

## Sonic Archives of Breathlessness

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This article conducts a close listening of the Australian podcast series *Breathless: The Death of David Dungay Jr.*, which reports on the death in custody of Aboriginal man David Dungay and his family's struggle for justice in its wake. Bringing an orientation toward sound and listening into conversation with Christina Sharpe's concept of "archives of breathlessness," it argues that *Breathless* can be heard as part of a larger sonic archive where Black and Indigenous breath is taken, stopped, let go, and held on to, and where the sounds of settler-colonial violence—and resistance to that violence—repeat across time and space. Drawing on notions of repetition, protraction, reckoning and recuperation, I explore the multiple ways "just hearings" in relation to Indigenous struggles for justice in the wake of colonization are stalled, protracted, and refused, while also listening for the sounds of Indigenous resistance, survival and moments of collective breath.

*Keywords: listening, sound, sonic archives, Indigenous deaths in custody, community media, podcasting*

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—David Dungay Jr., when forcibly restrained by prison guards at the Long Bay Correctional Centre, 2015.

If you can talk, you can breathe.

—One of the six prison guards who restrained Dungay.

In December 2015, 26-year-old David Dungay Jr., a young Aboriginal (Dunghatti) man from Kempsey, in the Mid North Coast of New South Wales, Australia, was three weeks away from completing an eight-year prison sentence. Four days after Christmas, on Gadigal lands in Sydney, in the hospital wing of the Long Bay Correctional Complex, prison guards and members of the prison's Immediate Action Team (IAT) stormed Dungay's cell after he refused to comply with orders to stop eating a packet of biscuits. Dungay's act of resistance was met with swift and violent force: He was physically restrained face down by several correctional officers and, in a state of increasing duress and panic, repeatedly told them he could not breathe. Prison CCTV and hand-held video footage capturing David Dungay's last moments record him saying "I can't breathe" at least 12 times as he struggled for his life. Corrections officers repeatedly ignored, disbelieved, or took his sounds of distress as evidence that he could, in fact, breathe. Dungay was chemically sedated—a violent, coercive form of "care"—at which point he stopped struggling and lay silent. Medical staff from the prison's Mental Health Unit and paramedics failed to resuscitate him. He was pronounced dead shortly after.

This article conducts a close listening of the Australian podcast series *Breathless: The Death of David Dungay Jr.*—which explores the circumstances of David Dungay's death, his family's struggle for justice, and the broader context of Aboriginal and Torres Strait Islander deaths in custody—to locate Dungay's death within a larger "archive of breathlessness" (Sharpe, 2016) left in the wake of colonization and state-sanctioned violence. It is a scene of ongoing struggle, where Indigenous lives are naturalized as "vulnerable," and Indigenous deaths constructed as "inevitable" (Whittaker, Bremer, & Browning, 2018) or "timely" (Razack, 2013). Following Razack's (2015) critical analysis of inquiries and inquests, and with particular attention to the politics of listening, I argue what happened to David Dungay—and the protracted process of coronial inquest his family has endured in their ongoing struggles for justice—must not (or not only) be heard as evidence of a systemic failure, but rather as evidence of systemic violence. That is, the repeated, institutionalized, and ongoing patterning of state violence and harm against Indigenous people in conditions of settler colonialism. Indigenous deaths in custody and the coronial inquests that follow—in *their very repetition and accumulation*—can be heard as traumatic markers of the slow death (Berlant, 2007; Puar, 2018) central to the calculus of settler-colonial state power.

I locate my analysis in dialogue with critical scholarship on political listening (Bickford, 1996; Dreher, 2009) and the colonial archive (Stauffer, 2016; Stoler, 2009) to make the case for thinking both archivally and sonically. I explore proximate and located listening positions that might allow for a more "just hearings" in response to accounts of settler-colonial harm attuned to both the case of David Dungay's death that *Breathless* presents, and hearing resonances across other sites (and archives) of settler-colonial harm. I make this analytical move to register Indigenous deaths in custody *not* as single events or miscarriages of justice (though, of course, they are this, too). Through the notions of repetition, protraction, reckoning, and recuperation, the article offers a listening route to attend to both of *sounds* and the *circumstances* of

David Dungay's death; to moments when his family's testimony punctures the official record; and to the collective breath needed to keep and hold David Dungay in view.

### **Listening to Archives of Breathlessness**

From the overincarceration and deaths in custody of Aboriginal and Torres Strait Islander peoples, to the indefinite detention of asylum seekers and refugees in offshore "black sites" (Pugliese, 2013) on the former Australian colonial territories of Nauru and Manus Island, racialized carceral logics and state-sanctioned violence are at the heart of the settler-colonial Australian state. The Australian state incarcerates Aboriginal and Torres Strait Islanders at one of the highest rates of imprisonment of any population across the globe—a new formation of the settler-colonial logic of elimination (Wolfe, 2006). While Aboriginal and Torres Strait Islanders make up around 3% of the population, they are overrepresented in Australian prisons, accounting for more than a quarter (28%) of the total Australian prison population (Australian Bureau of Statistics, 2019). Indigenous people in Australia continue to be imprisoned for minor offences such as unpaid fines and public drunkenness,<sup>2</sup> further contributing to preventable custodial deaths and ignoring key recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC; Commonwealth of Australia, 1991). To date, very few of the RCIADIC's recommendations have been implemented (Allam & Wahlquist, 2018), and rates of Indigenous incarceration have increased over the last 30 years (Cunneen, 2011).

David Dungay was born the same year the RCIADIC handed down its final report and died in custody 26 years after it made 339 recommendations to prevent further Indigenous custodial deaths. In the intervening years since the Royal Commission, more than 432 Aboriginal and Torres Strait Islanders have died in custody,<sup>3</sup> with no one held to account (McQuire, 2020; Whittaker, 2020). Indigenous women are the most overrepresented prison population, accounting for 34% of all women, despite making up only 2% of the female population (Oscar, 2018). In 2018, senate estimates revealed that 100% of all youth held in detention in the Northern Territory were Indigenous (Allam, 2018). This was despite a Royal Commission the previous year prompted by leaked prison footage from the Don Dale Youth Detention Centre in northern Australia documenting the violent abuse and torture by prison guards of teenage detainees, most of whom were Indigenous.

Less than 18 months before Aboriginal man David Dungay was killed in his cell, unarmed African American man Eric Garner died in the United States after being held in a chokehold by police and effectively strangled to death. Garner's last moments were captured on camera phone and circulated widely on social media. In the footage, Garner was heard saying "I can't breathe" 11 times before he died. The phrase became a rallying cry for the Black Lives Matter movement. Less than 18 months later, David Dungay was recorded in his prison cell calling out "I can't breathe" at least 12 times as he struggled for his life. As

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<sup>2</sup> The families of Yamaji woman Ms Dhu and Yorta Yorta woman Aunty Tanya Day, who died in custody after being imprisoned for unpaid fines and public drunkenness, respectively, have pressured state governments to abolish relevant legislation in each jurisdiction.

<sup>3</sup> See Guardian Australia's *Deaths Inside* database: <https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody>.

Simmons (2017) reminds us, the conditions of breath and breathing in this “settler atmosphere” are “collective and unequally distributed, with particular qualities and intensities that are felt differently through and across time” (para. 3). The appearance, repetition, and escalation of the utterance “I can’t breathe” must be understood within this context where Black and Indigenous life is arrested, and where the suffocating sounds of state-sanctioned, settler-colonial violence travels across time and space.

Writing in the wake of trans-Atlantic slavery and the ongoing legacy of anti-Black racism in the present, Christina Sharpe (2016) uses the phrase “archives of breathlessness” (p. 109) to frame the precarious conditions of breath for Black lives in the United States. In a brief but incisive passage, Sharpe locates Garner’s death within this archive—one that comes into being through the deliberate practice of “no aspiration” (p. 110). Earlier, Sharpe asks, “What might it mean to attend to these archives? What might we discover in them?” (p. 109). Sharpe’s provocations and her phrase “archives of breathlessness” are prompts to extend my horizon of attention to the Australian settler-colonial context: To attend to moments where breath is taken, stopped, let go, and held on to; where failures of hearing tell us something about their suturing to settler logic and law; and where Indigenous life encounters the violence of the state, but also where Indigenous lives resist and draw collective breath.

From the carceral space of the prison to the coronial space of the inquiry, state-sanctioned practices of containment and forensic examination work to dehumanize and extinguish Black life. Ann Laura Stoler (2010) shows us how colonial modes of governance and imperial power—such as inquiries and royal commissions—confirm and conform to “colonial common sense” (p. 35). In Australia, this mode of common sense continues to manage and produce knowledge about Indigenous deaths in custody. The hundreds of Indigenous deaths in custody since the 1991 Royal Commission are not so much a failure of the commission as part of its very functioning as a mode of governance.

Gomeroi poet and critical legal scholar Alison Whittaker (2019) has described the coronial inquiry as “a managerial story for black death” (30:25). She argues commissions and inquiries are settler systems of power that function as a “path that leads to White redemption” (31:51). For Whittaker, it is precisely through the “eyes of the law as a storyteller” (29:50) that at once extracts details of Black suffering and death only to exonerate its causes. She argues that “royal commissions have become their own kind of industrial complex around our stories” (30:45). Indeed, bearing witness to Indigenous harm and testimony can and has worked to perpetuate narratives of Indigenous people as vulnerable and in need of settler generosity and care, “renewing the good white nation and rescuing settler innocence” in the process (Slater, 2018, p. 16). For Razack (2011), writing in the Canadian settler-colonial context, inquests—with their focus on individual pathology and dysfunction—provide an opportunity for the settler state to “perform its legitimacy” (p. 90). In this context, *Breathless* is an intervention that privileges First Nations testimony and “the voice of the Black Witness” (McQuire, 2019, p. 6)—a counterarchive that disrupts colonial common sense and settler hierarchies of authority and voice. Following Sharpe’s provocation—what might it mean to attend to these archives? How might we listen to them in ways that are both responsive and responsible?



### Listening, Witnessing, and Ethical Responsibility

In the past decade, scholarship on listening in media studies, cultural studies, and political theory has done important work to shift attention from having a voice to being heard, drawing attention to conditions of inequality and structural injustice (Bassel, 2017; Bickford, 1996; Dreher, 2009, 2010; Ratcliffe, 2005; Thill, 2009). Susan Bickford's (1996) notion of political listening corrects for an omission in political and democratic theory that places value on voice and speech. Drawing on contemporary feminist theory, her work makes a compelling case to reorientate attention to the difficult and necessary work of political listening in building a relational and responsible politics aimed at justice. Bickford (1996) insists that political listening requires both responsiveness and responsibility: "Just as speakers must reflect on how to speak (and what to say), listeners must be self-conscious about how they listen (and what they hear)" (p. 120). In the context of media justice, Dreher (2009, 2010) builds on Bickford's notion of political listening in relation to community media interventions by marginalized and underrepresented populations to ask crucial questions about who is heard, on whose terms, and to what effect. In the context of racial injustice, political listening has extended attention to sound and "the sonic histories of racism," so that the structures that normalize and privilege the "white ear" are challenged (de Souza, 2018). In settler-colonial contexts (Australia, Canada, New Zealand, the United States, and beyond), listening must be situated within a decolonizing frame—"located in time and space and specific contexts shaped by colonial histories" to recognize that "we are differentially and very unevenly located" (de Souza & Dreher, 2019, p. 8). The transformative potential of listening then lies in the ways it prompts us to think not only about questions of responsibility, ethics, and accountability but also of the ways in which we shape and are shaped by those relations.

In the context of settler-colonial Australia where non-Indigenous Australians benefit from Indigenous dispossession, land theft, and the denial of First Nations sovereignty, a politics of positionality or locatedness is just as vital to developing ethical modes of witnessing. Sukhmani Khorana (2018) draws on Silverstone's (2007) notion of "proper distance" to consider how we might develop more ethical practices of witnessing and responsibility in response to media narratives of the suffering of those racialized as Others—such as refugees and asylum seekers—that push beyond a humanitarian politics of empathy and identification. For Khorana (2018), "ethical witnessing" orientated toward proper distance works as a mode of responsiveness "precisely because it is neither too distant nor too close" (p. 144). In other words, it is in the proximate space between spectacle and detachment that we might come to "embrace discomfort, shows willingness to de-centre the feelings of the self, and takes a sceptical distance from media representations" (p. 147). This mode of witnessing is sensitive to the ways both humanizing and dehumanizing media narratives work against a politics of transformation by rendering racialized others simultaneously hypervisible and invisible. Yet a plane of proximity alone (closeness, distance) does not fully account for the dense meshworks of power and privilege in which witnesses to mediated injustice are differently located and complicit in.

André Dao, cofounder of the community oral history project *Behind the Wire*, writes about proper relation in response to listening to the artwork *how are you today*, a collaborative sound-based work comprising 14 hours of sound recordings from six men then incarcerated on Manus Island, Papua New Guinea, under Australia's brutal and bipartisan policy of offshore detention. Listening closely to this sonic

archive, Dao (forthcoming) is pressed to consider his own listening location and the way it shapes how and what he can hear: "I have to pay attention to the quality of the relation between us—and to do *that*, I have to pay attention to the kind of hearing I am doing, for those different forms of hearing are constitutive of the relation." Drawing Dao (forthcoming) and Khorana (2018) into conversation, these proximate and positional politics of listening and witnessing work to orient us in relation to the injustice at the heart of *Breathless*—pressing us to stretch the ear and listen differently. In other words, proper relation and proper distance are required for us/them (non-Indigenous listeners) to hear Indigenous accounts of racial injustice and harm.

### Broadcasting Racial Injustice

*Breathless: The Death of David Dungay Jr.* is a podcast series made by community radio station 2SER, in partnership with *Guardian Australia*. 2SER is one of the Australia's longest-running community radio stations, originating in the early 1970s as part of the burgeoning community broadcasting movement. The podcast combines investigative journalism with the intimacy and immediacy of radio and is part of a longer history of community radio in Australia and beyond using the airwaves to broadcast carceral worlds and experiences to the outside (e.g., Anderson, 2013; Russell & Rae, 2019). In a critically underfunded community broadcasting sector in Australia, and scarce resources for longform, investigative journalism, *Breathless* is a media innovation: it builds on the trust and attentive listenership of community radio and its extension into podcasting, and the investigative resources and editorial independence of online news outlet *Guardian Australia*. It was funded through the Guardian Civic Journalism Trust, which supports in-depth Indigenous affairs reporting and investigations. The podcast was produced by Miles Martignoni (2SER/*Guardian Australia*), with 2SER's Taylor Fuller and Miles Herbert as its cohosts and main reporters. Editorial oversight was provided by Gamilarai-Yawalaraay woman Lorena Allam, an experienced radio producer and *Guardian Australia*'s Indigenous affairs editor.

Broadcast from Gadigal lands in Sydney, *Breathless* bears "earwitness" (Russell & Rae, 2019) to the life and death of David Dungay Jr., and follows the coronial inquest into his death over six episodes broadcast between July 2018 and November 2019. Episodes contain a mixture of investigative reporting on the details of the coronial inquest, the broader context and history of Indigenous deaths in custody, and personal testimony from Dungay's family members. It walks alongside members of David Dungay's family as they seek justice for their kin—his mother, Leetona; his brother, Ernie; sister, Cynthia and niece, Christine; his uncle, and his nephew, Paul Silva—giving voice to their grief, trauma and dignity in the wake of David's death. While the inquest raises important questions about the already-known risks associated with chemical restraint and positional asphyxia (Fuller, Herbert, & Davidson, 2018b), the podcast exposes the broader conditions of state-sanctioned violence and harm endured by First Nations (on their bodies, lives, and communities). It provides members of Dungay's family an opportunity to give their own account of David Dungay's life and death beyond the courtroom and jail cell.

Cohosts Fuller and Herbert situate listeners and themselves within the First Nations geographies of Dunghatti and Gadigal lands from where they report. They locate themselves alongside the Dungay family in their reporting, sharing authority and voice with family members. Testimony from the Dungay family—spoken from a standpoint of kinship and experiential knowledge—challenge and complicate the judicial

framings of the coronial inquest and prison footage. By locating listeners alongside the Dungay family as they describe their grief and frustration at the loss of their kin, we are invited to listen in solidarity (Bassel, 2017) rather than consume their grief as spectacle or entertainment. Further, by redistributing voice and authority to members of the Dungay family, the podcast disrupts notions of settler generosity and benevolence (Slater, 2018) to uncover the limits of what settler law is structured not to hear.

### **Listening to *Breathless: The Death of David Dungay Jr.***

In Episode 1 of *Breathless*, the first voice we hear (after the Cultural Warning that opens each episode) is Paul Silva, David Dungay's nephew. As one of several family members who witnessed the video as part of a review of evidence submitted to the coronial inquest (Fuller, Herbert, & Davidson 2018a), Silva recalls what it was like watching the prison footage of his uncle's last moments:

My uncle's saying "I can't breathe, I can't breathe. Stop, please, I'm trying to help youse."  
They just keep saying, "Stop resisting Dungay, stop resisting Dungay." He's saying "I can't breathe, I can't breathe." They're saying, "Oh, you're talking, so you can breathe." . . .  
They've covered his mouth and you could hear— sort of like when you're in the water and you're trying to talk with water in your mouth—and he's saying "I can't breathe," and his voice is goggling with water, but it's actually blood. . . . I heard that with my own ears, and so did all my family. (*Breathless*, Episode 1)

By giving Dungay's family a platform to speak directly about how witnessing the footage of his death affected and continues to haunt them, listeners to the podcast are pressed to hear the "afterlife of evidence" (Biber & Luker, 2014), beyond the forensic scrutiny of the prison footage replayed during the inquest. While the podcast reports on the testimony of prison guards, medical staff, and expert witnesses during the coronial inquest, it also provides the Dungay family with a platform to express their own responses to the video footage. This brings into view the dignity of the Dungay family and their ongoing struggle to hold the state to account for the death in custody of their kin.

In refusing to (re)broadcast Dungay's death as spectacle and contextualizing it within Silva's distress at witnessing the footage leading up to his uncle's death, the podcast insists on an ethical responsiveness beyond a comfortable politics of empathy. It demands that we register the violence through Silva's retelling. We register the refusal of the prison guards to hear Dungay's labored breath as anything other than a ploy; a willful mishearing conditioned through a structure of settler-colonial relations that naturalizes the "privileged position of 'white ears'" (de Souza, 2018, p. 2) and reinforces the narrative authority of the White Witness (McQuire, 2019). Indeed, at the coronial inquest into David Dungay's death, one of the prison guards said he thought Dungay's cries for help were a ploy to get the restraining guards to release pressure on him. Another guard testified he thought Dungay was faking it, and that he assumed that if he could talk, he could breathe (Fuller, 2018).

This mishearing of a cry for help as *not a cry for help*—of breathlessness as evidence of its opposite—is conditioned through a long history of dismissal and disbelief in Aboriginal and Torres Strait Islanders' capacity for pain and suffering. For those held in carceral spaces, this has devastating and life-

taking effects. A NSW Justice Health report investigating Dungay's death found that nurses present "did not feel safe going back into the cell despite the IAT presence and the patient stating that *he could not breathe*" (cited in Fuller et al., 2018a, para. 29, emphasis added). Repeated cries for help and sounds of pain are heard as threatening on the one hand, or repeatedly disbelieved on the other. A similar pattern of willful mishearing can be heard in the case of Yamaji woman Ms Dhu, who died in police custody in Western Australia in 2014, hours after she was arrested for unpaid fines. Her cries of pain, calls for help, grunting, and vomiting were heard and witnessed (and ignored) by several police officers and other inmates over the course of more than 20 hours. At the coronial inquest, one of those present the night of Ms Dhu's death testified she was "feigning her illness" and "exaggerating her condition," and that therefore her moans of pain were "not genuine" (Brull, 2016).

What does it mean when repeated sounds of distress are heard as their opposite? As evidence of life, rather than immanent death? The sounds of breath and breathlessness repeat and circulate across multiple sites of colonization, anti-Black racism, and forced migration: from the haunting incantation *I can't breathe*, ignored by police and prison officers, to the high-pitched sounds of asylum seekers drowning in the Mediterranean, whose flails and cries for help were misheard as a flock of birds (Stillman, 2013). To attend to these larger archives of breathlessness is to listen at the limits of intelligibility/audibility; to encounter and take seriously the sounds of epistemic violence and harm inflicted on Black, Indigenous, and other racialized bodies and lives in the wake of colonization and Indigenous dispossession. Crucially, hearing *Breathless* within this larger archive of breathlessness exposes Dungay's death not (or not only) as a symptom of a broken system, but as a foundational tactic of settler-colonial oppression.

### ***Repetition and Protraction***

It's the same story, different soil. It's the same thing from Long Bay to the USA. In Sydney, his name is David Dungay. In New York City, his name is Eric Garner. Eric Garner called for his life 11 times. David Dungay called for his life 12 times. These eerie similarities cannot go ignored. (Hawke Newsome, President of the Greater New York chapter of Black Lives Matter, *Breathless*, Episode 2)

*Breathless* bears witness to a double repetition: repetition of the *sounds* of Dungay's death; and of the *circumstances* of his death. A close listening to *Breathless* pays attention to these repetitions, these eerie similarities, and understands them as central to the racial calculus of violence enacted on the bodies of Black and Indigenous people across settler states. Christina Sharpe (2016) draws on the work of Saidiya Hartman (2008), Patricia Saunders (2008), and others to argue repetition is central to the logic of colonial violence:

The repetition of the visual, discursive, state and other quotidian and extraordinary cruel and unusual violences enacted on Black people does not lead to a cessation of violence, nor does it . . . lead primarily to sympathy or something like empathy. *Such repetitions often work to solidify and make continuous the colonial project of violence.* (pp. 116–117, emphasis added)

In listening for sonic repetitions across multiple sites—building on Sharpe’s observation of the visual and discursive repetition found in colonial violence—archives of breath and breathlessness can be heard together.

*Breathless* records the deep ambivalence from Dungay’s immediate family in relation to the inquest, because of the trauma of repetition the inquest necessitates. We witness how heartbreaking, painful and traumatizing it is for members of Dungay’s family to repeatedly witness the prison video footage where every second was subject to forensic analysis and interpretation as prison guards, medical staff, and expert witnesses took the stand. In the replaying, repetition, stoppages, starts, and protractions that the footage-as-evidence and inquest itself necessitates, I am reminded the temporality of Lauren Berlant’s (2007) notion of “slow death,” extended by Jasbir Puar (2018), who writes of its “nonlinear temporality, for it starts and stops, redoubles and leaps ahead” (p. 11). The forensic treatment of the video footage in the courtroom both obscures and exposes: It brings to light details crucial to understanding the places where systems and protocols broke down or were inadequate; at the same time, the Dungay family testify to the impacts of this repeated witnessing. Blue (2017) argues the coronial inquest “as a mode of conquest, as a trauma-inducing theatre of power” where displays of Indigenous suffering captured on CCTV footage play a “central and unresolved” role (p. 302). The testimonies of Dungay’s mother and nephew remind us that for them, the video is a painful record of their kin dying (over and over).

At the same time, audio excerpts from the footage played in the podcast are a reminder of the “soundscape of detention” (Rae, Russell, & Nethery, 2019, p. 1038)—the violent manner of Dungay’s death in his prison cell is clearly audible; we hear the sounds of guards shouting and shoving, of Dungay struggling and crying out in fear and pain for his life. Yet the accounts from the Dungay family extend our horizon of attention beyond the evidentiary frame, to register the collective labor it takes for the family to endure repeated harm. There is a recognition, as Biber (2013) insists, for the need to be sensitive; to recognize that these materials must be treated with “special care, delicate handling, tact” (p. 1043). As the detailed examination of the footage accumulates in the courtroom, the weight of repetition as the inquest continues becomes too much for some family members to bear. We know that each time the prison footage was replayed at the inquest, several family members got up and left the courtroom. Only David Dungay’s mother, Leetona, stayed to bear witness each time it was played, so her son would not be alone. Bearing witness to this footage as it is presented in the podcast takes into account—and accounts for—the life that is being extinguished. For Paul Silva, the repetition of the struggle for breath and its denial are the sounds that haunt him the most: his uncle’s words *I can’t breathe* and the repeated refusal of the guards to hear and respond, words swallowed up by the sounds of a mouthful of blood. The sonic traces of fear and desperation, and their escalating urgency, are part of the haunting afterlife that remains. But the podcast also insists the prison footage is not all that his life or death should or can be reduced to, either.

Elizabeth Alexander (1994), writing about the 1991 video footage of Rodney King being beaten by Los Angeles Police Department (LAPD) police officers, suggests “hearing too, is central to witnessing. Sounds here haunt the mind as much as the visual image” (p. 83). When the camcorder video footage of King’s beating was played at the trial of the four LAPD officers charged with his assault, it was often freeze-framed, paused, or slowed down to forensically examine a particular moment. This rendered the soundtrack inaudible. Alexander argues that without this sonic layer, another register of violence is stripped away: The

video footage, “stripped of a soundtrack in which falling blows and bystanders’ screams are audible, disallows the possibility that *the sounds of terror* could imprint themselves on the jury’s mind” (p. 83, emphasis added). The circulation of footage on social media capturing police brutality in the U.S. and leaked CCTV footage of human rights abuses against First Nations prisoners in Australia somewhat counterintuitively underscore this inaudibility of Black and Indigenous resistance to state terror—repeated over and over again in these videos are cries, pleas, and screams ignored—rendered silent. The sonic repetition and accumulation become part of this soundscape of injustice, where the sounds of terror repeat and circulate across settler states.

A close listening to *Breathless* also registers the multiple ways “just hearings” in relation to First Nations struggles for justice are stalled, protracted, and foreclosed, within and beyond the prison industrial complex. The protracted release of episodes map onto the protracted duration of the coronial inquest and the family’s ongoing struggle for justice: the inquest took place two-and-a-half years after Dungay’s death, and was postponed for a further nine months. By attending to these suspensions and protractions, I listen into the spaces where Black life itself is held in suspension, the temporality of the *longue durée* (Sharpe, 2016). I listen into this space—the temporal gap, the adjournment—to interrogate the carceral logic of the state. The suspension of time between Episodes 4 (August 1, 2018), 5 (March 4, 2019), and 6 (November 29, 2019)—between the inquest’s adjournment and then the coroners findings—draws attention to the protracted and stalled nature of First Nations struggles for justice in Australia, even as it questions the very possibility for apparatuses of the state (inquests, commissions) to deliver justice or systematic change.

These “breaks” between episodes can be heard as temporal markers that expose the logic of the carceral and criminal justice system where the coronial inquest itself becomes another apparatus of settler-colonial authority with the power to delay or deny justice. Moments when the family is forced to wait—holding their breath in anticipation, in hope, in worry. Stoler (2010) argues state commissions, and by extension inquiries, can both reactivate knowledge *and* “stop it in its tracks.” While they can mobilize interest, they are also “technologies of delay” that can “arrest decision” (p. 30). Arresting decision; arresting life. Earwitnessing this suspended temporality in *Breathless* and the inquest becomes a provocation to stretch the ear to register how the state holds Black lives in a state of suspension: the never-quite-found and always delayed character of inquiries and inquests that maintain the settler logic of law and criminal justice, while rates of Indigenous incarceration and custodial deaths accelerate.

### ***Reckoning and Recuperation***

Who’s going to be accountable to answer to these mothers that are crying, and the fathers that have to hold the mothers up when they are broken already?<sup>4</sup> (*Breathless*, Episode 2)

Darambul and South Sea Islander journalist Amy McQuire (2019) insists it is “crucial to recentre the voice of the Black Witness” (p. 6) to counter media and judicial representations of Aboriginal and Torres Strait Islander communities and lives. In the context of persistent calls from First Nations for truth-telling

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<sup>4</sup> Spoken by a woman at a rally following the death in custody of young Gamilaraay, Gumbaynggirr, and Wakka Wakka man Tane Chatfield in 2017.

about Australia's violent history, it is imperative for non-Indigenous people to listen to the authority of Black Witnesses; to register failures of hearing as sites of injustice. McQuire draws attention to the ways in which the "White Witness" (non-Indigenous journalists, media commentators and others) enacts a form of violence "through silencing and erasure, of the people they purport to care about" (p. 4). She highlights Aboriginal women in particular are the ones on the frontline, who speak out and resist, arguing they "have not been silent, rather they have been drowned out by a chorus of white voices continually speaking over them" (p. 4). I suggest *Breathless*, an Indigenous/non-Indigenous collaboration, prioritizes the knowledge of Black Witnesses throughout; it redistributes voice and authority from the two journalist cohosts to center members of David Dungay's immediate family.

In the first episode of *Breathless*, David Dungay's mother Leetona reminds listeners that her son was a young Dunghatti Warrior, resisting the deficit discourse of mainstream and mediatized representations of Aboriginal and Torres Strait Islander people (see Fforde, Bamblett, Lovett, Gorringer, & Fogarty, 2013). Leetona is valued in the podcast as Black Witness—an expert whose testimony *precedes* and *exceeds* the "authority" of the court; her words speak to the limits of what settler law can hear—a counternarrative to the official record of Dungay's death. When she tells listeners "they killed my son by taking his biscuits away," we are offered another register of testimony that doesn't fit the genre of inquest which looks for the forensic and technical terms of a death. Instead, hers is a truth-telling account of a death in custody that is a simple statement which exposes the conditions of vulnerability her son lived under: Where the escalation of a dispute over a packet of biscuits ended up in another Indigenous death in custody; where an act of Indigenous resistance was met with disproportionately brutal and life-taking force.

In her analysis of accounts of structural violence and injustice, Stauffer (2016) argues that "some injustices are made of a failure of hearing," sometimes occurring in the very "institutions designed for hearing" (p. 35) such as courts, truth commissions, criminal tribunals and so on. In these archives of testimony, particularly those found in law's archive, the rules of intelligibility that govern what is sayable, what is deemed relevant, and what is rendered silent, are wielded to consolidate power and the settler-colonial status quo. In the second episode of *Breathless*, these failures of hearing are given breath: The slippages, gaps and erasures in the archival record are given voice by Leetona in response to excerpts from the coroner's report describing Dungay's body at death. As excerpts of the coroner's report is read out, the podcast makers platform Leetona's voice, which punctures the state-sanctioned archival record and insists on a more truthful telling:

Coroner's report: Examination of the muscles of the anterior neck revealed some very small muscles of thin hemorrhage.

Leetona Dungay: He had bruises all over him.

Coroner's report: Some surface blood was present on the forehead.

Leetona Dungay: Smashed face.

Coroner's report: There was a small laceration immediately between the eyebrows.

Leetona Dungay: Broken nose, flat as.

This counternarrative from Leetona corrects for this failure of institutional hearing; it presses us to reckon with the conditions of Dungay's life and death beyond the horizon of coronial epistemologies. The

dissonance between the coroner's report and Leetona's observations calls into question the very authority of the state-sanctioned archive holding someone responsible for Dungay's death. The very frames of coronial language fail to account for what is imprinted on his body, the material and bodily impacts of settler-colonial violence committed against First Nations people in carceral space. Bearing earwitness to this act of recuperation by Dungay's mother—not bringing him back to life, but by insisting and inserting a counternarrative that refuses to reduce his death to a list of coronial pronouncements—reminds us that the bruises and injuries were pressed on him; that the marks on his body bear the story of his death and must not be reduced to a clinical description.

In Episode 2 of *Breathless*, Dungay's nephew, Paul Silva, recalls the trauma of seeing his uncle's body as he dressed him in preparation for the funeral service: "He had a boot mark that was—you could see the boot mark print on his back." Dungay's mother, Leetona, recalls the prison guard's actions: "He put his foot at the back of his rib and pressured down like he was a dead dog laying there." The boot mark on Indigenous bodies is another repetition in the archive of breathlessness I am mapping in this article, and also a material trace of a particular kind of violence. Countering the coronial language of "blunt force trauma" as the cause of the death of Paul Alphonse, a First Nations Secwepemc (Shuswap) man, Sherene Razack (2011) takes up the boot print in the settler-colonial context of Turtle Island/Canada to interrogate the wider Aboriginal and police relationship as an "intimate one of regular, violent contact" (p. 88). Alphonse was "stomped on so hard that there was a boot print on his chest and several ribs were broken" (p. 87). To register the force needed to leave an imprint of a boot on a body also requires engagement with the sonic imagination to render intelligible the *sounds* of violence, struggle, and resistance that led up to the moment where the boot makes contact with the body. As Sara Ahmed (2017) reminds us, "to remember violence is to bring the sound of violence into the present" (p. 61). In the space of violence between the body and the boot there is sound; after the boot makes contact with the body, there is breathlessness.

In *Breathless* Episode 4, we learn that, after a grueling two weeks for the Dungay family, the inquest is adjourned for another nine months so that remaining witnesses can testify. On hearing the coroner's decision to adjourn the inquiry for another nine months, Dungay's nephew was reported to have said, "In another year another Black person could die," before standing up and leaving the courtroom. Whittaker (2019) reminds us that those who speak up in court—the mothers, aunties, family members—are often told they are "interfering with the process." Yet these sonic disruptions are central to understanding what the law is structured *not* to hear or take account of. For Blue (2017), these moments remind us of tensions between the sovereignty of the court and practices of Indigenous sovereignty that threaten to shatter its authority. He describes one such moment by the family of Ms Dhu during the coronial inquest into her death:

When members of the public gallery shifted these roles by asserting a voice and a presence by demanding to be heard—even within the inquests' dominating and radically confined space—they (we) threatened the Coroner's and the court performance of sovereignty. (p. 307)

These moments of sonic disruption can be heard, or re-sounded, as generative acts of resistance and refusal in the face of state power, an assertion of First Nations sovereignty that holds the it (and us) to account.



### After the Inquest, Toward a Just Hearing

Previously, I suggested the extended pause or break in the podcast while the inquest was adjourned could be a prompt for reflecting on the protracted nature of First Nations' struggles for justice. But breaks can also be registered as breath. To *take a breather* or *stop for a breath* calls attention to the ways that break-as-breath opens up another space to think about the work needed to continue on. I am called back into thinking about members of the Dungay family quietly and repeatedly rising to leave the courtroom each time the prison footage of Dungay's death was replayed during the inquest. Their stepping outside to take a break—a breath—is a practice that allows them to continue—to not only break out of the settler logic of inquest and the evidentiary framing of Dungay's last moment, but to draw collective breath in each other's presence, to continue to fight for justice for their kin. Sharpe (2016) again provides some guidance when she asks what it takes, in the face of anti-Blackness, "to keep breath in the Black body" (p. 109), drawing on the multiple valences of the word *aspiration* to do so. To recuperate, to recover or regain; to aspire, the process of drawing breath and of hope or aspiration. Each gesture toward something reparative that holds past, present, and future together to continue on.

In November 2019, eight months after the inquest was adjourned and four years after David Dungay's death, the deputy state coroner handed down his findings. While the coroner found the precipitating incident that led to Dungay being removed from his cell was unnecessary, and of multiple systemic deficiencies and failures, he did not recommend charges be pursued against the individuals involved in Dungay's death. The final episode of *Breathless* was released in the wake of the coroner's findings and bears (ear)witness to the family's reignited anger, grief, and determination. Outside the courthouse, Dungay's nephew and brother are heard calling the NSW Corrective Services Commissioner to account: "Just remember what land you're walking on. Respect it. Hey, Commissioner, treat 'em properly. Stop killing our people on this land. Stop killing our people." The Dungay family are staunch in their demands for First Nations justice, and their assertion of continued First Nations sovereignty. In the Commissioner's silence is the sound of Whiteness.

Toward the end of the final episode, listeners are brought back to the courthouse in the present day. Leetona—in her authority and strength as a Black Witness—reads her prepared statement to the media:

We need things to change in this country. Aboriginal Australians are dying in our jails. Far too often, we Aboriginal people—my people—are almost 30% of the jail population. It's a disgrace. . . . I'm his mother and I want justice. I am going to fight until I live in a country where Black lives matter.

A chorus of family and supporters can be heard rallying around her, and claps carry her words forward for their fight into the future. Her last three words are spoken with brief pauses between each: Black. Lives. Matter. Words surrounded with Leetona's breath; the sound of Black life, in the face of her son's untimely and wrongful death.

The second half of the final episode shifts register and tone, temporally locating listeners at the end of 2015. It is the first time in the series we hear the sound of David Dungay's voice: two phone calls to

his younger sister, Cynthia, and his mother, Leetona, made just hours before his death. Calls by inmates are routinely monitored and recorded by NSW Corrective Services and therefore never "private." In (re)playing these calls in the context of the podcast, an alternative listening route is offered. We hear how kinship connections are forged and maintained beyond the bars via everyday communication technologies. While conditioned through carceral constraint and unfreedom, we are invited to eavesdrop on intimate moments of love, laughter, care, and concern among kin. These calls between David and his family are a counterarchive, one that speaks back to the state and gives voice to conditions of abandonment (Povinelli, 2011), while also recording practices of strength, endurance, and survival. By giving David Dungay and his family voice in *Breathless*, another kind of recuperation is performed, one that attends to his humanity and dignity under conditions of carceral constraint.

When David speaks with his sister, their mundane greetings "hello," "hello," "good afternoon," "good afternoon" are inflected with his laughter. Later, a gentle "oi" comes down the line from David after the high-pitched squeals of Cynthia's children are heard in the background (running amok), even though they cannot hear him; Cynthia chimes in with an "oi, oi," relaying his message to them to behave. Then, there is a faint beep on the line. Barely audible, the sound is easily missed if one is not attuned to what it indexes. This is a sound familiar to anyone making or receiving calls from prison: Their permitted five-minute call is about to cut out. After the beep, brother and sister's words are expressed in a rush, falling over each other, filling the seconds with a staccato of endearments and endings between siblings: "OK, I'll ring up tomorrow," "OK," "lunchtime, after lunch time," "love ya, see ya," "love ya, take care," "love ya," "be strong," "I sent you a card, Christmas card for you and the kids," "all right then, sis." In the phone call between David and his mother, a similar flood of love and kinship tumbles out in the seconds after the beep: "Don't worry about it, Mum, I'm strong, be strong," "don't let 'em crack ya," "nah (laughter), OK, Mum," "bye then," "love ya," "be strong," "take care now," "love ya."

*Breathless* raises important questions around the limits of listening and the capacity for non-Indigenous/settler Australians to bear witness to accounts of Indigenous injustice that expose the carceral logic of the settler-colonial state. I have argued the podcast centers First Nations voices and privileges the sovereign grounds of authority from which the family of David Dungay Jr. speak. Stauffer (2016) insists that if hearing is meaningful, "it has to be embedded in an openness where what is said might be heard even if it threatens to break the order of the known world for those who listen" (p. 80). In mapping the sonic archives of breathlessness in which Black and Indigenous life is taken, stopped, let go, and held on to, I have considered the broader conditions of listening and being heard at a time when First Nations calls for truth-telling demands a reckoning with Australia's colonial past-present. A close listening to *Breathless* orients us toward more "just hearings" based on a shared responsibility for building worlds, selves, and relations that do not reproduce settler-colonial harm.

### Coda

This article was written before the resurgence of the Black Lives Matter movement in June 2020 in the wake of the police killing of African American man George Floyd and the global protests that followed. In Australia, hundreds of thousands marched in Black Lives Matter/Stop Black Deaths in Custody solidarity protests and vigils across the country, with the Dungay family and other Aboriginal and Torres Strait Islander

families calling (again, still) for justice and police accountability. This article takes these calls seriously, and my analysis of *Breathless* has aimed to honor the persistent and urgent chorus of sovereign Indigenous voices that insist Black lives matter.

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