights law. Torture is unacceptable under all circumstances. The issue of sexual violence is unacceptable under all circumstances. And surely, as Indians living in mainland India, we have, we should demand from the government an accountability for these kinds of actions which are not acceptable. You might have a different opinion on the question of 370. But surely, we can't have a different opinion on the question of human rights violation. I want to get back to another report on Kashmir a last time.

It's by the Indian International People's Tribunal for human rights. Again, it's a report which has to be read. It begins by saying that the landscape in Kashmir is of 70,000 deaths, 8000 disappearances, 6000 unknown and unmarked graves, and in that context, they are asking the question of who the perpetrators are? Again, taking us back to the idea of a people's tribunal, where the issue being is not about a violation, which happens in a generalized sense, but rather about a violation for which we can and should pin individual responsibility. So the report points out to, I think, over 400 officers of the Indian Army who are responsible for these forms of violation. And in the middle of this, again, we're getting, I'm sorry, I'm jumping a little bit, I want to get back to the entire question of hope, which I would really end on, and there is in this a report of really horror, and violation and torture, which really makes a very gruesome, gruesome reading. There's one story there which I really want to bring to your attention.

It's a story of disappearances committed on four men from outside the Kashmir valley who were in the Kashmir valley at that time and were encountered by the army. And again, as things would go, we'd not have heard too much about this, we had no knowledge about this whatsoever. But what seems to have happened is one of the wives of one of the men who was encountered, received a letter in Hindi from someone, which basically narrated in great detail as to how the four men were killed, and who were the army officers behind the killing of them and it was signed anonymously, saying, "*apka sainik insaniyat ka pujari*" (your soldier, worshipper of humanity). And what seems to emerge is that someone obviously was a witness to the killing and burial of the four. Someone had picked up those identity cards, found an address as well as found the courage to write the letter. And finally the family members of the missing men arrived in the police station. And they filed, they temporarily filed the FIR, and a subsequent code of inquiry was committed by the army, in which one of the captains who was at the scene of the crime, Captain Sumit Kohli, was also a witness. And he was a young officer who was previously awarded a Shaurya Chakra, which is a prestigious medal for gallantry, for his courage in fighting, what are called, anti-national elements. Five

weeks later after he was put on the board to testimony, the captain was found dead, shot in the head with an AK- 47. A self-inflicted wound, the army said, hinting that he was depressed; suicide they said, but he was only 26 years old. And Sanjay Kak's conclusion to this very, very moving story. He says, "Captain Kohli's father had a cerebral hemorrhage on hearing the news and died a few days later to be cremated only a day after his son, that left behind a grieving mother and pregnant wife. And for many years the two women bravely campaigned to clear the air. They were convinced that their Sumit was no quitter, and that he had been killed for daring to lift the lid on the killing of the four civilians." This footnote to case 185 is about the young soldier who worshiped humanity, *Insaniyat ka Pujari*, who's the one exception to cross the line to become a possible witness and maybe a whistle blower. He was truly a *Shaheed*, both witness and martyr.

For me, it's very, very difficult to think of the question of trial without going back to Hannah Arendt's *Eichmann in Jerusalem*, which exemplifies that form of truth, that courage, where she's able to speak the truth to the Jewish community, and speaks the truth about what actually happened from her perspective. But in the course of the entire book, the one point I really want to pick up is the story of this German soldier called Anton Schmid, who is the one who forged the papers for the Jews and helped some of them to escape. The Germans found out and he was sentenced to death by the Germans in short, immediately after that and what Arendt says about him, is exactly which I want to read out to you. She says, "During the trial, when Schmid's story was narrated, a hush settled over the courtroom, it was as though the crowd has spontaneously decided to observe the usual two minutes of silence in honor of the man named Anton Schmid and in those two minutes, which were like a sudden burst of light in the middle of impenetrable unfathomable darkness, a single thought stood out clearly. You refuse to believe beyond question, how utterly different everything would be today in this courtroom in Israel, in Germany, in all of Europe, and perhaps in all countries of the world, if only more such stories could have been told." And really mine telling you the story of Sumit is really a question of how many more such stories can be told. And I think in India, there are many more stories like that which can be told and we began with one such story and the many more such stories which can be told. I'll just end with what Arendt finally concludes in this book. She says, "Hence nothing will ever be practically useless, at least not in the long run. But the lesson of such stories is simple and within everyone's grasp. Politically speaking, it is that under conditions of terror, most people will comply. But some people will not, just with the lesson of the countries to which the final solution was proposed, is that it could happen in most places, but not happen everywhere. Humanly speaking, no more is required, no more can reasonably be asked for this planet to remain a place fit for human habitation."

Sameena Dalwai: So we decided to go by this order: that the lawyer begins, a lawyer trying to be a theater person goes in the middle, and then the theater person. So what we were supposed to do with performativity, etc., comes at the end. So, I am going to actually raise some pesky questions, especially after that highly impressive presentation of how people's tribunals or people's truth is important. So the whole idea of *Jan Sunawayi* or people's court comes to hold vitality, because justice must be seen to be done. So what happens in the court is two men are sitting there and you expect them to play legal gods and that some kind of truth or justice is delivered. Yet we believe that justice is not delivered there. And so we go to the streets to people and ask them to create testimonials. So this then has a good and a bad people's court kind of thing. And I hope you will take this in the spirit that Anuj

Bhuwania has written about Public Interest Litigations (PIL), right? So that kind of thing where the holy grail also can be actually punctured. In some ways to make *khap panchayat* is very much the people's court, where people come together to decide on something. Now, how they decide and which way the decision may go, remains entirely on the *khap panchayat* or how it is formed, what kind of *panchayat* the *khap* forms. Shiv Sena courts in Bombay, the Mahila courts in Bombay, are very much an example of a people's court, where wives who are facing domestic violence go to Shiv Sena Shakhas. And there are courts, *mahilas*, women sitting there who are corporates, who are the local leaders, and then they call the husband's family. They threaten and intimidate him and the family and say, if you do this again, we will come, all these women will come to your home and will beat you up. Will this work? Or does this work? Yes, it does. In many ways, the court of the Shiv Sena women works more for the woman who's facing violence at home. But the women carry on the patriarchal notions of what a good woman at home should be. So they say, what is the problem? Why you beating up this? So all those things that bad women do, this good woman is not really doing, then why are you beating her up? Then your job is to earn the money, be a good husband, you know, all of that. Buy *gajra* for your wife! These kinds of things are said there. So whatever, I mean all kinds of random things that are said to this man, as advice from the people's court. Women's court is very much perpetuation of patriarchy. Yet, the violence may stop for the woman.

In the same zone, you actually see the Hyderabad rape and murder, not the rape and murder of the woman but the murder of four men by the police. So, it is in the same way, when the National Human Rights Commission came to inquire into the murders of these four men who are uneducated. The victim's father, the raped girl's father asked where were these NHRC people when my child was suffering, and all of our reaction is obviously, we are all pained by his pain. But then, one is wondering what kind of *Jan Sunawayi* is going on here, that actually it was the police that failed the girl. They should have been there. Her phone call went from this police station to that police station and they would not respond to a phone call of a girl in distress. And then the police in their capacity to actually not be a protector but to be a punisher takes these boys to re-enact the scene of crime. Re-enactment of the scene of crime is again a very interesting concept in law everywhere. Pratiksha Baxi's book, this huge book, called *Public Secrets of Law* speaks of how everyday rape trials actually make the woman come to court and re-enact her trial. So they say, this is the bench, lie on this and show us what happened. So now, most rapes happened in similar ways. What is there to see? It is a power game, it is sexual game? Whatever, now in this game the woman, in Pratiksha's words, is playing. It is a theater of pornography. Court becomes a theater of pornography in which the survivor woman is playing her part as an actor in that pornography. So this re-enactment what these boys were doing in the middle of the jungle at three o'clock in the morning with these policemen- I wonder what were they supposed to do? Re-enactment of this scene? Nobody asked this question. People are asking why they were taken in the middle of the night. And obviously they were killed and nobody tries to run from the police at four o'clock, I mean all of that. But what is this? What is this law that makes us re-enact the scenes? So all of this then is actually the People's Court. And then, where is our court? In all of this? In the Babri Masjid judgment? It was... Was it a court or what was it? To me, it was actually the people's court. It was a *Jan Sunawayi*, while the *jan* were not sitting in the court in Delhi in Supreme Court. But the majority *jan* of India were present by being absent in that Supreme Court when they were discussing Ram as an entity. And history should not be spoken of, but people's sentiments must be taken into account.

What was the Supreme Court doing? It was actually the people's court. So I'm basically trying to get to all the parallel sides of these people's courts that Arvind has cited.

He talked about all the positive possibilities of bringing people's truth in people's court. But I have seen several of these negative possibilities of a people's court. Latest being the Babri Masjid judgment in which actually the Supreme Court is acting as a *Jan Sunawayi* or as the people's court. And I mean, it could be hilarious in better circumstances. But if we were to actually go back to where this comes from. You started with the Nuremberg trials. But when I was thinking of *Jan Sunawayi*, I go back to the thought of Islamic law, which comes much before this whole Western liberal idea of secular law. And in Islamic law, there was very much this concept of democratic creation of law. So there are sources of Islamic law, obviously Quran, Hadith, Prophet, Sunna et cetera. All of that comes first, but then comes an idea of Qiyas, which is analogy. If the Quran doesn't give you answers to your questions then where do you go? So you are an intelligent person you think and you do analogy, that is "Qiyas". Then there is a thing called Ijma, which is jurists will come together to address an issue and they will have a consensus. The best to me is a concept called "Ijtihad", which was that my community will come together and agree on something. But the community grew so fast and went to so many places that the whole idea of community then became quite diluted, and anyway, the clerics and orthodoxy by the 11th century, basically close the doors of Ijtihad for Islamic law. And so we don't have the concept of Ijtihad anymore, where the whole community will come together- but at least the Jurists. So basically the concept of Ijtihad is that a whole community could have been a *khap*: a *khap* in a good way, but also in a bad way. So, you could see that in both ways: you would actually decide to stone a woman for adultery, but you could also decide to settle land disputes in amicable and justifiable ways. So, you could do both in Ijtihad. Similarly, in Ijma, there is a concept of many jurists coming together on some question of law and justice. So all of this is there. And then there are interesting concepts here. There is a concept of blood money, that many of us know as *the* Arabic thing: if you kill my brother, then I will seek somebody from your family or your clan, and you either send someone to me in full faith (so either I kill him or I adopt him), or I come with my whole clan (and then there can be far more deaths). So these are concepts that actually liberal law does not take as progressive anymore, not even justice oriented anymore. But I find a lot of interesting things in these concepts to go back to this. Including the concept of pardon and "mafi," where in this kind of a thing, if a child is killed in my family, then you could come and beg on your knees and say forgive me and I can give mafi and that still happens in Pakistan. So either there is blood money, or there is mafi. We had a film, called *Dor* in Hindi cinema, where there was this concept of mafi illustrated, when that girl comes from Arabia and she realizes that she could seek a mafinama, like a pardon letter from the wife and that would let her husband off, who's accused of murder of this man. And I find all of this are quite interesting ideas that are not thought through by legal scholars, because our whole thinking process is constantly in the orbit of liberal secular law. And all of this is almost like hidden law to us. And we don't really think of it. As if there was no possibility of playing with justice in this.

That takes me to the idea of Truth and Reconciliation, the people's tribunals again, referring back to Professor Bharucha's thing of South Africa. And what happened there? So, there are two things there. There is truth. And there is reconciliation. South Africa tried to do reconciliation a lot by telling the truth in front of a people. And I come and accuse you of something and you come and you cry and you say, I'm sorry, I did this. I took your house. I

did whatever. And then people cry, people have a cathartic moment and they can move on. I used to think it's such a silly idea: What do they get out of this? These guys should be hung or they should be flogged in front of these people. If I'm saying I did something, then I should be beaten up. What is this? I come there and I cry, and then I am forgiven. How will this work? But when Gujarat happened in 2002, and it's still happening in my head, and then I think of those women who are still living in those villages, who have to face their rapists and the murderers of their husbands or children in the same villages. Would this kind of exercise have helped them? Possibly it would have if those guys come in front of a whole conglomeration of people and say, we did this and please forgive us. And they came with bent heads and it would help in some ways. There would be a possibility of moving ahead in time that people have not yet found, because there is no acceptance of this truth. So there is a truth that everyone knows, but there is no reconciliation of the truth. And because that has not happened, people have not been able to actually move on with dignity. So for their lives, for survival, and for dignity actually, I'm creating a people's court there. But I'm talking about a people's court that's actually different than what we had in terms of when I was actually part of these people's tribunals. I used to work with HRL, Human Rights Law network, and I used to go as a 22 year old idealist lawyer person into these places.

And so I went to Orissa and there was a people's court and we roamed around everywhere, we met people. It's the same place where Graham Staines was killed with his two young sons and we were going there the next year. So we are thinking, we are doing such a great job. I'm also 22 and then there comes suddenly the group of people who are the relatives of these people who would have killed the man. And they enter, and the first thing they say is, what are you guys doing? Take the tape recorders, we will parade you naked! So I'm like, wow. So quickly they do this. They don't even say something in between. In my head there should have been some kind of a build up to parading naked. But no, the first thing they say is, we will parade you naked. So it's not even threatening. I mean, what is this nonsense? So then what do you do? It's not even something where you can actually hold a court. The court that does Babri Masjid judgment is sitting nicely there in Supreme Court building, AC rooms, whereas we're sitting in Orissa trying to get the truth out of people, of these murders that are happening. The court would not run, so then that meant that a people's court has no jurisdiction, or no power to really do anything. We all know the truth. We know. I mean, I can imagine what is in that Kashmir report, I can imagine much worse than what is written there. What will it do? How will it change the situation there? Or, how will it help me to know how particularly people were tortured? That remains the question all the time, I already don't sleep well. I am going to get worse sleep. How will that actually help, unless people are held accountable through this process? So what happens to all this truth that we gather? What do we do with it? How will it actually come forth to where people are? So I have both questions. I'm very sorry to actually sound very confused. I am confused. So, but both questions I have: what do we do with it? And, do we really need to do the truth telling?

The last point that I wanted to state is related to my work with the dance bar industry. My PhD was on that. And I've been working on this. The book came now. When I used to speak to bar girls, and when I'm trying to actually get their interviews, I realized a very interesting thing about this truth: that they don't tell the truth. So you go there, everyone is an outsider to them. So not only do they treat the customers, male customers, with that very interesting gaze. And I had that experience of sitting in the bar, a woman gazes at me, she winks at me, and I'm instantly smitten, sitting there. And then I want to meet her, just like a man would.

And I want to then take her interview, and I want to find the truth. But she will not, she will just smile and then she will not give me the phone number. She will give me the phone number after three times, and then she will not pick up the phone call in the day. And I'm thinking what have I done? Then slowly I realized that it's not me. It's their way of life and survival. Everyone who is an outsider to their community, who does not know actually how they operate, will be treated with this outsider treatment that is kept for the entire community. And then what are they doing? They are surviving. So what is my job as a researcher? Am I trying to get to the truth of the story of the individual bar girl? Like many people have done in their journalistic accounts, some very gory details of sex and shit and sicknesses have come out of journalistic accounts of bar girl stories. After I did my research, I became quite uncomfortable with all this. I feel the researcher's job is not to get to the individual story, the truth of her life, how many men has she slept with. Why do I care? She's not asking me the number of men I have slept with, why do I care about her life and her sexual life in this way? What should I care about as a researcher? The survival technique, the fact that she needs to have this survival technique, the *purdah* between me and her, the outsider and the insider, tells me about the life of the community, how they live, how they must survive, and how they ought to then create a life inside. So that becomes my truth. Instead of the true story of a bar girl, her name is changed for whatever, I don't need to do that, my truth then becomes possibly an empowering story. I can create a legal ethnography, a document that, if the politicians or the judges read, would have some kind of policy implication, in which I tell the story of a community, how they're living, and what the bars are doing and not doing for them. So in this, maybe, and I am very sorry that it's not very well formulated, because these are all basic ideas, so this I would have wanted to be used as a methodological kind of impetus to people tribunals of massacres even. I know as lawyers, we want evidence of individual truth, because that's how we can actually take people to justice. But can we also think of truth which is of a narrative way? A narrative style in which, rather than individual truth or individual evidence, a truth of a holistic kind comes out and whether we can then use it to execute some kind of justice. Thank you so much.

Zuleikha Chaudhari: I just like to begin by saying thank you to Kai and Anuja for inviting me and Shomo for moderating. I'm really a bit nervous since I'm sitting between two lawyers. One has to ask some very real questions and, in the process, I think, in the process of making, one kind-of keeps learning how to sharpen the question. I'm going to read out just because I don't have a lot of time and I just wanted to give a general sense of where I'm coming from. So at the outset, I'd like to clarify, that while I am here at to talk about documentary theater, I wouldn't say that this is something that is the entirety of my practice, in the sense that I have many things that I do. My working with law and theater is, at the moment, something that I'm doing and will be continuing for the next couple of years and a couple of projects, simply because I feel that the ideas embedded in what I'm doing just need some time. It's not going to happen with one project, it needs a thinking over through a number of projects. So I'm just going to start out with a kind of very broad formulation of where I'm coming from.

Late legal scholar Robert Cover proposed the world of law as a system of tension, which bridges concepts of reality to an imagined alternative. According to Cover, these polarities are maintained and moved forward through the device of the narrative. It is through narratives that we build and understand the relationship between a social construct and our vision of potential futures. These narratives require a leap of imagination in order to connect

not only what is and what should be, but also what might be. The framework of law as performance considers law's performativity as a way of forming, of performing the world through a certain structure of the use of science, that is always at the same time, a procedure and a connection of a historical sign to a new context. The concept of performativity here describes a mode of doing something to the world. Both law and theater assert productions of truth and reality, the construction of narratives, a historical frame of reference, and the creation and possibilities of alternate conditions and visions of the present. It is this parallel between law and theater that provides the basis for both the projects I'll be showing a little bit of today. One is *Rehearsing the Witness: the Bhawal Court Case*, and the second one is *Landscape as Evidence: Artists as Witness*. I just want to be clear that this is one very broad formulation with which, around which, I work, there are many more. "I want not land for land, but a running brook for a running brook, a sunset for a sunset, and a grove of trees with shade for a grove of trees with shade. So my right to life is a right to my specific civilizational mode of being in the world. I cannot be rehabilitated or compensated outside the recreation of what life means to me." In the early 1970s, legal scholar Dr. Upendra Baxi, with whom we had a lot of discussions with on *Landscape as Evidence: Artists as Witness*, submitted a preliminary petition against the Narmada Sardar Sarovar Project. This court was central to thinking about *Landscape as Evidence: Artists as Witness*, as it coaxes us to revisit and reconsider fundamental questions: What is the definition of justice and how do we measure loss? This project takes the form of a staged hearing before a commission of inquiry, with two lawyers and a judge premising art as evidence and artists as witnesses. The project has an iterative format with each successive version engaging with a different ecological issue and a changing roster of artists. The first iteration of the project was staged at the Constitutional Club of India in Delhi on the seventh of April 2017 and opposed the then recently cleared, river linking project. So the project was developed with three artists Navjot Altaf, Ravi Agarwal and Sheba Chhachhi. The second iteration of the project was staged in December 2018 as part of the Serendipity Festival and looked at the hearing of the construction of a luxury resort on village property and was developed in collaboration with two artists from Goa, Kedar Dhondu and Vishal Rawlley. So I'm going to be showing a small clip from the first iteration, which is the one in Delhi. Here the petitioners, who were myself and Khoj International Artists Association from Delhi, who were collaborators on the project, opposed the river linking project, which is, as a lot of you might know, a pilot multi-state-multi-purpose water development project of the National River Interlinking Program that involved connecting two rivers, the Ken and Betwa rivers through through the creation of a series of large dams, a reservoir and a canal. In order to provide storage for excess rainfall during the monsoons as a means to divert the water for consumption and irrigation purposes. So the project took about a year to kind of formulate and put into place. I was keen to work on a project that sort of had some contemporary relevance to that what was happening around us. Our work actually just happened before the project was cleared. The river linking was supposed to begin in mid-2017. So we performed in April 2017.

So the other project I'm going to quickly talk about is *Rehearsing the Witness: the Bhawal Court Case*. So the Bhawal Court Case was an extended court trial in pre-independence India that revolved around the identity of a *sanyasi*, claiming to be Ramendra Narayan Roy, the second Kumar of Bhawal, one of the largest zamindari estates in Bengal. He was presumed to be dead a decade before the sanyasi showed up. This claim was contested by the British Court of Wards and by the widow of the second Kumar of Bhawal, Bibhabati Devi. Over the

course of 16 years, the physical attributes, birthmarks, portraits and testimonies were collated as forensic evidence to establish the claiming *sanyasi's* identity as being the Kumar. Hundreds of witnesses, including doctors, photographers, artists, prostitutes, peasants, revenue collectors, tenants, sadhus, magistrates, handwriting experts, relatives and passerby's were deposed. There were 1800 depositions. The case went from the district court in Dhaka to the High Court of Calcutta to the Privy Council in London, finally ending in 1946, with a victory for the plaintiff, who died a few days after the verdict. This project has had three iterations beginning from 2015 and continues at the Dhaka Art Summit in 2018, in the form of a retrial - staged with two real lawyers and a judge. Broadly, the retrial considers how identity is written into history, and played out in the domain of the law, as opposed to actual complexity of real lived experiences and relationships. The state, that is the British Court Of Wards, is one of the parties in the Bhawal Case. And we see, via the testimony of expert witnesses, the body of evidence as the site where identity is played out, what the state considers and requires as identity and where the individual locates it. The retrial uses a set of photographs used in evidence in the original case. So these photographs are currently with the Alkazi Foundation for the Arts in Delhi, as well as original testimonies. The project very broadly, considers citizenship to be a template and a score, the successful performance of which is always a matter of an ongoing test. One achieves citizenship, one loses it, one's performance is either applauded or it fails to live up to the demands, requirements and standards that accrue to it. To live with these conditions is to always be on trial and to know that in the eyes of the examining authority, one is always an imposter unless proved otherwise. I'm going to talk a little bit, or show a little bit more of this project in my second panel. At the moment, I've got a small clip, so you get a sense of what the format was.

Theater is a space where things are real and not real at the same time. It is a paradox that creates situations and practices that are symbolic and actual at the same time. What sort of justice and judgment can we find in a theater? What can theater uncover about the theatricality that is always present in courts and is integral to political life? And how do we judge actions differently when they are staged in a theater rather than rated in a courtroom? Legal judgment is presumably objective, fact and evidence based. To experience and judge a trial aesthetically, by contrast, would mean to judge the case based on the virtuosity of acting, on immediate impressions and emotions while watching, and on the atmosphere in the courtroom. Are legal and aesthetic judgments mutually exclusive? Thank you.

Soumyabrata Choudhury: - Thank you for this fascinating session. We will have 20 minutes or so for questions, but before throwing this open, just a couple of remarks. You know, we usually tend to think of the world as something primary and theater is something which is a kind of representation of it, and law as belonging to the primary world rather than the theatrical world. But there's an etymological curiosity. I mean, this question Sameena brought up of the truths of that particular individual in law, and that the idea of law is always general. So the question of the legal person is always that of a person, rather than of that particular individual. So interestingly, the word that in Roman law, from where much of our present secular law comes, the word for the legal person is *persona*, now that word in Latin actually means both: the mask of the legal person, that is the plaintiff in court, which means from what family she comes, from what community she comes, in India it will be what caste she comes; and also that word means the actor's mask. So already, between law and theater, there's actually an equivalence, there is a kind of complicity, an excess. So never it is

actually law's aim to reach at the particular truth, it seems to me. But, deductively, it seems to me, that it rather aims to the truth of the case, which, of course, has implications for particular individuals. So one of the questions that really fascinates me, and I had already put them in our email exchanges, is the kind of force law must have: so you can actually through the force of a *khap panchayat* do, what these women do in the Shiv Sena *khap panchayat*, through the force of the secular law you can hang a person. So law must have force, now theater is also a force, but it's a strange force. It's a rhetorical force. So all theater is not the argument in terms of its truth or falseness. But what it can do is, I am relating to an Aristotelian understanding of law, is putting the argument on show. So theater too can actually put the argument on show, which is exactly what we see in Zuleikha's work. So all the arguments are there absolutely done in a dispassionate, salutely kind of true-to-court atmosphere, very dry and banal. But at the same time, it's theater. So it's actually on show. You know, it seems to me that between rhetoric law and the question of theater, the question of truth seems to be circulating. And it's very difficult to say truth belongs where exactly. So that's a general remark I thought I would like to make. Having said this, let me open it up to the house. So yes, questions! Maybe you do want to collect some questions and then answer, or one, one each. It could be comments too. So it's really up to you. Yes, Rustom.

Audience Question: I felt that what we saw right now and what we experienced, what I experienced right now, was documentary theater. And I felt that this is a challenge for us, because in a very lively, engaged, physical and virtual way, I felt I was experiencing theater. You know, and there again, those boundaries that you're trying to talk about, get extended into the framework of a conference, you know. So I think it's challenging because our understanding of the performative is changing very, very fast. And it's particularly interesting that the law and theater should be catalyzing this kind of rethinking of the performative. So I was thoroughly engaged by this, for me it is a play, but in a very, very nuanced kind of way - that is making us think about real events, but also about other takes on it. I'll just use the word take, you know, other kinds of takes on it. I was struck by your opening remarks Shomo: Something has happened/Something is happening. It's happening, you know, but something has happened in Kashmir, something has happened elsewhere. Now, how is that being transmitted through a document. And for that document to be happening, it has to be read. We were talking about this yesterday, reading is becoming an essential factor of this whole process. Maybe the act of writing is not evident, but obviously, you wouldn't be reading anything if something hadn't been written. These were some thoughts.

Soumyabrata Choudhury: So, maybe we can collect some more, we can have some more comments and questions and then the panelists can respond.

Audience Question: The question is largely to the panel and is connected to the things that came up today, landscape as evidence for instance and artist as a witness, the idea of whether trees, rivers, mountains can be considered to bear witness to violence. I was wondering, if given the reliance of documentary theater on documents, on witnessing, on reading, is there any possibility to sort of transcend the anthropocentric frameworks to look at processes. But processes that exceed human perception and may not perhaps always be immediately visible, whose effects may not register, but that there are forms of violence that are happening on our larger ecological environment. How does documentary theater contend with that?

Soumyabrata Choudhury : So if there's nothing else, can I just add to that last bit? Since this interlinking of rivers, you know, came up in Zuleikha's presentation you can talk about that directly after. So, I want to remember briefly the Ayodhya judgment that. you know, this god Ram is a kind of legal person now, Ram is very much always been there. Jagannatha has a bank account, so it's nothing new, because for the law, it's not a problem. Like I said, these are personas, these are fictions, so god can be a fictional person in the law. That's not a problem. But the problem is, and the newspapers are finally reacting to this after the Ayodhya judgment, something has happened in our society. The first time I've seen in *The Indian Express* people asking this question, what does it mean to say Ram is a legal person like I can be a legal person? And the river can be? Which means that we live with Ram, Ram lives among us. You know, the reality of this kind of a god, which has implications for our lives. This is not a legal question. This has suddenly become a question of our common historical life. For law it's not a problem. It's just a fiction. And you can use that fiction to then, you know, proceed. So anyways, that is something, because I thought it might be interesting to reflect on.

Zuleikha Chaudhari : - So, in response to what you've asked, I was very curious about what art does. The structure of the hearing is that in the examination in chief, the artists show their works and discuss their works. In, I think mostly all cases, these are artists who have been working with ecological issues for a period of time. There are some of the artists also working with communities and so there's not necessarily just only an artwork that they have to show. One of the things that the project tries to do, but also fails to do, is it uses art because it's trying to find an alternate language, another vocabulary, right? And I realized actually quite at the beginning, but also after the second iteration was done, that the issue is, how does one actually communicate the work, right? So, I go to an exhibition and see an artwork. Sometimes I have to read what's on the site to get it. Then I go to a seminar and I hear the artists talk about the work. I find there are gaps. Just like I face the same gap, right? I talk about the work. There are words that one begins to use in order to be understood, which sometimes, you know, may or may not come close to what your artwork may be able to do, or may not be able to do, which might be the intention of the artwork. And so I mean, the project itself is how do you articulate differently. How do you think of loss differently? How do you begin to understand this broad question of justice differently? And what it seems to require is a, is a very particular kind of articulation, which I think we all struggle with trying to arrive at. And I think it's this: how does one talk about processes and community?

I asked Vishal Rawlley to be part of the project because he just didn't have any objects. He had videos of stuff he had done with kids over here, etc, etc. And it became really interesting how he was trying to articulate what that was, what the process was, what the end result was, if there was any, and then how he had to explain that within this context. And so I think that is an ongoing process of trying to find ways to articulate. What I'm trying to say is, I don't think necessarily always it pre-exists, one has to work towards creating it. I have only understood that as a result of three years in two versions of a project, one has to articulate it, one has to create, one has to work very hard to change the frame of reference. That has to be really pushed and it requires a tremendous amount of work. In these cases, the judge always comes in at the last moment, he is not party to the process at all. I try and get a conservative judge. Somebody I know who's not one of us because I don't want to tilt the balance in my favor. It's like not doing the project at all, then, right? So the judgment is not

known to anybody, which is a dramaturgical strategy on my part as well, just to keep the performance tight. So far, just in case anybody's interested to know, we've lost every time. So I asked the judge, when are we going to win? And he said, not the way you're going. The way that you're going, you're always going to lose, because you're in fact not necessarily changing my frame of reference. And that was, I mean, it was a good feedback.

Arvind Narrain:- Yeah, maybe I just like to respond a little bit to Sameena's provocation in terms of the entire question of when you were talking about the negative with the people tribunal and the people's court. I think the point I really want to make is, I began by saying the Permanent People's Tribunal and the idea of a people's court emerges from a failure of the state. So the Permanent People's Tribunal and the *Jan Sunawayi* is taking the logic of the law of the state more seriously than the state takes it. It says, human rights matters, to the state it doesn't matter. What we're trying to expose through a people's tribunal is the state's failure to comply with the laws it says that it will comply with, you know, and that's really the purpose of a people's tribunal. So I don't think it is the same as a Lynch tribunal or Lynch law you know, that's very, very different. It's not an alternative justice system. It is saying we are taking the law of the state very seriously, as the state is responsible for failing to take its own laws as serious as it should. That's one part of it.

And the second part of it gets to the question, and you Sameena, said that as well, it's really about innovating the existing forms of state law. And how do you expand it? How do you develop it? How does it take on another form as it were? And that's really the question when you refer to the entire question with the anthropocentric nature of law. It's true. Law is anthropocentric. We see people, a person as you put it, as the basis of the law. But the innovation in that is in the Constitution of Bolivia, the Constitution of Ecuador, which recognize nature, as also a subject of the law. And we're looking at Bolivia, for example, which has come up with something called the *Declaration of the Rights of Mother Earth*, where you're looking at rivers and oceans and mountains as entities also having legal personality, meaning you can sue on behalf for rivers, oceans, mountains, etc. And the Ayodhya question, perhaps the way to answer that, is to say that its discourse comes from the law of religious endowments where you're talking about the idea that you give an idol a legal personality. The only reason you need to give an idol a legal personality is because an endowment is made by person to a particular temple, the person dies. What happens after that to the endowment? There must be certain conditions by which that can continue over generations. And that's the idea of an endowment. In this case, of course, the big problem is the idol is installed illegally in 1949. The idol, which is not a party in 1949, becomes a party in the 80's and the idol gets legal rights, which it should never get under what the law of endowment should be. So there's a range of illegalities which happened in the way the idol gets rights as it were.

Audience Question: Zuleikha, could you please elaborate a little bit more on the logistics of your project. Because on the basis of that, I wanted to kind of respond to it.

Zuleikha Chaudhari:- Okay. essentially, I try to look at an ongoing case. So both in Goa and in Delhi, there were cases I knew, that were not resolved completely. And that was important. That's why I selected them on the basis of that, then I auditioned artists. It's not as terrible as that sounds, but it is actually what it is. In the sense that one looks and speaks to artists who have worked with that particular issue, hopefully for a very long period of time, because

it means that they can be asked specific and particular questions, so it cannot be somebody who's done just one project. It has to be somebody who's worked with it, thought through it, etc. etc. I then actually spend a lot of time, because this is not based on a large archive, like the Bhawal material. This just begins by conversations between me and the artist, free ranging conversations, and they're not really that specific. They become more and more specific over time. At one point, I invite the lawyers in, and then it becomes a three-way conversation, which is partly a rehearsal, partly a production of text, partly to clarify, what specifically, we want to discuss. So, I mean, then I produce a script, in the sense that I put it in a script format. And I do that and give it to everybody, so that everybody has a sense of it, because these are not rehearsals like one rehearses a play. We're just sitting in rooms having conversations. And I'm also trying to ensure that everybody knows what to do: so the script normally says things like "Ravi leaves, Navjot enters, Zuleikha stand up". Whatever, just so that there is a sense of the movement of the piece. The text is simply just for people to follow what's happening on that day. And for the witnesses to stick to, because they have a short period of time, so they don't miss what is critical in their testimony. The judge normally comes in the day before we do a walk through in the space, which is like somebody walks in, we walk out, you know, we just walk through that. And then the next day we perform. So the judge comes in the day before. Just to walk through it, because that's important for all of us, and to do a sound check and video check. So it is rehearsed in one way, but it's also not rehearsed.

The second project, the Bhawal project, functions in a similar manner. The two actors that there are in the piece are connected to one of my larger interests: what kind of knowledge does the actor produce? It functions as theater at some level, it is also actual original testimony. Basically, in a sense, what I do tell the lawyers, is you have three questions to ask during performance, which you've never asked before. I might do that simply to keep these pieces theater pieces. And so these three questions are there, so that the artists don't get too comfortable. So, you know, and it's normally the cross examining lawyer who asks it and he'll ask the first one right at the top, which prepares the artist who doesn't know that I have told the lawyers to ask. It just keeps them, it just wakes everybody up.

Audience Question: I think of the space you create not only as a space of witnessing but also as a space of validation. Why do we need to be in that space? Same thing happens with artists even when they engage with academics. I don't come from an academic background, you know I'm an engineer and I've been making art, but I collaborate a lot with academics. It's also this kind of constant skirmish of, if I want my practice validated, it has to be written about. This even counts within that space that we move within right now. So where is that space that we don't seek? This is super interesting to me; are we in that space that we need to be? I really liked some of the things you said in the beginning about taking the time to understand what is happening even as it's unfolding. But do we need to be there in terms of, like, the legality of it, but we do need to be there, I understand that also.

Zuleikha Chaudhari:- Let me just say, this is an invitation I put out to artists. There are also artists who said no, right? It's an invitation, which means that, whoever the artists are, have come for, you know, they have agreed for a number of reasons. And I don't say, why have you said yes? Actually that's not what we discuss. My assumption is that they participate in it, because there is a wanting to engage with this format, and with what it provides and with what it doesn't provide. So, if you go to a seminar for example, or you hang around in art

events and parties, there is a lot of talk about what art does, and can do. This is also something I was just interested in. How does one bring this to a situation like this, which has a particular language that's used? It's also from what I've understood and what I enjoy that law is about words. And it's about taking something and making shifting it around. And it's about thinking strategically. At the end of two projects, my take back is that one has to be very, very, very, very, very, very sure about what one says in the examination in chief, because it is only on the basis of that, that you can be cross examined. So how do you put, how do you articulate some fundamental game changers or shifters, or new vocabulary or a new set of parameters, right up front? This connects to the way that we talk about our practices. We can all sit and say, well I don't really want to talk about what I do, but here we are, right, we're all doing it! What can art do? You know, one answer is, not very much, but then we must bring that very honestly I think to any conversations, upfront. And say, okay, here we are, funded, the agencies of funding are dodgy, we'll take the money anyway, we'll just talk to a pretty elite audience, who are already converted. You know what I mean.

Audience Question: So then what does the lawyer, and the judge think of the staging? And I mean in an informal conversation, once it all ends, what is their take on the fact that there is this kind of staging taking place here? I mean it's not in the court of law or somewhere else, it's this very kind of structured space where it's happening. What is their take on it?

Zuleikha Chaudhari:- I think, Anand Grover, whom I've worked with the longest, I think he got interested. Not every lawyer is interested, not every judge is interested. I have to work sometimes quite hard to involve people. There are some lawyers they all turn out, in retrospect to be activists, which says something. But I think for them all it's a potential site to rethink something. And these projects, it's always one, one event and it's not repeatable in that way. It normally seats about 300 people max. I try to be specific about where I choose to do it, so the Constitution Club happened, because it is a site where matters of public interest are discussed and this is why it happened there, and not in a theater, for example. Half the audience, more than half the audience. were lawyers and activists. Both times in Dhaka as well. I don't necessarily get theater people coming to watch this, not very many, nor do I get necessarily artists. Of course, in this case, there were a lot of artists because Navjot, Sheba and Ravi are very well known. So it's interesting to see how the audience is changing and it's something to think about. When I think about who's the work talking to it turns out, that it talks to a lot of lawyers, legal historians and things like that.

Soumyabrata Choudhury: Yeah, since yesterday, theater wins over academics, we clap hard here. We absolutely clap hard here. Thank you. Thank you very much.