

**The Spectacle of the Judicial System: Exploring the publicising of private legal affairs through  
Documentary Cinema as a means of addressing miscarriages of justice.**

Detailing a history of documentary cinema's impact on the legal system is far greater a task than is conquerable in a single essay. The purpose here is to instead explore the publicity and spectacle of events to do with legal institutions, specifically through the medium of nonfiction film, and how this exploration can further one's understanding of the ways which documentary may reflect cultural, social and political agendas. In addition, I hope to demonstrate some of the ethical complications that arise from the exhibition of such documentaries. The approach for this involves studying *Capturing the Friedmans* (2003, Andrew Jarecki); *Titicut Follies* (1967, Fredrick Wiseman); *Sisters In Law* (2004, Kim Longinotto). These films will allow me to outline how a highly publicised event can reflect the ambiguities and difficulties of legal battles and testimonies, discuss the ethical and aesthetic considerations that must be made regarding the cinema vérité approach, and look to the potential for documentaries to expose miscarriages of justice in other cultures respectively. These three films all share noteworthy components that are relevant in each of these discussions and so will be referred to concurrently throughout this essay, rather than separately. Furthermore, the dialectic of the judicial system represented within documentary is complex and problematic. As such, I hope to present my ideas in an easily digestible fashion by first describing what I mean by the publicising of private legal affairs, before providing a demonstrative example of the difficulties that can arise from this process. Reflecting on recent work regarding neuroscientific research into biases and the psychological implications of conducting documentary interviews, I then look to highlight the complications surrounding testimony and political predispositions, as they are represented in my three chosen films, as well as an audience's trust in a film's impartiality. This shall finally lead me to the idea of progressivism, an attitude that I argue is not necessarily relative to political ideologies.

It stands to reason that documentary provides a fitting opportunity for private miscarriages of justice to be publicised. Whilst discussing *Sisters In Law* Patricia White outlines how "theatrical exhibition garners national reviews, a realm of public discourse..." (2006, p.125) White is reflecting on the potential for the film to promote its message and display its proof of injustice by means of distribution and exhibition. This rather self-evident note is an ideal starting point for my discussion on the publicising of legality, as it provides framework for understanding how injustices, previously unknown to the larger population, can become known (and, more importantly, amended) through documentary. It is worth clarifying here what it is exactly being labelled as 'private' and 'publicised'; the former denoting events suppressed from popular media, the latter referring to the publication of such events. This could be personal scenarios, as seen in *Capturing the Friedmans* whereby a family's private ordeal is publicised on national television and in a documentary, or private circumstances withheld from the public by a company or institution that are later revealed by a filmmaker. As noble as this endeavour may be in some cases, however, one should consider the difficulties that arise in other certain contexts. Apt examples of such difficulties are found in Fredrick Wiseman's *Titicut Follies*: On one hand, it may be considered admirable for Wiseman to expose the unjust treatment of the criminally insane, and to publicise the malnourishment and abuse faced by the patients of Bridgewater State Hospital. However, Wiseman's tactlessness found in his cinema vérité approach "pulls [his] cinema toward the realm of voyeurism and visual pleasure." (Nichols, 1978, p.16) It should be noted that I place *Titicut Follies* within cinema vérité as I believe this best describes the film according to the scholarly canon due to the questionable staging of some events

[Figure 1] and, contrary to Bill Nichols' claim, subjects in the film looking at the camera, therefore aware of its presence. [Figures 2-4](1978, p.16) This alternative realm of spectatorship that is a result of Wiseman's lack of tact raises questions regarding his responsibility as an agent of potential change. To what extent can or should he intervene with his subjects? What are the possible consequences of each level of intervention? How ethical is the theatrical display of such injustices? To what extent has the filmmaker's artistic pursuits affected the representation of events? Such aesthetic and ethical dilemmas are commonplace within the scope of discussions surrounding cinema vérité. Patricia Aufderheide even deems it to be a worthy observation in her introductory book on documentary film, simply noting that "[the] ethics of a vérité [sic] filmmaker's relationship with the subject has been raised. Filmmakers may inadvertently change the reality they film, and they may agonize over how much to intervene." (2007, p.54) When placed within the context of *Titicut Follies*, then, one can identify how ethical complications may arise as a result of the perhaps otherwise noble act of publicising the private affairs within the hospital.

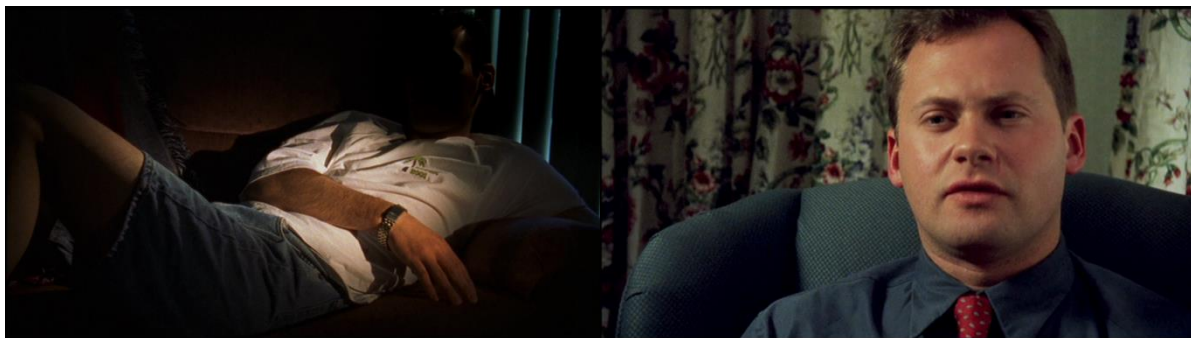


**Figures 1-4**

Salient as the aforementioned questions may be to the vérité approach, they are not exempt, I argue, from being asked with regards to other types of documentary practice. *Capturing the Friedmans*, for instance, provides a very clear example of similar difficulties that arise by means of being less impartial about its subjects as it intends to portray, raising issues regarding the faith an audience may put in a representation of events. A film that centres around inconsistencies in conflicting testimonies, both Susan Bandes and Stella Bruzzi remark on the supposedly indeterminate nature of Jarecki's work; "The 'truest story' in terms of how Jarecki packages and

present it, turns out to be an inconclusive one...”(Bruzzi, 2006, p.241) “...a complex, challenging story without clear heroes or villains...” (Bandes, 2007, p.295). I contest, however, that Jarecki’s filmmaking problematizes the relationship between the film and its audience’s trust more than is first noticeable. To demonstrate one way in which this happens, it is worth exploring the psychological implications of interviews within documentary – a component of nonfiction filmmaking that features heavily in *Capturing the Friedmans*. This demonstration shall also highlight another way in which the publicity of crime may entail underlying ethical complications.

Consider two of the talking head interviews conducted from previous students of Arnold Friedman in which the first claims to be a witness to sexual abuse, and the other claims to be unaware of such behaviour [Figures 5, 6]. The obvious stylistic differences between the first and the second include low-key lighting, comparably more informal clothing, slouched body language of the subject and a wider shot used to capture this posture. Michael Grabowski’s recent work on the cognitive activity that takes place when watching interviews helps to appreciate the significance of these differences. Reflecting on the works of Murray Smith and Carl Plantinga, Grabowski describes how “viewers empathize with characters through the mimicry of facial expression and body movements on a pre-cognate level.” (2018, p.283) The relevance of this observation cannot be overstated, as it highlights the affective consequences of interviews within nonfiction film. Grabowski later continues to detail that spectators “seek out perceptions of facial muscle groups to ascertain the emotional cues of participants” and “develop simulations of the participant’s mental state and infer a social relationship.” (p.287) Deferring this cognitive activity in a film’s audience by altering the representation of a witness through comparatively dramatic stylistics may raise suspicions over the filmmaker’s intent, thereby problematizing an audience’s trust in the representation of events. It must be clarified that no direct accusations are being made: It may well be that this difference in representation is of little more consequence than that of varying levels of anonymity requested by the subjects. These observations that are afforded by recent cognitive studies within documentary are not designed to prove a filmmaker’s intentions, but are helpful when understanding the behaviours of



Figures 5, 6

spectators when faced with apparently morally ambiguous representations of ‘characters’ in documentaries. Furthermore, they aid the discussion surrounding the difficulties of putting faith in a documentary’s representation of events, and the complications that arise out of the publicising of private memories and testimonies of witnesses.

Having explored some consequences of injustices being publicised, it may now be of value to appreciate some of the more progressive aspirations of nonfiction filmmakers. This appreciation looks to recognise other implications of publicising private circumstances outside the scope of ethical issues. The discussion shall now instead focus on how publicising legal cases challenges inherent biases within humans, and on the left-leaning political qualities in the works of some scholars that aim to project collectivist ideologies onto readings of my chosen films. The latter of these two matters shall, subsequently, lead to a concluding recollection of the potential for documentaries to progress towards a more just judicial system despite entailing inevitable ethical dilemmas. First, though, a note on the inherent political bias in humans. Another observation afforded by the ever-evolving field of cognitive film theory is Dirk Eitzen's reflection on "confirmation bias" in his examination of "Documentary in a Post-Truth Society" (2018, p.95). A well-known psychological phenomenon, confirmation bias is the tendency for an individual to find information countering one's opinions to be incompatible or problematic:

People tend to hear what they want to hear, believe what they want to believe, and not pay attention to or even fail to notice things that do not square with their wishes and expectations. When they do notice things that do not square with their wishes and expectations, their brain works very hard to fit these into existing frameworks of belief. (p.95)

Michael Renov, in an introductory chapter about truth in nonfiction film, has alluded to the significance of such behaviours long before cognitive film theory was able to articulate the reasoning for them: Describing the events that took place in the Rodney King trial, Renov suggests that "Everything hinged on interpretation which was, in turn, dependent on the context established through careful argumentation. One aspect of context... [was] the psychological and ideological predispositions of the spectators/jurors." (1993, p.9) This is a behaviour that is recognisable in all three of my chosen films. David Friedman, for instance, refuses to accept his father's own



Figures 7-10

confession of having “sexually arousing contact with two boys” by evasively suggesting that “maybe [Arnold] was leaning against a tree, that’s called sexually arousing contact... I don’t know what that sentence means!” [Figure 7] Similarly, there is an apparent reluctance to provide the necessary treatment that patient Vladimir requires from both the doctor and the 2 other members of hospital staff in *Titicut Follies* [Figure 8]. Likewise, Kim Longinotto’s *Sister’s in Law* features several examples of confirmation bias exhibited. One is an early scene in which two family members struggle to accept that they are without custody entitlement and have committed a serious offense, as insisted upon by prosecutor Vera Ngassa [Figure 9]. Later, one defendant avoids answering to demands to verify his suspicions (fundamentally founded on misogynistic social practises in Cameroon) about his wife, claiming that judge Beatrice Ntuba is “embarrassing” him [Figure 10].

To publicise the private matters of these couples, both via a public court case and the exhibition of Longinotto’s film, is to demonstrate the potential for change in certain social and political contexts. In particular, institutional activity that may be considered unethical comes under fire in these three documentaries, as the ambiguous and faceless corporate bodies are represented to be without coherent or concrete hierarchies of authority. This philosophy of emphasizing the indirect ascension of authority within institutions is seen in Bill Nichols’ assessment of Fredrick Wiseman’s oeuvres possessing a structure that “assumes that social events are multiply-caused, and must be analysed as a web of interconnecting influences and patterns. It is dialectical rather than mechanical.” (1978, p.18) Likewise, Susan Banes details how *Friedmans* “approaches the legal system as a complex organism of multiple institutional actors,” later stating that the film conveys how systemic dysfunction “is often the result of the acts of numerous individuals...” (2007, p.296) These claims, though not without sound reasoning, do appear to reflect sentiments of prioritising a collective over an individual. To deter suspicions of this notion being a sophism, consider the following points: Nichols directly cites Karl Marx before analysing Wiseman’s mosaic structure, echoing the Russian formalist ideas of montage whereby a dialect between the individual and the collective is present; “The supplementary or associational nature of Wiseman’s mosaic pattern stresses goal-seeking and constraints more than determinism and causality.” (1978, p.21) This evaluation of Wiseman’s form comes after defining his choice of subject as “distinctive... among cinema vérité film-makers and challenges assumptions about the individual as the locus of social interaction.” (p.16) Patricia White, too, follows this route by taking the inspired and optimistic attitude of *Sisters In Law* to be found in “cues within the film [that] encourage a viewing consistent with Mohanty’s model of transnational feminist solidarity.” (2006, p.127) Banes’ description of the complex structure of the legal system as represented in Jarecki’s film, Nichols’ insisted parallels between Wiseman’s structure and the individuals within tax-funded institutions, and White’s accreditation of Longinotto’s film as a “portrait of empowered contemporary African women” (p.127) are all indicative of the difficulties faced when pushing for change with institutionalised injustices and the tendency to see left-thinking politics as a key tool to overcoming these difficulties.

I must omit discussions regarding the value of either political directions here, as this sits outside my current area of interest. It can, however, be observed that it only seems rational to aspire for documentary to be vehicle for change and progress for those in unjust circumstances, regardless of political leanings. For this reason, I wish to avoid the narrowing idea of the political left representing progress and the political right representing stagnation. Instead, it is paramount that one continues to consider the very act of pushing for change, rather than the underlying political motivations: Publicising mistreatment of women, the criminally insane, or a molestation

case, shares the progressive aspirations of capturing private injustices unknown to the masses, and using nonfiction film to make them known. These acts are considered unjust regardless of political leanings, and neglecting this would limit one's filmic discussions to that of one-sided political discourse. Richard Barsam attributes (then recent) technological developments to the effectiveness of this progressive mission, referring to the 'new' nonfiction film as having the "basic desire... to use lightweight equipment in an informal attempt to break down the barriers between film maker and subject... to get at the truth, the whole truth and nothing but the truth, and to catch events as they are happening, rather than to question events that have happened in the past." (1974, p.249) Though the final defining characteristic somewhat disqualifies *Friedmans* from the 'new' nonfiction film, I contend that neither the breaking down of barriers nor the pursuit of truth is exclusively achieved via particular modes of production. A more accurate estimation, perhaps, would have been one that acknowledges the congruent aims of 'new' and 'old' documentary filmmakers alike, whilst still maintaining a distinction between their practices – both of which may work to address miscarriages of justice.

To close, it has not been the intent of this essay to assign political leanings to the progressive intentions of nonfiction filmmakers (or vice versa), nor has it been to conclude with any certainty whether the act of publicising legal affairs through documentary is (a) absolutely achievable, (b) inherently moral or immoral, or (c) exclusive to nonfiction film. Furthermore, it was not the objective to provide an exhaustive account of examples from my three chosen films that demonstrate my arguments. Rather, this essay has explored of the dubious nature of legality as it is represented in non-fiction film, acknowledging the aesthetic and ethical complications of voyeuristic spectatorship of injustices, the psychological implications of faith in representation and social attitudes, and the balance between the filmic and the political discourses to be had on the progressive attitudes of nonfiction film. It is hoped that the reader can recognise the connotations of a legal affair becoming a spectacle of public attention. Moreover, it has been shown that my three selected films are adequately exemplary of change that is on a smaller scale, yet no less significant. It is undisputed that documentary can and has had an effect on social attitudes, but it is key to look outside of the documentary mainstream to seek promise in the smaller stories of change; *Titicut Follies*, after a lengthy federal ban, is considered to have played a role in the eventual closure of Bridgewater Hospital; *Sisters In Law* set an example for overcoming archaic religious oppression; and *Capturing the Friedmans* unearth the discrepancies within the US legal and judicial system, and captured the eventual reparations of a broken family. These consequences are inseparable from their films' initial exposure and exhibition, as such miscarriages of injustice would have remained unknown to the public were it not for the medium of documentary film. If nothing else, this may urge readers to reflect upon the stories of injustice that exist but remain unknown each day, and potential for them to be corrected through film.

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