The Police Videotape Record of Interview as "Documentary": Its Use and Implications from a Film Theory Perspective

Jean Burton explains the links between Police Videotape Interviews and prime time entertainment.

In 1998 the relationship between the law and the media in Australia is becoming more committed than ever. Crime reporting on television has left the news room and gone onto the streets, not just with news crews but passers-by with their handheld video cameras ready to shoot out-of-focus footage to send to ratings-hungry networks. Inadvertent community surveillance has turned Australia's Funniest Home Videos into The World's Silliest Criminals. This is the ever evolving commercial face of the partnership between these two cultural institutions, the face that entertains and smiles at television's consumers.

The commercial arena aside, more importantly, what of the *professional* partnership between media and law? How has the technology of the media influenced and infiltrated the processes of law in Australia? Although there are now remote room cameras available for courts and surveillance footage tendered as evidence, this essay argues that the police videotape record of interview (PVRI) is one of the most influential and challenging media-based introductions to the legal framework.

This statement is premised on my belief that the PVRI can be considered as documentary footage, in a film theory sense, and this is where its links and relevance to the law are interesting. The argument will be developed by focusing briefly on the concept of evidence and historical perspectives of the law, introducing film theory and cultural influences as they apply to the PVRI and, finally, directions for the future. In doing so I will demonstrate that not only does this essential legal tool carry the "truth claim" of documentary, but that its connection to culture positions it on the verge of media exploitation.

Before proceeding further it is important to identify the PVRI as distinct from other audiovisual material, such as surveillance videos or amateur footage, that may be produced or procured by the law. For the purposes of this essay the PVRI refers purely to the interview carried out by police officers with a suspect in controlled surroundings in a police station[1], and using the example of Western Australian law.

Videotape interviews were first trialed in Western Australia in 1987, and by 1994 legislation was drafted for amendments to the *Criminal Code (WA)* to include videotape interviews as evidence. However, to allow time for purchase, training and installation of equipment, the legislation did not come into effect until November 1996. Section 570(D)(2) of the Code states that evidence of an admission by an accused person standing trial for a serious offence is not admissible unless on videotape. There are provisions for reasonable excuse and exceptional circumstances, as defined in section s570(D)(1) and (4) respectively, when a videotape recording has not been possible, resulting in frequent legal argument as to admissibility. This clearly identifies the PVRI as a unique and important "document" in relation to the admission of evidence. It is salient at this point to examine these two fundamentally legal terms.

ORIGINS OF "DOCUMENT" AND "EVIDENCE"

The use of the word "document" is deliberate because it is culturally connected to the law. Brian Winston in *Claiming the Real: the documentary film revisited* traces the origin of the word "documentary" as an adjective from 1802 and of "document", ("something written, inscribed, etc, which furnishes evidence or information, only") from 1727. He comments that words such a "muniment", "affidavit" and "writ" become incorporated into the generic "document", and that these words stem mainly from the legal profession; that they bind

> *"writing and what is written to the common law, specifically to evidence before the law in both the pre-modern and the modern period. The contemporary use of "document" still carries with it the connotation of evidence."*

"Evidence" stems from the science-as-inscription argument which says that initially, due to observation and experiment, science became external to thought. In other words, according to Switjink this grounded scientific data as not belonging *"to the consciousness of the perceiving subject... because different observers will obtain the same data."* Science was inscribed in writing or pictorial representations (eg. anatomical and botanical drawings) and held to occupy the area closer to knowledge than opinion. Data became inscribed evidence of the physical universe.

From the 1600s, however, mathematical probability entered the scientific realm and by the early 1900s the result was that social observations could be "proved" by probabilities and considered scientific "laws". Winston says that *"[a]gainst this background of numbers, social investigation became transformed"*. Nichols, according to Winston, takes this point further by suggesting that criminality then became measured by probabilities:

> *which governed similar people, doing similar things, in similar situations, with similar motives, goals, and results. Such an algebra replaces personal knowledge of specific individuals – their family history, past behaviour, typical traits, and established goals. It is the algebra of the city and of the management of populations.*

In other words, what were previously seen as observations could be examined on a statistical basis that provided probable outcomes; evidence backed up by numbers but without regard for the personal.

With the introduction of the photograph in the mid 1800s as an extension of the scientific device, that is, producing

evidence, the link for the cinematograph to be given evidential status is established. By the early 20th Century photography was to become an indispensable and widely used criminology tool. It is a process of evolution that film, video and computer visual technology have subsequently taken their place alongside the photograph as the visual producer of evidence.

It is from this point that "traditional" film documentary theory develops in the 1920s and 1930s, including Grierson's "actuality", what he saw as evidence of reality; the introduction of the aesthetic or "creative treatment" by such people as Flaherty and Vertov who played with images for effect; and of course the later developments of verite and its hybrids such as direct cinema and 'fly on the wall' (eg Sylvania Waters).

Throughout all discussion, however, there has been an underlying premise which continues to be problematic: film (= science = evidence) = truth – the truth claim of documentary. It is not my intention to dwell on the truth claim in terms of traditional documentary styles suffice to say that it is deeply ingrained, almost as commonsense; "the camera doesn't lie." Instead, keeping this important point in mind, I wish to return to the realm of the PVRI and examine its documentary relationship to law and culture. Winston says:

> *Although documentary's truth claim depends ... on the fact that, because of the camera, scientific evidence is what is on the screen, scientific evidence itself is influenced by the concept of evidence in the law ... So the law provides the general cultural concept of evidence into which science and documentary's truth claims in general both fit.*

This confluence of the camera and the law at the point of truth only adds to the problematic area of the gap between the evidence and truth. If follows then that the legal profession is constantly striving to narrow the gap in order to fight crime and achieve convictions, and that this occurs by providing the best possible evidence for the jury and/or judge to have before them. Evidence is provided by witness testimony and exhibits, and this now of course includes the PVRI which is considered on the upper level of "truth", and particularly if it contains an admission.

In Western Australia, since the PVRI's introduction pleas of guilty have increased and challenges to evidence have decreased. Therefore, the PVRI must be contributing to reducing the gap between evidence and truth. With that comment made, and acknowledging the different perceptions possible for the word "evidence," I turn again to the cultural implications of the camera as evidence and the documentary identifiers connected to the PVRI.

MEANS OF RECORDING THE INTERVIEW

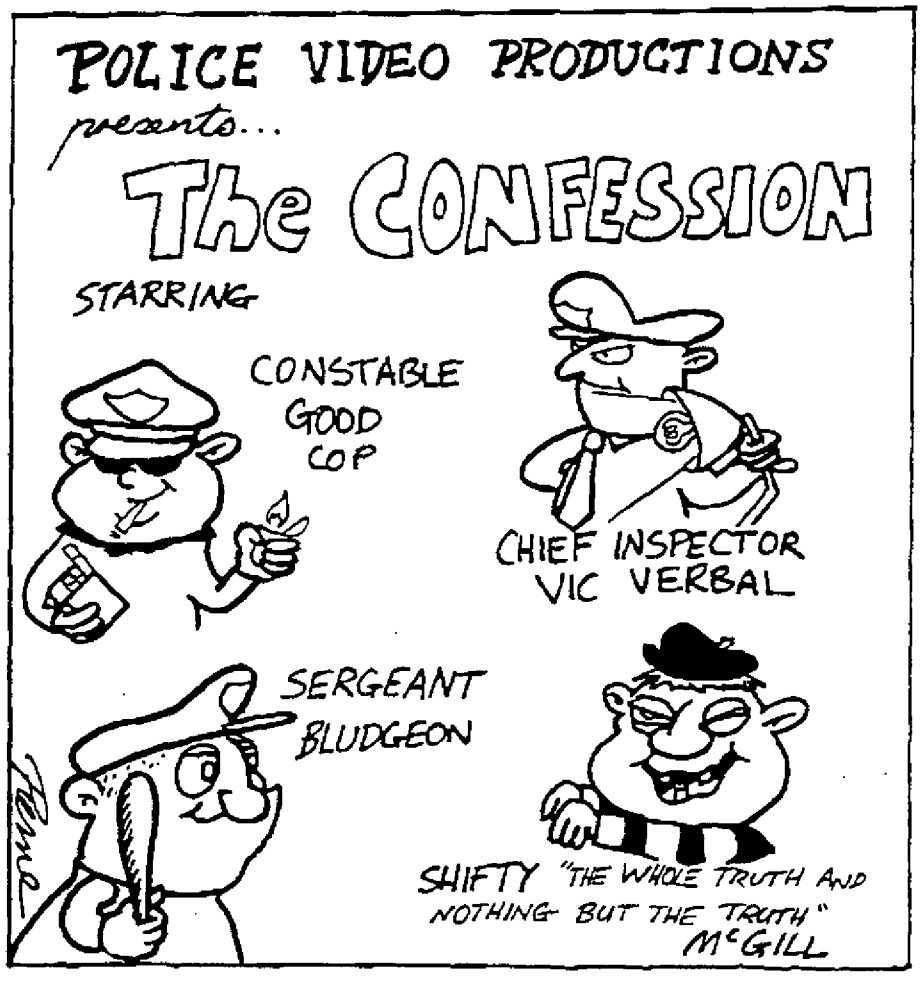
The means of production of the PVRI are very controlled. Equipment is standard and procedures clearly defined by the ideology of the state though legalisation. The camera is positioned in a location that covers the interviewing room with table and chairs and two videotapes are used simultaneously; one for backup. Videotapes are recorded with a visible reference to the date and time on screen and tape. The result of the production is that there is limited scope for "creative treatment". However, in the remotest interpretation of the concept, "creative treatment" does occasionally occur in answer to legal requirements in the form of editing which will be discussed below.

Considering the environment of the PVRI, what is also produced is a unique camera gaze, akin to the documentary gazes. As Bill Nichols explains:

> *"Just as various prefigurative choices in the use of language signal the moral point of view of a historian, 'the camera's gaze' may signal the ethical, political and ideological perspective of the filmmaker".*

In other words, different filming techniques reflect a film maker's point of view which can result in, for example, a professional, humane or curiosity gaze, to name a few. With the PVRI, although it is technically a detached visual recording – the camera is not handheld but controlled from a console – the result is, I would suggest, a legal gaze. This is because it is a visual document which has an evidential purpose, a strong narrative and a varied audience (police, legal professionals, jurors) that are related to the ideological requirements of the law, which separates it from the professional gaze or surveillance video.

This links tenuously to an ethical consideration. Nichols again, in *Blurred Boundaries,* comments that,



"The proximity of the camera to its subject or the relentlessness of its gaze may provoke discomfort when it obtains evidence with regard for tact, or perhaps even decency."

In the circumstance of the PVRI the suspect's rights to receive a "tactful" and "decent" gaze from the camera are somewhat waived once consent is given for the video interview to take place; that is, they have no control over the camera's gaze.

To a significant extent, this legal gaze in the PVRI also arises from an obvious feature which is one of the documentary's critical techniques, the interview. Corner links the law to documentary by calling interview speech, "variously obtained and used", as his evidential mode 2 (testimony). Using Nichols' definitions of documentary type, interview identifies the PVRI as an interactive mode of documentary. He states,

"this form raises ethical questions of its own: interviews are a form of hierarchical discourse deriving from the unequal distribution of power, as in the confessional and the interrogation".

Because of the nature of institutional procedures in place during a PVRI there is obviously an unequal distribution of power between police officers and the suspect. However, it is important to note that, from a legal point of view at least, the suspect is not completely powerless because of the fundamental premise of innocence until proven guilty. Even so, once the unequal power relationship is established between police officer and suspect, there are a minefield of cultural issues that arise in the interview room.

First, according to Nichols, *"for every fact, for every piece of incontrovertible evidence, more than one argument can be fashioned"*. One of the standard means of shaping an argument in documentary is by authorial control of editing. This can affect narrative and relationships to fiction and evidence. Editing is not problematic with the PVRI in the way that is debated in a number of documentary styles; that is, in actively putting forward a position of argument. However, as highlighted earlier, there is a limited amount of "creative treatment" given to the PVRI when inadmissible or irrelevant portions are edited out of the original recording, such as references to previous convictions.

Second, according to Guynn, *"Narrative is never absent in documentary films"*. Corner and Nichols develop this point by suggesting that the narrative structuring of exposition through chronology and causal connections in a question and answer format have long been a feature of documentary. This is clearly demonstrated in the PVRI through the use of questions and answer to establishes times and activities linked to the inquiry investigation. Further, there is often more than one narrative in the PVRI: the narrative of the legal/police institution, and the narrative of the suspect – and the two often conflict as to fact; for example, a suspect denying knowledge of being at a certain place at a certain time. This does not subvert the truth claim of documentary, however, because the fundamental premise of camera = truth hovers over the narrative.

Although narrative can certainly be applied to the PVRI, when it is linked to evidence then the problematic areas of motive and intent are introduced. These arise because the PVRI is considered to be "raw" footage. It is not treated by technology or further cultural significances by way of editing or authorial interference – "cooked". The PVRI is only the primary representation; as Corner explains, *"the recorded sounds and images from which the film is constructed"*. This leaves it devoid of additional cultural readings adding to the film's meaning. Because of this the PVRI remains "on the back burner"; never totally "cooked" but also, by its use in the legal profession, being removed from its "raw" state by attempting to demonstrate intent and motivation – two very loaded cultural concepts – through the narrative.

Nichols states succinctly, *"No image can show intent or motivation"*. This is also important when considering the suspect's demeanour during a PVRI, something that previously was unavailable for juries to have as evidence. As an example, a PVRI may appear in its 'raw' state to indicate an expressionless suspect making an emotionless admission to an alleged offence. However, by the time the PVRI is tendered at trial, the accused, through legal representation, may argue that the admission was made in a state of shock or under duress. Nichols expands on this:

The same evidence, or facts, can often be placed quite convincingly within more than one system of meaning, or given more than one interpretation. Court trials often hinge upon precisely this fact and involve not only matters of circumstantial evidence but the meaning of documentary evidence itself. For this reason the status of the photographic image in legal proceedings is far from cut and dried and it may serve us well to recall the caution exercised there.

Once again this challenges the truth claim but still doesn't deny the PVRI's possibilities; juries now have another evidential tool to consider with other evidence.

ISSUES REGARDING LANGUAGE ON THE PVRI

It would be erroneous at this point not to acknowledge the powerful cultural impact of language on the PVRI and how it contributes to evidence, power, narrative, motive and intent. As viewers of texts, we are aware of jargon when hearing a police officer speak on television or listening to counsel in court. Different social and cultural institutions such as the law and police have distinctive language patterns, and it follows that because they hold the power in the PVRI, they therefore control the pattern of language in that situation.

This can provide a very persuasive environment. For example, in the Rodney King trial the accused police officers (when *they* were being interviewed) used one-dimensional language and emotionless responses with, according to Nichols, *"no space for critical consciousness or dialectical thought"*. A more public example of this concept was the American media/military's use of "friendly fire" to explain allied deaths caused by their own fire. This is an area strongly connected to semiotic analysis not pursued here, but it goes to demonstrate that language can be crucial in shaping an argument or proposition.

CONCLUSION - THE FUTURE FOR PVRI

Finally, I wish to conclude with some comments and concerns for the future of the PVRI. One of the constants of documentary is that nothing is constant. Documentary styles have adapted and hybridised to the point where one of the most popular television forms at present is the "reality TV genre[2]. Corner says, *"It would be hard to find another period when so many different styles of documentarism were being broadcast"*.

Although the idea of a controlled interview such as the PVRI may not be appealing now as "infotainment", society's present fascination with crime

and voyeuristic social deviancy such as paedophilia, combined with television networks' lust for ratings, is creating an ever-increasing market for whatever can be broadcast. There are legislative limits in place now (up to $100,000 fine or 12 months' imprisonment in Western Australia) to prevent the broadcasting of PVRI's, but the demand and influence of the media moguls cannot be denied. One only has to look at the relationships between media barons and political leaders and the re-emergence of media ownership issues to confirm this point.

CONCLUSION

In summary the points I have raised regarding: the production of the PVRI; the documentary theory including the interview, gaze and editing; and cultural considerations of narrative and language, demonstrate that the PVRI is significantly aligned with documentary style from a film theory perspective. It is also undeniably important as documentary evidence from a legal perspective. Introduce the considerable political and economic influence of the commercial media and the PVRI seems poised to join the constantly evolving reality TV documentary game. It must only be a matter of time before the media-legal relationship is reaffirmed; the "evidence" will be in front of us, on screen, prime time.

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1 Mobile units are used in certain circumstances; eg remote areas.

2 See "The World's Silliest Criminals".

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Jean Burton is a part time media studies student at Edith Lowan University and also works part time for a national court reporting company.

Child On Line Protection Act Halted for Now

John Corker looks at the battle over the Child On Line Protection Act in the United States.

The war has broken out again in the US between the free speech on-line groups and the government over new laws which seek to protect minors from harmful material on-line. The Child On-Line Protection Act (COPA), passed by the US Congress on October 7, and signed into law by President Clinton on October 21, 1998 was prevented from coming into operation by a temporary restraining order granted on 19 November 1998 by Judge Lowell Reed Jr. of the US District Court. This order prevents the Government from enforcing the Act and is likely to stay in place until a full hearing is held of the substantive issues raised by the plaintiffs.

The plaintiffs are diverse and include the New York Times, Sony On-Line, CBS New Media, Time, Condomania, a leading on-line seller of condoms, OBGYN.NET, a site about women's reproductive health and RIOTGRRL, a feminist e-zine.. They all argue that whilst the law purports to restrict the availability of materials to minors, the effect of the law is to restrict adults from communicating and receiving expression that is clearly protected by the First Amendment. They say that the law will put a wide range of web sites in danger of prosecution for what amounts to constitutionally protected content, such as information about safe sex, gay and lesbian issues, medical conditions, or even poetry[1].

This is round two in a battle that started more than two and a half years ago where the same forces met in the same US District Court to battle over the now infamous section of the Communications Decency Act (CDA) which made it a felony to transmit or display any "indecent" material on the Internet that could be obtained by minors. The plaintiff's Memorandum of Law in support of their Motion for the Restraining Order states:

This is Congress' second attempt to impose criminal sanctions on the display of constitutionally protected, non-obscene materials on the Internet'... Recognizing that the Internet had become a powerful "new marketplace of ideas' and "vast democratic fora" that was "dramatically expanding" in the *abscence* of government regulation, the Court imposed the highest level of constitutional scrutiny on content-based infringements of Internet speech.

The Supreme Court found that the CDA was too wide ranging, not specific enough and struck down that law.

The COPA has tried to get around the difficulties of the CDA case by creating a definition of harmful material which is remarkable for its specificity:

> *"material that is harmful to minors" means:*
>
> *any communication, picture, image, graphic imagefile, article, recording, writing or other matter of any kind that is obscene or that (A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors is designed to pander to, the prurient interest; (B) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post pubescent female breast; and (C) taken as a whole, lacks serious literary, artistic, political or scientific value for minors*

The COPA imposes criminal and civil penalties on person who:

> *knowingly and with knowledge of the character of the material, in*