

Crime, Guilt and Testimony: On Performativity and Nonfiction

Giulia Scmazzon / Ph.D. Thesis Abstract¹
Università IULM, Milano

This thesis explores how nonfiction cinema intersects with the ethical and political problems of crime and guilt, playing a role in public debates about justice and punishment. The starting point of this thesis is a careful analysis of problems and issues associated with the performative quality of documentary described by Stella Bruzzi in her influential book *New Documentary*.² Bruzzi's notion of performance draws upon J.L. Austin's speech act theory and Judith Butler's ideas on the performance of gender. By examining differences and analogies between the concept of performativity described in Austin's work on ordinary language and the idea of performance developed by Butler's critical theory, the research investigates the complexity and the usefulness of these reflections in the field of nonfiction studies.

The writings of Stanley Cavell and Shoshana Felman are discussed in order to focus on questions that are crucial in understanding the ethics and the aesthetics of the performative. Specifically, Cavell and Felman have stressed the constitutional possibility of failure of speech acts in Austin's theory, and have described the responsibility of the enunciator in terms of a non-sovereign self.³ The purpose of Chapter 1 is to recognize the quest of knowledge as inherent within the performative documentary. The epistemic sense of nonfiction film could be interpreted in terms of keeping an authentic promise. As Felman has argued reading Nietzsche, a promise constitutes a paradox which is founded upon the relationship between language and body.

This indissoluble and problematic bond is relevant to central issues of testimony and guilt which is explored in Chapter 2. The vision of human being as a 'speaking

¹ Ph.D dissertation supervised by Professor Luisella Farinotti and Professor Marina Sbisà. For information: giulia.scmzn@gmail.com

² Stella Bruzzi, *New Documentary: A critical introduction* (London and New York: Routledge, 2000).

³ See Stanley Cavell, *Philosophical Passages: Wittgenstein, Emerson, Austin, Derrida* (Oxford: Blackwell, 1995); Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge: Harvard University Press, 2002); Shoshana Felman, *The Scandal of the Speaking Body: Don Juan with J. L. Austin, or Seduction in Two Languages* (Stanford: Stanford University Press, 2003).

body' and as a field of vulnerability brought to light by both Felman and Butler plays a significant role in this transition from the analysis of performativity to the question of testimony. As it has been pointed out by John Durham Peters, 'to bear witness is to put one's body on the line'.⁴ Witnesses in a courtroom make a commitment to tell the truth about something they acknowledge as a result of their corporeal presence at an event. Furthermore, in trials witnesses testify at risk of punishment if they fail to keep their promise of truthfulness. Chapter 2 offers a brief comparison of Adversarial and Inquisitorial Theory in order to discuss the ways in which democratic regimes structure the legal notion of testimony. This analysis addresses Foucault's genealogy of punishment and discipline in the modern state and the positive aspects of legal proceedings guaranteed by the establishment of Fundamental Rights in the European Union and by the criminal justice reform in Italy.

In a pragmatic perspective, I seek to compare the conventional procedure displayed by fair trials to Austinian conditions of felicity of the speech act and to conversational maxims and cooperative principle described by Paul Grice. Reading Arendt's work, we focus on the idea of witnessing as a practice for securing a relevant truth, namely a truth that we, as a society, need to know and judge.

The structure developed in Chapters 1 and 2 provides a theoretical framework for the case studies analyzed in Chapters 3 and 4, from *Aileen: Life and Death of a Serial Killer* (Nick Broomfield, 2003) to *Wormwood* (Errol Morris, 2017). The aim of my research is not to establish a methodology, but to define an interdisciplinary approach to the most important moral issues raised by many filmmakers in the past two decades.

Chapter 3 traces different 'strategies of authentication'⁵ adopted by filmmakers in order to represent criminals and to deal with the pursuit of justice within a democratic society. Throughout a selection of films between the years 2000 and 2020, we shall investigate the ways in which documentary practices encounter the social and moral drama of guilt and the political issue of responsibility. We argue that Broomfield, Herzog, Morris, Jarecki and other filmmakers have actively contributed to the public debate about criminals and punishment. Their works show how nonfiction discourse is capable of accessing reality and bearing witness through narration and argumentation. As Linda Williams has pointed out, truth is not guaranteed by any nonfiction techniques.⁶ Nonetheless, documentary discourse, as we show through case studies, may be used to expose lies and to reveal their circulation in our media-saturated world.

⁴ John Durham Peters, 'Witnessing', in *Media Witnessing: Testimony in the Age of Mass Communication*, ed. by Paul Frosh and Amit Pinchevski (London and New York: Palgrave Macmillan, 2009). p. 308.

⁵ See Carl Plantinga, 'Rhetoric of Nonfiction Films', in *Post-Theory. Reconstructing Film Studies*, ed. by David Bordwell and Noël Carroll (Madison: The University of Wisconsin Press, 1996).

⁶ Linda Williams, 'Mirrors without Memories: Truth, History and the New Documentary', *Film Quarterly*, 46.3 (1993).

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Chapter 4 introduces the nonfiction genre of ‘true crime’ and discusses its popularity in the age of streaming TV. It is necessary to recognize the popular fascination with crime stories that affects western mass culture and to problematize the discursive construction of criminal subjects that informs a large part of true crime entertainment. In particular, Chapter 4 addresses the concerns about media obsession with criminals and criminality pointed out by Philip Jenkins and Frank Furedi.⁷ Despite the recognition of these valuable concerns, the case studies investigated here share a critical approach to the question of guilt and punishment. The rise of true crime documentary, especially on streaming platforms, is founded upon the huge public success and the impact of the podcast *Serial* (2014–), HBO’s miniseries *The Jinx* (HBO, 2015) and Netflix series such as *Making a Murderer* (2015–2018) and *The Keepers* (2017). Many of these works cannot be reduced to ‘leisure interest products’.⁸ On the contrary, they involve the viewers in a critical search of the truth that intersects with the social experience of crime and justice. The chapters conclude with three case studies — *The Jinx*, *The Keepers* and *Wormwood* — that explore miscarriage of justice engaging the spectator in a discussion about the criminal justice system, the right to a fair trial and the victim’s desire to seek justice.

⁷ Philip Jenkins, *Using Murder. The Social Construction of Serial Homicide* (New York: Aldine de Gruyter, 1994); Frank Furedi, *Therapy Culture. Cultivating Vulnerability in an Uncertain Age* (London-New York: Routledge, 2004).

⁸ Anita Biressi, *Crime, Fear and the Law in True Crime Stories* (London: Palgrave Macmillan, 2001).