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John Perceval: an ethical representation  
of a delinquent angel

David Blackall  
University of Wollongong

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**John Perceval – An ethical representation of a delinquent angel**

A thesis submitted in fulfillment of the requirements for the  
award of the degree

Doctor of Philosophy

from

University of Wollongong

by

David Blackall, B.Sc (Agric), Dip. Ed, MA (Jour)

Faculty of Creative Arts

School of Journalism and Creative Writing

2004

**CERTIFICATION**

I, David Blackall, declare that this thesis, submitted in partial fulfillment of the requirements for the award of Doctor of Philosophy, in the School of Journalism and Creative Writing, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document and its associated documentary film have not been submitted for qualifications at any other academic institution.

David Blackall

July, 2004

### **Confidential Material**

This thesis contains confidential material, which cannot be made freely accessible for a period of three years after submission.

\* Confidentiality relates to the substance of the information and the source of that information as obtained through the Freedom of Information Act, and that there is likely to be further court action pertaining to one of the case studies.

\* Secondly, the writer wishes to ensure that the rights of certain individuals who have participated in the research are protected until such time they are no longer at risk as a result of this publication.

## Abstract

This dissertation accompanies two versions of a one-hour documentary, *Delinquent Angel*. The filmmaking process, arriving eventually at the second and broadcast version, saw the film receive considerable acclaim. Despite this, the process in making *Delinquent Angel* was fraught with legal and ethical dilemmas at nearly all stages of production. The enclosed film therefore became a best case study for this PhD, which might otherwise be entitled: “Non-fiction Filmmaking: How to Minimize Harm in a Dangerous Profession”.

The PhD asserts that if ethical standards are met in filmmaking, or indeed television journalism, it is more likely that costly legal problems may be minimized. This argument is given a context through a central discussion on the nature of the consent that participating subjects make for documentary and television journalism, and that simply, a respect for the subject and their rights is reason enough to behave ethically.

The culture of documentary and television journalism is such that the context of a subject’s consent is most likely defined by the particular genre of film being envisaged, its overriding commercial aspirations and the realities the film will create once editing is completed. The filmed subject’s plight in final representation is further magnified in that documentary and current affairs television journalism, like fiction films, have conflict built in for cinematic and dramatic interests. In a perfect world, non-fiction film subjects would be informed of this and the manner in which this will be executed.

A ‘truthful’ informed consent filming process would have the camera subject understanding that devices like dramatic conflict sometimes serve the film as a cultural form, or are in public

interest, or are included to attain a more complex level of truth. More often, however, devices like dramatic conflict serve storytelling in simple and selfish ways, boosting the reputations and commercial success of producers and their works.

The documentary *Delinquent Angel* as an integral part of this dissertation, primarily explores the history and artistic works of John Perceval. The film empowers his works as historical and socially committed texts in their own right. Through the psychological dimensions of the works, *Delinquent Angel* is able then to touch on Perceval's history, his relating to family and to the contemporary social forces around him. The film also shows the relationship between Perceval and the filmmaker (the artist's former son in law) and so makes transparent some of the filmmaker's (my) ethical and personal responses to the production process. The PhD brings analysis to that filmmaking process in terms of the representation of the participating subject, the funding bodies and the culture of the related industries of film and current affairs television journalism. Further case studies and epistemological analysis are then provided to reinforce the assertions made as a result of producing *Delinquent Angel*.

The PhD does not centre on the extreme of academic comment around the subjectivity-objectivity balance, nor a general philosophical debate on freedom of expression. Rather, the ethical contradictions and problems generally within the journalistic filmmaking process are at the focus of this discussion. Discourses are arranged into an argument that exposes and discusses ethical dilemmas and how ethical consideration may assist in reducing legal risk. Despite this rather obvious point, it is apparent that the Australian documentary film industry lacks definition or acknowledgement of ethics, or any codified guidelines for that matter. For context and reference, the PhD returns continuously to questions of ethics surrounding the camera gazing upon the very private but famous Australian expressionist painter, John Perceval AO, the delinquent angel.



The PhD shows how the reflection on the making of a major documentary on a famous artistic figure informs our understanding of the ethics of journalism and documentary filmmaking generally. In doing so, the PhD illustrates how this understanding impacts on the higher education journalism curriculum and how a code of ethics for documentary filmmakers should be developed from the codes now available to journalism.

This study asserts, therefore, that if ethical standards are met in filmmaking, or indeed in television journalism, it is more likely that legal risk is reduced. The costs of unethical practice, however, are not only monetary as they often impact in psychological and social terms. This is demonstrated and argued in a context; that unless an overwhelming public interest can be demonstrated to justify deceit and subterfuge, then no film is more important than a film subject's mental or social wellbeing.

### Acknowledgements

I wish to thank Cathy Robinson (Chief Executive with the Australian Film Commission in the 1990s), who assisted in the first instance in my Freedom of Information inquiries. I wish to also thank Caroline Verge (who, in 1998 worked with the Australian Film Commission's legal department) for her assistance in the Freedom of Information process and for her releasing the resultant material in public interest (Appendix 1). I would also like to thank Harold Scruby for his permission to release those documents in the context of his part in *The Wonderful World of Dogs*. My thanks to Ken McGregor for all his diplomacy between me and John Perceval, and to the late Mark Worth for his inspirational interviews over the years on sole operation in (miniature) video camera journalism, and its historical links. My thanks also to Dr Eric Loo as final supervisor to this thesis after Professor Lloyd's untimely death, and to Jolyon Sykes and Professor Mark Pearson in their additional reading and comment. Finally, my gratitude to Beverly Lloyd in the months after Professor Clem Lloyd's death, for locating his computer files valuable to his supervisory comment.

### **Dedication**

This thesis is dedicated to three friends who sadly passed away over the time of its compilation: John Perceval AO, Clem Lloyd, PhD, AO and Mark Worth, journalist and filmmaker. I owe them a great deal for their generosity and charisma.

# John Perceval – An ethical representation of a delinquent angel

## CONTENTS

Certification	ii
Abstract	iv
Acknowledgements	vii
Dedication	viii

### Chapter one: minimizing harm in non-fiction filmmaking

1.1 Introduction	3
1.2 Background	7
1.3 Who was the delinquent angel?	13
1.4 Hazardous camera gaze	14
1.5 Purpose of the study	17
1.6 Reality misrepresented	20
1.7 Rationale and theoretical framework	26
1.8 Case study research	29
1.9 Action research	30
1.10 Participatory action research	31
1.11 Delineation of the research problem	34
1.12 Developing theory	35
1.13 Grounded theory	36
1.14 Research assumptions with the researcher in it	40
1.15 Checks and balances	46
1.16 Benchmark in international law	49
1.17 Literature: available discourses	50
1.18 Importance of this study	57
1.19 The following chapters	61

### Chapter two: the state of the Art

2.1 Truthfulness as a starting point	64
2.2 Documentary filmmaking and journalism – truth as a measure	66
2.3 Documentary, Social Realism and Real TV – their claims on the real	71
2.4 The politics of constructing realities	79
2.5 The psychology and sociology of the traditional consent rip-off	83
2.5.1 The scene	83
2.5.2 Ethical positions	84
2.5.3 A blend could do it	90
2.6 Defining public interest for public interest	91
2.7 Reliance on virtue and honesty	95
2.8 Technology, Truth and <i>Cinéma-Vérité</i>	96
2.9 Truth	100
2.10 Reference and Sense	103
2.11 Truth as accuracy	106

### **Chapter Three: Perceval - a delinquent angel**

3.1 Introduction	109
3.2 Art and Artists: Public and Private	111
3.3 Story telling	113
3.4 Finding a suitable case for a film treatment	114
3.5 The effects of obtaining funding	118
3.6 Fortress Perceval or willing social actor	125
3.7 Audience desire	127
3.8 Evolution of an informed consent process	129
3.9 Truthfulness again - a reality check	132
3.10 Competency to give informed consent	133

### **Chapter four – informed consent and Australian camera epistemology**

4.1 Rationale	139
4.2 An overview	143
4.3 The early years of non-fiction 1896 – 1920	144
4.3.1 Australia's first screen production unit	144
4.3.2 Edison's technology	146
4.4 Actuality films	154
4.4.1 Documentary and journalism	155
4.4.2 Industrial/commercial	155
4.4.3 Tourism and promotions	157
4.5 The developing ethic of exploration and adventure 1920 – 1930	158
4.6 Film heritage	161
4.7 The coming of sound to the factual film heritage	163
4.8 War journalism 1940 – 1950	169
4.9 The combat camera after 1960	177
4.10 Current affairs and Four Corners	179
4.10.1 The Freewheeling 1970s	191
4.11 New technologies, forms and markets – 1990s onwards	192
4.12 Conclusion	204

### **Chapter Five: The Case Studies**

5.1 Preamble	208
5.2 Representational issues and <i>The Battle for Byron</i>	211
5.3 Beyond <i>The Battle for Byron - Delinquent Angel</i>	215
5.4 <i>Delinquent Angel</i> – linking legal to ethical	217
5.5 Enticement to participate	219
5.6 Gauging ability to foresee risk	222
5.7 Releases can define the issues for best possible informed consent	225
5.8 Consideration	227
5.9 In the event of breach of contract	229
5.10 Informed consent as a core issue	231
5.11 Shifting contexts and perceptions	233

5.12 Informed consent and the delinquent angel	234
5.13 <i>The Wonderful World of Dogs</i>	237
5.14 The social actor	239
5.15 Formative agreements	240
5.16 A problem develops	242
5.17 Escalating legal involvement	243
5.18 <i>Dogs</i> and informed consent	250
5.19 <i>Cop it Sweet</i> - public interest and journalism	250
5.20 A matter of style in approach	254
5.21 Informed Consent in <i>Cunnamulla</i>	255
5.22 The Court – seek justice and set precedents	258
5.23 What do we get from all this?	262
5.24 Release forms - a legal document summarizing what is agreed	263
5.25 Ethically hazardous professions	265

## **Chapter Six: Evolving an Ethical Narrative**

6.1 Introduction	267
6.2 Ethic of responsibility	269
6.3 Background	270
6.4 Citizen-typology - style and political position	271
6.5 Perceval-I Citizen AO	272
6.6 Perceval-II Guerrilla	278
6.7 Perceval III – Reflexive and of cinema vérité	287
6.8 The Thornley Assessment	287
6.9 After Thornley	291
6.10 Matters of style – actuality	294
6.11 Perceval – hero or victim?	298
6.12 The reflexive film - Perceval III revisited	301
6.13 Conclusion: ethical outcomes/aftermath	310

## **Chapter Seven: Ethical Outcomes/Aftermath**

7.1 A theoretical approach for building an informed consent process	315
7.2 Orientation	316
7.3 The grounded theory expanded	318
7.4 Save on the inevitable legal costs	321
7.5 Formulating style within an ethos of informed consent	323
7.6 <i>Delinquent Angel</i> case study revisited	326
7.7 Consent releases - <i>Delinquent Angel</i> and other examples	329
7.8 The defamation releases	334
7.9 The story telling nature of non-fiction	336
7.10 Please release me	338
7.11 Encountering the legal terrain	340
7.12 Reality used to be a comrade of mine	342
7.13 Reshaping industry practice in terms of ethical theory	346
7.14 Conclusion - a pluralistic approach to ethical discourse	351

## **Appendix**

## **Chapter one: minimizing harm in non-fiction filmmaking**

1.1 Introduction	3
1.2 Background	7
1.3 Who was the delinquent angel?	13
1.4 Hazardous camera gaze	14
1.5 Purpose of the study	17
1.6 Reality misrepresented	20
1.7 Rationale and theoretical framework	26
1.8 Case study research	29
1.9 Action research	30
1.10 Participatory action research	31
1.11 Delineation of the research problem	34
1.12 Developing theory	35
1.13 Grounded theory	36
1.14 Research assumptions with the researcher in it	40
1.15 Checks and balances	46
1.16 Benchmark in international law	49
1.17 Literature: available discourses	50
1.18 Importance of this study	57





# **Chapter one: minimizing harm in non-fiction filmmaking**

## **1.1 Introduction**

Professional ethics has become a critical topic over the past decade with the news media increasingly using invasive cameras, spin and ‘cash for comment’, while in the corporate sector corruption and collapse occurs on a massive scale. Blatant examples of business malpractice in many countries continue to stimulate pressures for codes of conduct to eliminate unethical behavior in banking, share trading and even medical business. Consequently, there has been a demand for the drawing up of codes of conduct for a diversity of professions, trades, disciplines and organizations. This demand for regulation of conduct has also spread across the employment spectrum and throughout society.

Traditionally, codes of conduct or ethical codes have been a hallmark of professionalism. It has been argued that no occupation is truly a profession until it has professional entry requirements, a defining and professional code of conduct or ethics, and mechanisms for disciplining those who offend against professional codes. Traditional examples where this applies are journalists, nurses, teachers, lecturers, doctors, lawyers, engineers and accountants. Strangely however, the tradition of documentary filmmaking has never considered this aspect of professionalism.

Unfortunately this lack of ethical criteria for filmmaking, or even the option of referring to the related codes and guidelines in journalism, is not widely known to the public. With increasing public concern about media behavior, particularly in relation to privacy, demands have increased for greater government regulation of media conduct. But increased government regulation endangers freedom of expression, so there is no alternative but for the film-based

television current affairs and documentary industries themselves to self regulate and develop codes and guidelines in cooperation with the public.

It is within this context that my PhD aims to show how a deliberate reflection on making a major documentary (*Delinquent Angel*), about a famous artistic figure, can inform a specialized understanding of the ethics of camera journalism and documentary filmmaking. The thesis illustrates how this understanding has implications for both moving image journalism and documentary filmmaking in particular, where there are no uniform codes or guidelines. The thesis also suggests how educators in higher education and within the respective industries might begin to develop a unified code of ethics for use in the filming of people as social actors.

Any deployment of a professional code of ethics in filmmaking should be accompanied by an understanding and dialogue over what constitutes the informed consent of camera subjects, otherwise known as social actors, for the film. Informed consent is a process of dialogue to provide information for people who are about to participate (usually voluntarily) in something that may have a big impact on their lives.

In other professions this consent as sought from subjects might be for their part in a scientific experiment, or in some psychological or pharmacological research. For a subject's consent to be 'informed', enough information must be presented to enable them to voluntarily decide whether or not to participate. It is fundamental to ensure respect for these subjects through the provision of enough information so that a 'fair' and 'reasonable' person is able to understand what they are about to undertake.

A professional who is undertaking the research must ensure that the subject's consent is voluntary and is not coerced in any way. The informed consent process should be designed to educate the subject in a language they can understand. This thesis will continue to define and

expand on this understanding of informed consent. The thesis contends that an understanding of informed consent in filming is more critical than it is in other forms of journalism (like print or radio). This is because filming exposes more of the subject (image, likeness, voice and story) than other modes of journalism and secondly, that filming is usually done for television, an invasive medium reaching larger audiences than other modes of journalism.

The central idea to this thesis is that a unified code of ethics should be applied to all non-fiction camera situations. This could be developed initially from existing codes already available to Australian journalists. From this idea arose a hypothesis, reinforced by the findings in the thesis, that an application of ethics and codes of practice inevitably reduces legal risks and costs, while also setting a context for when deception is acceptable on the occasions when it serves an overwhelming public interest.

Two versions of the enclosed major documentary are submitted as an integral part of this thesis. The one-hour documentary film, *Delinquent Angel* – Versions One and Two, which I shot, produced and directed, is predominantly a *vérité* work, rigorously researched and assembled over six years. A large body of material in many forms – image, sound and print – was accumulated for the production. This film, whose main subject is the Australian expressionist painter John Perceval AO, attracted considerable acclaim on its release. It was selected for three international film festivals, was broadcast nationally, screened with a notable Melbourne independent cinema and nominated for four awards in the context of Australian documentary and journalism.

At this point in reading the thesis, the two versions of *Delinquent Angel* should be viewed by playing the enclosed VHS tape. The versions to be screened are:

1. *Delinquent Angel* Version One with Alice Perceval and sons. Duration 52 minutes.

2. *Delinquent Angel* Version Two, Alice and sons removed. Duration 47.5 minutes.

The process of making the two versions of *Delinquent Angel*, followed by its broadcast and distribution, engaged and resolved some important issues in filmmaking: such as sole operated camera, informed consent, competency to participate, copyright and the use of contentious, and possibly defamatory, material. The film, and the arguments presented here, evolved simultaneously, presenting the film as an ideal case study for the thesis. The thesis also examines a number of other documentary films and journalism pieces as case studies.

The particular sensitivities required in filming *Perceval*, which will be explained later, required and validated the consultative filmmaking style, ensuring that ethical considerations were always at the forefront of the production process. Conflicts between ethical behavior, legal requirements and the filmmaker's responsibilities to the funding body, under the terms of the Australian Film Commission Production and Marketing Agreement, eventually arose in the course of production. The addressing of those issues, in a reflective way, adds both depth and relevance to this thesis.

Both the film and thesis were designed from a perspective that measured the legal position of documentary filmmaking under common law, while simultaneously considering where ethical practice fits. However, as the thesis demonstrates, while ethical considerations reduce legal risk, they go further than the law in terms of the relationship between the filmmaker and the voluntary participants in a documentary. This centers on the transparent process of obtaining consent from the film's participants.

The consent issue in making a documentary is often overwhelmed by the filmmaker's legal obligation to funding bodies, employers and to the film script in its own right. This raises two important questions that are central to this dissertation: when is consent to filming truly

informed? And when is the appropriate moment for a film social actor to sign the final and binding release agreement?

With my background as lecturer in broadcast journalism at the Graduate School of Journalism, at the University of Wollongong, I developed an understanding of these issues over eight years. The process worked at finding a place for journalism, television news and documentary filmmaking in the overall context of an ever-changing international information culture.

This context provided for a critique on the accountability in television news, current affairs and documentary in terms of the filmed subject's rights before the gaze of the camera. This issue of camera subject's rights was particularly critical over the time of study with the emergence, internationally, of the sole camera journalist using highly portable digital video for the production of both documentary and television journalism. The arrival of the sole camera journalist meant that crews no longer accompanied journalists and directors, leaving the journalistic and ethical decision-making at the point of filming, entirely up to one person.

## **1.2 Background**

*Delinquent Angel* was preceded by some sixty hours of documentary and current affairs programming with Special Broadcasting Services television that I have recorded, written and directed, largely as a sole-camera-operator. My technical skills began, simply, through making home movies and as a high school science teacher, using Super-8 film and video within the curriculum.

Later, oral histories for and within Aboriginal communities and their organizations (1987-91) required the development of a low-intervention method between the camera operator and the subject being filmed. This work resulted in an invitation to write and direct television documentaries and current affairs with the Special Broadcasting Services *First in Line*

Indigenous program (1988-89), and later with the SBS 'Local-Production' documentary unit (1990-91).

SBS then disbanded its in-house documentary unit with the advent of SBS Independent, a separate business entity, which commissioned works from independent filmmakers. In cooperation with funding bodies like the Australian Film Commission, more realistic budgets became available, enabling higher quality films. After the SBS 'Local-Production' documentary unit closed, I became an independent filmmaker, working with others, often at night, during the SBS network down time.

These early films and their contexts of production enabled me to develop a filmmaking style that provided for and encouraged consultation between the filmmaker and the subject. This style allows the filming of highly stressed and sensitive subjects to continue in circumstances which may have caused a more authoritarian style of filmmaking to be terminated by the subject, or their minder. This style allows the subject's voice to be heard in ways that are likely to be more natural and compelling. The style is also unmediated by authoritarian journalistic pieces to camera or voiced linkages. There are definitely no reversal shots supposedly confirming the interviewer was situated truthfully with the subject. Preferably, when a voice-over is used, as it was in *Delinquent Angel*, it is involved and attached, rather than detached. It is subjective and sympathetic while remaining accurate.

In the early planning stages of *Delinquent Angel*, it became obvious that within the television current affairs and documentary industry there is little definition and discussion of the ethical and consent responsibilities of practitioners. Indeed, there were few broadcasters, executive producers, writers, funding committee members, journalists or filmmakers who were prepared to discuss with me, current thinking in ethics or from where ethical standards came. This brought me to assume that there was a prevalent culture of denial in filmmaking, which ignored the duty of care and moral considerations inherent in obtaining full consent from the human subject being filmed.

While the documentary film industry has no specific or recognized codes of ethics, for journalists, there are many that can be referenced in times of ethical dilemma. Broadcasters like the Special Broadcasting Services and the Australian Broadcasting Corporation have charters and codes of practice on programming policy, but these are not specific to the behavior of camera operators and journalists at the point of filming and interviewing. The Australian Broadcasting Authority also does not provide specific guidelines for the camera journalist or documentary practitioner in the field. The journalist union, the Media Entertainment and Arts Alliance (MEAA), does have field specific guidelines and, internationally, there are numerous journalist codes that can also apply to non-fiction filming.

Throughout the early stages of filming *Delinquent Angel*, and in formulating this research, two journalist codes in particular were referred to: The Recommended Media Entertainment and Arts Alliance (MEAA) Code and the actual MEAA revised and adopted journalist code. Both these codes were presented to the Australian public at the time I was thinking through the script and ethical issues in respect to the filming of *Delinquent Angel*, and in my teaching ethics and media law.

The Recommended MEAA version was more comprehensive in comparison to the adopted code in that, among other important standards, it declares the need for informed consent - a critical focus of this research and analyzed regularly, in numerous contexts, throughout this thesis. The recommended code also acknowledges the unfairness in using surveillance cameras, mobile telephone cameras and deliberately hidden cameras. Coincidentally, these MEAA codes emerged at the time that mini-digital video cameras were becoming available internationally. The cameras radically changed the acquisition methods involved in television news, current affairs and documentary (see Chapter 4) and a camera specific code was needed for the time.

Sole camera operators, from journalism to documentary, immediately procured the new digital cameras. This was a significant development for both industries, literally converging the two through the identical method and practice at the point of filming. This technological revolution and the ethics involved with its filming is examined in Chapter Four.

The MEAA ethics code revision committee wanted to initiate dialogue and devise a code that would ensure each journalist was aware of the important role they play as a voice within a community. It was accepted that like documentary filmmakers, journalists must keep in mind their service to the public. However, the public service role is now in danger of being lost to the commercial imperative for product that is entertaining. This ignores the central importance of journalism to society and democratic process, where members of the public are seen as citizens and not just consumers.

In documentary filmmaking there is not even dialogue of this nature between film industry sectors and the public about these important issues. Such dialogue can be initiated, as argued in this thesis, by firstly applying the process of designing a code like the MEAA Recommended Journalists Code to documentary filmmaking. By simply replacing the word 'journalists' with 'documentary filmmakers' in the following preamble to the MEAA code, a neat fit ensues, and in doing so, initiates definition of the responsibilities to the public that documentary film shares with journalism.

Journalists describe society to itself. They seek truth.

They convey information, ideas and opinions, a privileged role.

They search, disclose, record, question, entertain, suggest and remember.

They inform citizens and animate democracy.

They give a practical form to freedom of expression.

Many journalists work in private enterprise, but all have these public responsibilities.

They scrutinize power, but also exercise it, and should be accountable.



Accountability engenders trust. Without trust, journalists do not fulfill their public responsibilities.<sup>1</sup>

If the culture of documentary film was to accept that its ethical role was basically journalistic, and is adequately defined as above, then the argument around ethics in documentary might begin to have some definition. A reflective realization on the part of documentary makers in particular is most urgent in redefining the status of those being filmed. This begins to acknowledge the basic human rights that should be accorded to filmed subjects.

In continuing to build a definition for journalistic professionalism, the Recommended Revised MEAA Code of Ethics (Appendix 15 b) also provides twenty useful standards. These provide the best benchmark for referral and definition, as this thesis argues, because the Recommended Revised MEAA Code of Ethics has more relevance to both filmmaking and camera journalism than the current (adopted) MEAA Code of Ethics.

It is not intended that either code be deified, rather they are referred to here as reference points for reflection, argument, resolution, definition and dialogue. The Recommended Revised MEAA Code is finalized by a Guidance Clause and this is worth noting:

Basic values often need interpretation and sometimes can come into conflict. Ethics requires conscientious decision-making in context. Only substantial considerations of public interest or substantial harm to people allows any standard to be overridden.<sup>2</sup>

In 1995, when I was formulating an ethical filming for *Delinquent Angel*, this MEAA Recommended Code was put to the public for scrutiny. Mary Delahunty wrote:

Let's get a few things straight. This draft media Entertainment and Arts Alliance (MEAA) code of ethics will not, like a magic wand, sweep away all the misdemeanours of the media, and those who expect it are misinformed or mischievous.

---

<sup>1</sup> Media Entertainment Arts Alliance, 1997, *Recommended Revised MEAA - Code of Ethics*. (Appendix 15 b) <http://www.alliance.org.au/work/aja/ethics/ethics20.html> [Accessed 25 September 2003.]

<sup>2</sup>Ibid

This draft code is but one corner of the canvas, an attempt by a group of journalists, and non journalists, to begin to change the culture.<sup>3</sup>

The Delahunty quotation is central to this thesis as it is cited with an imperative to continue to bring about definition to an ethics based argument - furthering dialogue, experiment, acknowledgement and response.

As an ABC journalist and a member of the MEAA Ethics Review Committee at the time, Delahunty wrote that the draft code should be a point from which journalists are educated in ethics and public responsibility. In spite of this, journalists are mostly unaware of ethical codes,<sup>4</sup> and, as this thesis argues, there is an alarming lack of discourse on ethics of any kind in the related forums of documentary film. Delahunty again:

Ethics are not answers; they are principles that guide us.

This draft code I hope will spark discussions among journalists about the competing interests they must balance. I hope it will also invite the community to apply the blow torch to the belly of all who work in or own the media.<sup>5</sup>

Journalist and academic Wendy Bacon was also on the Ethics Review Committee and reminds us of the public responsibility – the public sphere – and so helps define another context for this thesis:

The draft code does recognize the power of the media and the need for it to be more accountable when abuses occur. This is welcome but it is disappointing that the list of principles underlying the code does not mention the “public right to know”, the philosophical principle on which journalists base their claims to special rights or privileges.<sup>6</sup>

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<sup>3</sup> Delahunty, M. 1995, *Ethics code – more than just aspirations?* Sydney Morning Herald, September 1.

<sup>4</sup> MEAA, 1997, *Ethics in Journalism*, Introduction to the Report of the Ethics Review Committee, Media Entertainment and Arts Alliance, Australian Journalists' Association, p. xiii.

<sup>5</sup> Delahunty, M. 1995, *Ethics code – more than just aspirations?* Sydney Morning Herald, Friday, September 1.

<sup>6</sup> Bacon, W. 1995, *Ethics code – more than just aspirations?* Sydney Morning Herald, Friday, September 1.

By 1997 the MEAA adopted a pared down version of the draft code (see Appendix 15).

Despite an acknowledgement for the need of revision every five years, the final version has not been updated since, and unlike the Recommended Revised MEAA Code, has no mention of informed consent – a critical focus of this thesis.

For purposes of simple definition at this point, informed consent is an ongoing conversation between the professional (filmmaker, journalist, medical researcher, sociologist, doctor) and the subject being filmed, being studied or having a medical procedure. The subject, usually through signing a contract, grants consent then filming may begin, or medical or sociological research may get underway. Informed consent implies that the subject is given all the information relevant to their decision to consent under circumstances of fairness, transparency and honesty.

### **1.3 Who was the delinquent angel?**

John Perceval at the time of filming was a frail old man who had just spent a decade in a mental institution. He also had a chronic problem with alcohol. After his death and after the second version of film was broadcast, John Christian created an Internet site in memory of Perceval. Entitled *The Last of the Angry Penguins*, Christian writes how Perceval died of a stroke in October 2000 at the age of 77, and how he was the last surviving member of the Angry Penguins, “a loose-knit group of Australian painters who radically changed the local art scene in the 1940s and early 1950s”.

The Angry Penguins, who coalesced around Max Harris and John and Sunday Reed, took their name from an art and literary magazine first published by Harris in 1940. Members of the largely self-taught group included Arthur Boyd (1920-1999), Albert Tucker (1914-1999), Sidney Nolan (1917-92) and Joy Hester (1920-60). The group rejected conservative styles favoured by the Australian art academies and the socialist realism championed by the Stalinist communist parties and looked to early European expressionists and the Surrealists for inspiration. Much of their early work focused on social themes, in particular scenes of urban poverty. While members of the grouping

went their separate ways during the late 1950s, they had a lasting influence on contemporary Australian art.<sup>7</sup>

Like the film *Delinquent Angel*, the website asserts that the introspective Perceval spoke little about his art or personal life. The film and the site imply that his introspection comes from his trauma over his parent's separation. "The young boy and his older sister spent alternative periods with their mother in Perth, the state capital, or with the father on a large wheat farm 220 kilometres east of Perth".

The children had few friends and farm life was harsh and isolated—the nearest school, a primitive building alongside the railroad-tracks, was a five-kilometre walk away. The farm was poor and Bob South was forced to labour from daybreak till evening often returning to the homestead in a smoldering temper. Perceval was haunted by some of these early childhood memories and recorded them in later paintings.

In 1934 he moved to Melbourne with his mother where he later changed his name from Linwood South to John Perceval, adopting the surname of his stepfather, and attended a Melbourne boarding school. At school the teenager, who had already begun drawing and painting, had his first access to a reasonable library and was profoundly affected by reproductions of the great masters in the school's collection of art books. In fact, the first painting in the recent Sydney show is called *Sunflowers* (1935), a copy of the well-known Vincent van Gogh painting.<sup>8</sup>

An 'innocent' of the isolated pre World-War-Two Australia, Perceval captured the vibrancy and the essence in Van Gogh's work, simply by referring to books. He later experimented with the images of other great masters like Pablo Picasso, creating his own interpretation with a textural quality that was to become his trademark.

#### 1.4 Hazardous camera gaze

As a journalism lecturer, my observation and analysis arising from the *Delinquent Angel* filmmaking process and its inherent social interactions, demonstrated that while there are

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<sup>7</sup> Christian, J. 2001, *The Last of the Angry Penguins*.

<http://www.wsws.org/articles/2001/jun2001/perc-j16.shtml#top> [Last accessed 10/8/2003]

<sup>8</sup> Ibid.

strong similarities, there are three key differences between documentary making and journalism. The distinction requires ongoing consideration with the view of developing a code of ethics for documentary filmmakers and camera journalists:

1. Journalists with tertiary training have a substantial education in ethics while documentary filmmakers with tertiary training do not necessarily have that same ethical grounding.
2. Journalists usually work within an organizational/corporate framework, whereas documentary makers are normally independent and subject to market and aesthetic pressures.
3. Filmmakers are more likely to be bound by the nature of their genre and have longer stories to tell with more opportunities for depth, dramatization, reconstruction, artistic interpretation and story extension - all with the aim of increasing dramatic and commercial value. Like journalism, documentary has a role of telling the truth, however this truth can be quite different to what is understood as truth in journalism. This difference is examined in Chapter Two.

During the last two decades, journalism education throughout the English-speaking world has developed curricula around ethical theory<sup>9</sup> and this has come under the microscope on several fronts. Many conferences and publications<sup>10</sup> have been reflecting a growing awareness of the importance of reference to and reflection on ethical practice and the professional codes, and what they stand for.

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<sup>9</sup> Patching, R. 1998, *The Preparation of Professional Journalists*, in Breen, M. (ed), Journalism Theory and Practice, Macleay Press. Sydney, p. 344.

<sup>10</sup> Sheridan Burns, L. 1995, *Philosophy or Frontline? A survey of journalism educators about teaching ethics*, Australian Journalism Review, Vol. 17 (No. 2), p. 1.

. . . the JEA [Journalism Education Association] could ensure that *all* journalism graduates, regardless of their “backgrounds, perspectives and approaches to their journalism” (Pearson 1994:71) could for example, construct a news story, test a defamatory statement, articulate the difference between active and passive voice and make an ethical decision.<sup>11</sup>

This awareness is largely a result of journalism education, input from community and from institutions like the Australian Press Council and the Media Entertainment and Arts Alliance. These parties have been responding to stimulation from many fronts, including some very public cases being fought in the courts. As part of an educative process, the Australian Broadcasting Corporation’s program *Media Watch*, the Australian Press Council and the Media Entertainment and Arts Alliance have publicized and reflected upon the cases.

Not so, it seems, for the related industry of documentary film, which by nature of its form, avoids criticism by programs like *Media Watch* or active scrutiny by institutions like the Press Council. Discourse analysis throughout this thesis demonstrates (particularly in Chapter Five), that there is minimal dialogue in the film industry on these matters, despite some very public court cases where issues are identified. Compared to journalism, when it comes to discussing ethical guidelines, there remains a virtual silence in the film industry, particularly in the government funding bodies, the point at which most documentaries are funded.

Thinking about ethics is a skill anyone can acquire. It first requires some background about the study of ethics . . .[but] while each facet of mass communication has its unique ethical quandaries, thinking about ethics is the same whether you write advertising copy or obituaries.<sup>12</sup>

There are several reasons for considering these issues at this juncture. First, they provide a navigational point and they begin to clarify the research position taken within this thesis. Second, they further indicate the need for discussion of ethical theory and the imperative to

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<sup>11</sup> Ibid, p. 7.

sharpen the awareness of informed consent in camera journalism and filmmaking. Third, the case studies provided in this thesis set the background for the need to be discussing what informed consent really means. Discussion would be underpinned in some instances by law and is currently enshrined, at least, in the discourse of journalism ethics, in documents like the Recommended Revised MEAA - Code of Ethics, (see Appendix 15).

Any developing theory pertaining to the introduction of ethical codes for documentary should be thoroughly prepared in order to meet the inevitable and virulent objections from the factual film (documentary) industry. This research has found that objections are most likely to be raised by long-term members of the film industry - inevitably taking up positions they feel they should defend.

This thesis points to the importance of a pluralistic approach in developing ethical theory with an informed consent process appropriate for documentary. It is precisely such a flexible approach that allows for ongoing appreciation and response to the inevitable objections from the 'established' sectors of the film industry.

### **1.5 Purpose of the study**

The documentary *Delinquent Angel*, as an integral part of this dissertation, primarily explores the history and artistic works of John Perceval. While the film empowers his works as historical and socially committed texts in their own right, the thesis study was designed to explore around and into the filmmaking process. The film, therefore, served as a primary research base on the ethics of informed consent.

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<sup>12</sup> Patterson, P. & Wilkins, L. 1991, *Media Ethics: Issues and Cases*, WCB Brown and Benchmark: Dubuque, Iowa, in Sheridan Burns, L. 1995, *Philosophy or Frontline? A survey of journalism educators about teaching ethics*, Australian Journalism Review, Vol. 17 (No. 2) p. 7.

Triggered by the psychological dimensions in Perceval's works *Delinquent Angel* is able to touch on wider issues of family dysfunction and the politics of masculinity. The film was designed to show both his relating to his private space of family and to the contemporary social forces around him. The film was able to show the prickly relationship between Perceval and journalists generally, and particularly in respect to me as the filmmaker who was also the artist's former son-in-law. This became a strong point in the research, in that a constant questioning and dialogue was needed: what ethics of responsibility should be afforded Perceval to ensure the film's progress while also avoiding harm to the old man?

Filming had to be executed in such a way as to render transparent the continuous process of obtaining consent. This transparency enabled an analysis of some of my ethical and personal responses to the filmmaking process. This was compared to (in confidence) and informed by Perceval's account of some of the previous television current affairs productions that severely offended him, and may well have harmed him by the stress they induced.

The analysis was applied to the filmmaking process with particular focus on the informed consent of all participating subjects, not only Perceval. This was not to be taken in isolation, as if there were no other subjects like Perceval. Rather, it was taken as part of a publicly accountable whole. This included the funding bodies, the film subjects, the audience and the cultural mores of the related industry of current affairs television journalism.

The study that developed did not centre on the extreme of academic comment on the subjectivity-objectivity balance, nor a general philosophical debate on freedom of expression and the law. Rather, the ethical contradictions and problems generally within the *Delinquent Angel* journalistic filmmaking process became the focus for the larger discourse analysis project. Discourses and dilemmas were scrutinized so that findings might expose best practice to enable the *Delinquent Angel* filmmaking in its own right. This was then reapplied to case



studies and a wider discussion around the universal ethical dilemmas in television journalism, documentary and the new more virulent forms of non-fiction filming.

As non-fiction television genres became more competitive and commercially oriented, they were more likely to become exploitative and voyeuristic – especially in the absence of ethical guidelines. This coupled with the increased activity in tabloid current affairs television, real TV (or reality television) and the portable miniature cameras applied to a more probing documentary form, increases the potential for damaging the subjects being filmed. The newer forms like reality television have brought about an ethical slippage and in turn are affecting standards in all non-fiction filmmaking. In this context a dialogue about accountability and ethics should be more frequent and transparent.

Oliver James, a psychologist in the United Kingdom has called for a scientific study on the impact of reality TV on its participants, many of whom he fears are being damaged in filming. He argues that on-camera contestants are likely to be people who are dissatisfied with their lives generally. They are more likely to believe that by participating in the show, their lives will be improved through notoriety and glamour, leading to greater opportunity. On Sunday August 26, 2001 the *Media Guardian Online* in the UK reported:

Broadcasters have been urged to commission a clinical study into the lasting psychological effects reality TV shows have on their contestants.

TV psychologist Oliver James said it simply wasn't enough to obtain the "informed consent" of contestants who enter shows such as Big Brother, Survivor, or the BBC show Surviving the Iron Age.

He said three-quarters of the research into the effects of TV went into studies about violence and that it was the responsibility of broadcasters to establish the true effects of reality shows.

In conversations with several reality TV contestants, he said he found many who were left emotionally distraught by the lack of fame that followed.

While many in the TV industry knew lasting fame does not follow, the disappointment for contestants could be damaging for those who were 'emotionally vulnerable'.

Broadcasters are not social workers, but the question is what does 'informed consent' mean? If we had more knowledge in terms of the concerns, if we had a proper clinical study, before and after the shows, you would be able to predict with accuracy how people would perform.<sup>13</sup>

One purpose of this PhD is to expand on Oliver James' argument and apply it particularly to documentary and camera journalism. Subsequent chapters, and case studies, demonstrate that examples of the more traditional documentary form are causing damage to emotionally vulnerable people. Oliver James argues that not enough is done to ascertain the stability of participants before they're invited to enter the harsh glare of public scrutiny, and even less is done to prepare them for life after the attention subsides. Ideally, he would like television networks (who – he maintains - have profited from the reality TV phenomenon) to fund studies that would monitor the mental progress of reality contestants for at least a year following the screening and subsequent notoriety.<sup>14</sup>

## **1.6 Reality misrepresented**

This PhD asserts that the same Oliver James process should be applied to all non-fiction filming, and to the documentary industry in particular. Reality shows have huge budgets and at last are being forced to be more accountable. With cautious lawyers and thorough contracts addressing duty of care, the reality shows are improving in respect to the ethical treatment of participants.

In comparison, the documentary remains a relatively under-funded form and in recent years film budgets have become leaner. Compared to the reality shows, the documentary not only

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<sup>13</sup> Staff for Media Guardian Online, 2001. *Psychologist demands study into effect of reality shows*. <http://media.guardian.co.uk/edinburghfestival/story/0,7523,542746,00.html> [Accessed 13/8/03]

<sup>14</sup> James, O. 2003, *The Sunday Age*, April 27. <http://www.theage.com.au/articles/2003/04/26/10513819381917.html> [Accessed 13/8/03]

has a leaner budget excluding certain aspects of duty of care to filmed subjects, it also assumes a moral high ground, based on tradition, a supposedly reputable pedigree with a superior moral status<sup>15</sup>. This issue will be examined epistemologically in Chapter Four.

Film academics are now beginning to demonstrate that documentary, and its newly evolved 'fly-on-the-wall' forms, hold such a tenuous hold on reality that they are arguably fictional in form. The fly-on-the-wall' forms in particular, rely on the assumption that the events filmed would still have occurred had the camera not been there. To complicate this, these new forms are mutating into quirky, self-conscious, voyeuristic, deceitful, and ethically conceited narratives that are ideal for lucrative niche markets.

Another morally suspect form of non-fiction television is tabloid current affairs. In referring to discourse from the Sydney Morning Herald some further definition of the ethical problems can be gleaned. Jenny Tabakoff:

The reporter is to the fore in most TV current affairs shows. Walking towards the camera, talking authoritatively, asking questions, nodding to interviewees. The inevitable impression is that reporters "own" stories, that they have done the research and interviews, drawn their conclusions, written the scripts and sat through the editing.<sup>16</sup>

Privileged discourse from a court of law exposes this area of professional practice as fraught with representational and methodological problems:

Richard Carleton and his Channel 9 colleagues, John Westacott and Howard Sacre, have sued Paul Barry, the former Media Watch presenter, and Peter McEvoy, its executive producer, for defamation. In July 2000, Media Watch said a 60 Minutes report about the massacre of more than 5000 Muslims in

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<sup>15</sup> Hughes, P. 1996, 'Strangely Compelling Documentary on Television', *Media International Australia*, No 82 – November, p 48.

<sup>16</sup> Tabakoff, J. 2002, *On the box: who's talking?* Sydney Morning Herald, p. 13.  
<http://www.smh.com.au/articles/2002/03/25/1017004765173.html> [Accessed March 26 2002]

Srebrenica had been lifted from a BBC documentary "lock, stock and barrel". Barry went on to mention "lazy journalism" if not plagiarism.<sup>17</sup>

The case was later decided in the ACT Supreme Court. Its unfolding was to sidetrack the original intent of seeking damages for defamation in that it revealed the superficiality of the work of some television journalists, who are at best - presenters and at worst – actors.

The argument was over a particular scene in Carleton's *60 Minutes* story in which he did a piece to camera from beside a mass grave exhumations site. *60 Minutes* viewers were led to believe he was at the scene of the 1995 Srebrenica massacre, one of the ugliest incidents of the Bosnian war. But the grave site beside which he stood was hundreds of kilometers from Srebrenica. It contained no bodies from the war crime in question. All the exhumations from Srebrenica had been completed.<sup>18</sup>

Under cross-examination, Carleton denied misleading the viewers or lying to them. Barrister Terry Tobin QC, for *Media Watch*, then suggested a hypothetical situation where a program portrayed the survivors of a sinking boat "as if it were people throwing their children overboard". In this light Carleton accepted that "in so far as that misleading is taken to mean lying, yes, I lied".<sup>19</sup>

Purportedly, journalists execute the work in this form of current affairs, but in many cases, technical people like camera operators, producers and editors in fact do the work. These professionals are not likely to be aware of, nor have been part of, discussion on codes of ethics, as the case with journalists through their journalism education and their likely membership with the MEAA.

Carleton said it was only after he began legal proceedings against Media Watch that he learnt some of the BBC documentary material had been included in the 60

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<sup>17</sup> Ibid

<sup>18</sup> Seccombe, M. 2002, *The lies have it*, Spectrum, The Sydney Morning Herald, Weekend Edition, April 6-7, p. 8.

<sup>19</sup> Ibid.

Minutes report. He recalled Sacre, the report's producer, telling him: "We've got a bit of a problem here."

In the witness box, Carleton could not recall which of 60 Minutes' four editors put the report together. Maybe some material from a CBS program on the same subject had gone in. The apparently misleading subtitles had been done by somebody else.

When Carleton was being cross-examined, his barrister, Bruce McClintock, objected to a question because "it proceeds on the assumption that he wrote the script, which he said he didn't".<sup>20</sup>

*60 Minutes*, now in its 24th year, has earned a reputation as a producers' show despite the fact that these producers (sometimes as distinguished journalists) are not acknowledged as the originators of the story. These producers are never seen in publicity shots, despite their influence on the story being significantly greater than the star reporters. *60 Minutes* has twice as many producers as reporters.<sup>21</sup>

Most current affairs programs and high budget documentary have producers who are responsible for a large share of the journalism. They come up with story ideas, do much of the research, help formulate questions, line up (and sometimes do) interviews, help write scripts and oversee editing.

John Westacott, *60 Minutes*' executive producer, says Tabakoff, winces at the term; "producers' show". He says it is meant in a "disparaging way" and "doesn't bear any analysis". He thinks his show is an easy target precisely because it is so successful. Many of his rivals speak with awe of the tight turnarounds at *60 Minutes*, and of its staff as some of the best in the business.

In an editing suite, Westacott shows the breakdown of a typical 12 to 14 minute report. Ten to 15 hours of footage is digitised, structured, scripted, rough-cut, assessed, edited and treated with sophisticated visual and audio effects. The finished report is likely to contain 120 cuts. That highly polished sound and look, the music, the wipes and dissolves and graphics are not to be dismissed lightly. As Westacott says, "It's a little mini-doco, a little mini-movie."

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<sup>20</sup> Tabakoff, J. 2002, *On the box: who's talking?* Sydney Morning Herald, Page 13.  
<http://www.smh.com.au/articles/2002/03/25/1017004765173.html> [March 26, 2002]

<sup>21</sup> Ibid.

There are often two producers on a story, and often a freelance researcher. So what do the reporters do? Westacott says that far from being "empty suits", they have a strong hand in the report's research, journalism, structuring and scripting. Reporter and producer write scripts in close conjunction, though exactly "who puts their fingers on the typewriter" changes from team to team. Reporters are generally less involved in the post-production phase because they are back on the road.

He concedes 60 Minutes makes much of its stars, but that is because subjective reports are the show's style: "The audience are invited to come along with the reporter on their journey through the story."

Westacott says it would be "shallow in the extreme ... to think that my masters would pay people lots of money to go round doing such shallow, simple work. The reason that we get 4 million viewers every week is that we must be doing it bloody right".<sup>22</sup>

After establishing this as central discourse on the potential for misrepresentation in current affairs we can now turn to discourse available on documentary and its ethics of representation. In *Representing Reality* the American academic Bill Nichols provides a context.

One way to give further consideration to this shift in problematics from narrative to documentary would be to address the specific qualities of the documentary gaze and its object of desire: the world it brings into sight. What we call axiographics moves to the fore. The neologism stems from axiology, the study of values (ethics, aesthetics, religion and so on), with "particular reference to the manner in which they can be known or experienced" (Webster's Third International). Axiographics would address the question of how values, particularly an ethics of representation, comes to be known and experienced in relation to space. Instead of the fictional space of narrative and questions of style, we confront the axiographic space of documentary and questions of ethics.<sup>23</sup>

As this thesis centers on the ethical issues around the visual representations of the camera, it must then interrogate the place the filmmaker and the television journalist hold in relation to the historical world. The Simulacra or represented screen world as a televised and seriously historical reality, of which the filmmaker is a tangible part, must be scrutinized in terms of the rights and obligations of all parties involved in production. Laura Mulvey suggests that:

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<sup>22</sup> Ibid.

<sup>23</sup> Nichols, B, 1991, *Representing Reality: Issues and Concepts in Documentary*, Indiana University Press, Bloomington and Indianapolis, p. 77.

Playing on the tension between film as controlling the dimension of time (editing, narrative) and film as controlling the dimension of space (changes in distance, editing), cinematic codes create a gaze, a world and an object (an event in itself with a life of its own.), thereby producing an illusion cut to the measure of desire [italics added].<sup>24</sup>

As Chapter Four is able to establish, any journalism method that shares the processes of documentary film is also underpinned by these same cinematic codes, as Mulvey argues. Television journalists and filmmakers alike, use these processes when engaging or even exploiting the social actor, the interviewee, ‘the talent’ - the person who is unpaid and often constructed before the camera as victim. Nichols:

. . . the presence (and absence) of the filmmaker (journalist ) in the image, in off-screen space, in the acoustic folds of voice-on and voice-off, in titles and graphics constitutes an ethics, and a politics, of considerable importance to the viewer. Axiographics extends those classic topics of ethical debate - the nature of consent; propriety rights to recorded images; the right to know versus the right to privacy; the responsibilities to his or her subject as well as audience, or employer; codes of conduct and the complexities of legal recourse - to include the ethical implications conveyed by the representation of time and space itself.<sup>25</sup>

In 1960s Australia, the cinematic codes and conventions established in the unique documentary sector were imported to the evolving culture of television journalism news and current affairs (see Chapter Four). While this may be self evident, the process created an enduring inheritance: a continuous epistemological infusing of the camera’s gaze on the historical world between documentary and television journalism news and current affairs.

Today, the nature of this gaze continues to mutate in dangerous and exploitative ways, serving audiences with desire, pleasure and promise on a daily basis. Yet public dialogue in this politicized arena is lacking, and ultimately, it is television producers who determine the material for audiences to consume. This should be of some concern,

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<sup>24</sup> Mulvey, L. ‘Visual Pleasure’, p. 314 in Nichols, B, *Representing Reality: Issues and Concepts in Documentary*, Indiana University Press, Bloomington and Indianapolis, 1991, p. 77.

<sup>25</sup> Nichols, B, 1991, *Representing Reality: Issues and Concepts in Documentary*,

given the power, the influence, the commercial and ideological agendas of television journalism news and current affairs. Codes of ethics are a way by which we can stimulate this necessary public dialogue. This is because codes of ethics provide a context and guidelines for appropriate behavior when professionals film and record camera subjects.

The principal focus of this study of a filmmaking process (*Delinquent Angel*) has been on the question of how we as filmmakers should act towards film subjects. Should they be afforded informed consent throughout the process or, for the purposes of maintaining editorial control, should they be prevented from knowing certain aspects of the design in order to keep the project viable?

With the exception of a few writers referred to in this thesis, scant attention in the Australian documentary film industry is paid to this question. This is exploitative for an industry that is not prepared to defend the special relationship it has with the un-paid people being filmed, when those same people (the camera subjects) are critical to a production's success.

### **1.7 Rationale and theoretical framework**

In the process of preparing this study, it was necessary to canvas a range of methodologies and significant writers in the field. It was concluded that a single tool of analysis would fall short of the complete and ideal. Methodological relativism, for argument's sake, confines itself to the empirical cataloguing of differences. The weakness in this relativist approach lies in its emphasis on description of difference. This has problems in that description necessarily involves comparison and the making of political and cultural choices. Thus, in relativism there is a failing to adequately theorize the social and cultural contexts, in order to substantiate the positive and



shared ethical and epistemological grounds from which observation, description, analysis and comparison can be undertaken.

Nichols<sup>26</sup> argues that a social science approach to documentary cannot adequately deconstruct the complexities of film narrative (fiction or non-fiction) and the psycho dynamics of the camera's gaze. The dynamics and implications of the camera's window on the world, says Nichols, is so complex, the subjectivity of its critique so varied, that no one theoretical form of analysis will suffice.

Nichols suggests that the camera's scopophilic pleasure of sighting an object of desire, coupled with the identificatory pleasure of watching another who serves as model for the self, demands complex forms of analysis. The camera lens peering on the world and producing marketable footage provides both information and pleasure to the viewer while building desire for further viewings. Each re-appearance of the material renders it further towards the mythical, iconic, serialized, marketed and packaged.

This lens-based scopophilic pleasure of sighting, and the identificatory pleasure of watching, are further scrutinized by Laura Mulvey.

. . . writers pursue aims in indifference to the perceptual reality, creating the imagined, eroticised concept of the world that forms the perception of the subject and makes a mockery of empirical objectivity.<sup>27</sup>

Nichols and Mulvey suggest that while there are similarities, the documentary narrative ultimately subverts the fictional mainstream texts of Hollywood. This is because documentary and screen based news and current affairs use social actors with real and compelling pieces of actuality. These real people and events are recorded on

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<sup>26</sup> In *Underpinning Ethics in Representing Reality*, Bill Nichols discusses *Axiographics - Ethical Space in Documentary Film*, subtitled *Erotics/Ethics*.

<sup>27</sup> Mulvey, L. 1985 in Nichols, B. (ed.), *Movies and Methods*, Vol 2 Berkely University Press, p. 308.

pieces of “actuality” in a way that the audience assumes had relatively low levels of intervention in the process of recording that event. This brings a fascination and a desire to the non-fiction form, that fiction rarely provides.

For scientists, what is called “mere film” or raw footage can be of great value. Unedited, not organised into any more elaborate form of textual system, it still bears significant information about the world . . . <sup>28</sup>

Discourse analysis as a method for this study is useful. It can show that influences of fiction and of non-fiction wash back and forth with the ebb and flow of the market and audience taste. Blended with the shaping powers of big events, journalism and documentary, both obliged to adhere to commercial imperatives, make for a potent brew that is capable of propagandizing and shaping issues for new markets, into new realities and perceptions. No simple technique is capable of thorough analysis of such complex systems.

## **Methodology**

Two main methods of study were ultimately chosen within a generally applied technique of discourse analysis. The main assumption is that systemic cultural practices, though hidden to casual observation, are confirmed through various kinds of discourse found in documents of a formal nature. They might be legal, administrative or mass media generated discourses; but they reflect many of the ideologies and ethical positions of those in power and those who produced them.

To provide an international framework, some analysis is made of case studies from the UK and the USA while the particular focus of this PhD study period relates to the Australian context and my film, *Delinquent Angel*. Specific definition of the research methodologies applied here is best described as a blend of the following:

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<sup>28</sup> Nichols, p. 78.

1. Case study research - applied to a select number of examples where the subsequent “logging” of the issues being examined were recorded in the form of reflective journal entries after obtaining primary documents, sometimes of a privileged nature.
2. Action research and participatory action research - two educational research methodologies that allow me, as educator and film practitioner, to set up a project around research questions on ethical filmmaking, to keep records of the progress, and reflect upon and respond to, those findings and any theories evolving from them. The two systems under scrutiny (education and documentary film production) were then affected by inputting the findings in a way that might generate positive change.

### 1.8 Case study research

Case study research involves the use of analytic induction. Applied on its own, it has been shown to be a defective research method. When cases like documentaries and journalism are selected for discourse analysis and used in conjunction with other methods, then case study research has value. The method employs an exhaustive examination of cases to draw universal causal generalizations within the systems being studied. After an appropriate number of cases are observed and have been found to satisfy the hypothesis formulated before the study, then a universal causal relationship can be established. One exacting and definitive critique of this method, employed particularly by ethnography, can be found in Peter Manning’s seminal essay, *Analytic Induction* (1982/1991).<sup>29</sup>

This case study research, then, is supported by dual methodologies (i) participant observation, discourse analysis of court proceedings, conferences and case documents obtained through Freedom of Information and (ii) interviews with experts and key personnel and stakeholders.

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<sup>29</sup> Manning, P. 1991, *Analytic Induction*, in Plummer, K. (ed), *Symbolic interactionism; Vol. 2. Contemporary issues* (pp. 401-430). Brookfield, VT: Edward Elgar. (Reprinted from R. Smith and P. K. Manning, Eds, *Qualitative Methods*, Cambridge, MA: Ballinger, 1982.

## 1.9 Action research

Action research was used in this PhD to develop theoretical principles and guidelines. In simple terms action research is a family of research methodologies. These simultaneously pursue action (or modification and response) and research (or conception). In most of its forms, using a recurring process that interchanges between action and critical reflection enacts this process.

The process is ideal for situations in education, management and media production and was ideal for me as journalism lecturer making a documentary with dangerous ethical considerations. Thus in *Delinquent Angel* I was searching for the most workable and ethical method in a recurring process that was interacting between action and critical reflection.

In the later cycles, while continuously refining methods, data and interpretation, the understanding and knowledge is developed from what is gleaned from the earlier cycles. In *Delinquent Angel*, this was an emergent process taking shape and being applied as understanding increased. As a repetitive process, action research converges towards a better understanding with an eventual theory emerging over time by way of the increased (cyclical) exposure to the issues of research.

In most cases action research is qualitative and participative, in that the researcher is involved. Modification of the system is usually easier to achieve when those affected by the change are involved in some way. Due to my participation in most of the systems being examined, my research method was to naturally evolve into what is best known as ‘participatory action research’.

### 1.10 Participatory action research

Participatory action research, like action research, is a broad collection of scholarly activities involving community, solidarity and commitment: “all are necessary to carry the arguments to confront the psychologizing and socializing of research and method and their engagement in social life”.<sup>30</sup> This process can (comfortably) encompass the law, epistemology, ethics, morality, values, and so has relevance to the research process in respect to *Delinquent Angel*.

I decided that participatory action research (PAR) was superior (to action research) in that PAR can provide recognition that all research methodologies are political in character. PAR is therefore able to define any advantage and power between the researcher and the studied – a central issue to the notion of informed consent. In this sense the researcher is part of the research process and is acknowledged for it. This was particularly appropriate to journalism education, to filmmaking generally and to *Delinquent Angel* particularly.

The journalist or filmmaker, with plan and angle for a story based on some person’s dreadful experiences, will rarely acknowledge or declare these power differences within the text they are producing. Writer David Hamilton says that there are at least three egalitarian propositions that have been adopted by the participatory action research movement. The first is that the twenty first century democracies should empower all citizens, not only those of the already privileged elite. Secondly, that research of any kind in the humanities, arts and the liberal social sciences generally, is never morally or politically disinterested. And thirdly, that maintaining a separation and distance between research and practice (execution) “is psychologically, socially, and economically inefficient”.<sup>31</sup>

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<sup>30</sup> McTaggart, R. 1997, *Participatory Action Research – International Contexts and Consequences*, State University of New York Press, p. 1.

<sup>31</sup> Hamilton, D. 1998, *Traditions, Preferences, and Postures in Applied Qualitative Research* in Denzin, N. & Lincoln, Y. (eds) 1998, *The Landscape of Qualitative Research – Theories and Issues*, Sage Publications, Calif, p. 126.

In agreement with the egalitarianism inherent in participatory action research, and in citing McTaggart, further argument suggests the case for adopting this particular method, in the making of *Delinquent Angel*, and then for expanding the research into the culture of documentary journalism generally:

What counts as research is not merely a matter of elegant argument about methodology; social research is also about the politics of having arguments heard, a precursor to being understood and accepted. Because participatory action researchers sought to redefine the often privileged relation of the researcher to the researched, the vindication of participatory action research required more than the validity of arguments to achieve acceptance by the research establishments it confronted and by the people it claimed to support.<sup>32</sup>

Within participatory action research, a full and pluralistic ethical discourse provides for discussion, argument and resolution through a non-confrontational dialogue. The pluralistic ethical discourse should recognize the pre-existing legitimacy of people, of epistemology, legal philosophy, international law and civil and human rights.

Participatory action research is a systematic and collaborative approach that is ideal in collecting evidence in these ways and generally, arriving at a theory of action. This process is ideal for industrial reflection, dialogue, decision and outcome analysis, the results of which can be deployed back into the next stage.

Participatory action research is *not* simply problem solving. It involves problem posing, not just problem solving. It does not start from a view of ‘problems’ as pathologies. It sees values and plans problematized by work in the real world and by the study of the culture and nature of work by people themselves. It is motivated by a quest to improve and understand the world by changing it and learning how to improve it from the effects of the changes made.<sup>33</sup>

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<sup>32</sup> McTaggart, R. 1997, *Participatory Action Research – International Contexts and Consequences*, State University of New York Press, p. 1.

<sup>33</sup> McTaggart, R. 1997, *Participatory Action Research – International Contexts and Consequences*, State University of New York Press. p. 39.

Participatory action research is not ‘done’ on other people. Rather, like the filmmaking process for *Delinquent Angel*, participatory action research is applied to the work that we are involved in, in order to assist in improving professional practice. This way, participatory action research reduces the perception held by some, that they must take up positions they feel they need to defend.

An inclusive and consultative process within participatory action research should also establish guidelines for personal discourse and reflection, outside the ethical codes, on what is professional and what is ‘good character’. In keeping with the theme of this thesis, Neil Levy recommends:

This is not to say that good is irrelevant to journalism. The advocates of virtue-centred approaches to ethical education are right to emphasize its importance. The point of these reflections is instead to stress the extent to which character formation is a process which requires a conducive environment, which is to say an environment shaped by regulations. If we are to produce virtuous journalists, journalists capable of resisting the pressures to deceive when it is not appropriate and when the regulations no longer guide them, we must focus at least as much on rules and structures as on character. The focus on character cannot be a substitute for the formulation of rules and guidelines for right action.<sup>34</sup>

Participatory action research is best for this focus and is akin to the aim of this thesis: to build a culture of common ethical responsibility for the documentary film and camera journalism industries. The process should include all the interested parties - treating them as autonomous and responsible agents. Those involved in this consultative journey should participate actively in making their histories and conditions known to all. The outcome hoped for: subjects will not be treated as objects in filming, rather they will be involved as agents in the process, their active responses contributing to the evolving film and the specific professionalism appropriate for its production.

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<sup>34</sup> Levy, L. 2002, *Good Character: Too Little, Too Late*, paper presented at the Inaugural International Media Ethics Conference, 3 – 4 July, Old Parliament House, Canberra, p. 11.

### 1.11 Delineation of the research problem

As previously mentioned, this thesis uses a number of case studies and their most obvious problems are closely examined in terms of the consenting film subject. This is employed so that a theoretical argument can be developed in respect to building ethical guidelines useful for all non-fiction moving image-makers.

Informed consent and ethical practice relates to, and so marries, camera journalism and other non-fictional forms through the process of the subject consenting to be filmed. Philosophers have been looking more closely in recent decades at these moral dimensions, which are essentially about relationships, and they have discovered that traditional ethical theories do not apply. This is due to the nature of filming and interviewing: that it is of a professional nature but is also most likely to be of higher quality with high levels of personal involvement. This division is a motivating force for most modern ethical theory. The split is situated, essentially, between our ethical motives to act and the reasons that are acceptable within an established ethical theory, which underpins professionalism.

If a code of ethics was principally designed for guidance for non-fiction film practitioners, then it should include the two elements of professional action: the first, the selfish and preliminary motivation, the second the actual behavior in practice. A code should begin with this important assumption: that there should be a balance between deciding selfishly and then acting professionally. This would provide a semblance of harmony between the motives and the reasons of production. Any theory arising from participatory action research and argued in the context of this thesis, needed to take this dichotomy into account.



### 1.12 Developing theory

Most ethical systems, if indeed acknowledged by the profession, fail to permit or encourage harmony between all the conflicting considerations, not the least the conflicts between the ethical and commercial. Largely motivating journalists of commercial networks, and particularly of documentary filmmakers, is commercial gain, dramatic value and notoriety for the author. Thorough consideration of ethics is generally left aside as its practice is not openly rewarded in society, or within professions like filmmaking and television current affairs.

As evident in my preferred code, the Recommended MEAA Code example cited earlier in this chapter and in Appendix 15, personal and direct feelings of friendship, love and concern for individuals are generally not valued by ethical theories and the codes resulting from them. These subjective aspects may be deemed a conflict of interest and too subjective to be relevant or reliable. Rather, such theories and any codes arising from them give value to the empirical aspects of objectivity, duty and accuracy.

In the film journalism as applied to *Delinquent Angel* - friendship, love, and direct caring for another person were imperatives. However, alongside the contractual considerations made to the Production Agreement with the Australian Film Commission and in terms of the law, this meant that these personal aspects were relegated to a secondary value. Yet it is most often these very personal aspects that make stories on video or film so successful, as the case for *Delinquent Angel*.

Ideally, ethical foundations should seek a convergence of both professional duty and personal desire. A theoretical approach to building ethical guidelines must be one that promotes the best possible professional behavior while acknowledging subjectivity and humanness. This is preferable to an ethics, which fails to acknowledge that inevitable dichotomy or accepts it as natural and unproblematic.

To achieve this, the participatory action research, as applied throughout this PhD, was then to be extended to an appropriate process for the development of theory. This process had to be analogous to participatory action research, by allowing me to immediately affect the system as both researcher and participant.

Filmmaking and journalism are essentially processes with a context in both production and management, while as an educator, I also needed to consider pedagogical issues.

Consequently, I decided to follow an approach based on ‘grounded theory’. This seemed to allow for the combination of all the contexts – allowing for my filmmaking, my teaching in journalism education and for my developing a theoretical position in respect to ethical practice, especially in relation to the informed consent of the ‘personally’ filmed subject.

### **1.13 Grounded theory**

Grounded theory is unique in that it can be deployed in project management, production and group-based situations like those of education and filmmaking. Grounded theory is useful in that it can produce tools as the research progresses and this is compatible with participatory action research. Grounded theory, in the *Delinquent Angel* process, informed the approach to ethics while it remained in acknowledgment of the other areas of philosophy: of metaphysics, moral philosophy, logic, epistemology, legal philosophy, social action theory, and social and political philosophy. Grounded theory, then, in the context of this thesis, considers the relations between the institution (of the tertiary education sector, the film and journalism cultures, the funding bodies and the broadcasters) and the individual (the manager/filmmaker/journalist of a discrete project).

This consideration is then applied with attention to the discourse of the commercial, legal and artistic aspects of filmmaking and the considerations of individual ethics and informed consent. The process assisted in finding tools that were capable of mediating between the film

subjects and the systems: the AFC, the SBS and the film *Delinquent Angel*, which was to represent the subjects. These ethical tools are eventually made accessible to other people and thus become productive for social interaction generally and for informed consent particularly in the process of ethical and successful filmmaking.

Grounded theory, as first developed by Barney G Glaser and Anselm Strauss (1967)<sup>35</sup>, works towards best practice and best management for the people working within the system under scrutiny. The grounded theory building process is suited to this study in that it employs, as the central aspect, theoretical sensitivity with rapid response provided to the subjects in a study. The descriptive function and heuristic role of grounded theory thus becomes a part of the interactive and continual development of the theory as the data is obtained. This model is ideal for education, health sciences and business where more truth is needed to engage in the problems of important dependent variables and so the model was ideal for developing a responsive theory for the ethical approach in *Delinquent Angel*. It was hoped that this might then provide a general model for filming in ethically dangerous contexts.

Data arose from the *Delinquent Angel* filmmaking process itself and from the film industry as a system, with which I was constantly negotiating as the producer, writer and director of the *Delinquent Angel* project. Grounded theory provided a context to the case study research, as focused upon in Chapter Five and this was informed by the discrete interviews where journal records of the interviews needed a defined methodology for the theoretical development in focused areas of the thesis, like Chapter Four. This, in turn informed the development of curriculum in journalism and documentary education in the Graduate School of Journalism in which I was working.

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<sup>35</sup> Glaser, B. G. & Strauss, A. L. 1967, *Discovery of Grounded Theory; Strategies for Qualitative Research*, Aldine DeGruyer.

Grounded theory combines ‘concepts and hypotheses that have emerged from the data with some existing ones that are clearly useful. . . . Potential theoretical sensitivity is lost when the sociologist commits himself [*sic*] exclusively to one specific preconceived theory’ (1967: 48). The notion of *sensitivity* here refers to openness on the part of the researcher to different ideas, to a process of interrelating theoretical insights and data.<sup>36</sup>

Norman Denzin further developed grounded theory in respect to this notion of sensitizing

concepts. Drawing on Glaser and Strauss (1967), he argued that within his version of

‘symbolic interactionism, the use of sensitizing concepts precedes operationalization’.<sup>37</sup>

Denzin defined sensitizing concepts negatively: “By *sensitizing concepts* I refer to concepts that are not transformed immediately into operational definitions through an attitude scale or check list”.<sup>38</sup> The process involves the social actors who give meaning in their own right to the concept being investigated and the process of developing theory is loose and open ended.

When a researcher participates in, encodes and analyses data in the continuous process of grounded theory, decisions are made progressively.<sup>39</sup> Glaser and Strauss defined theoretical sampling as the “process of data collection for generating theory whereby the analyst jointly collects, codes and analyses his [*sic*] data and decides what data to collect next and where to find them, in order to develop his theory as it emerges”.<sup>40</sup>

In particular, Chapter Five (of this thesis), focuses on a number of case studies (including *Delinquent Angel*) as data collection (research) sites. The initial cases were selected according to hypotheses indicating that the introduction of codes, awareness of ethical behavior and, specifically informed consent, would alleviate some of the legal problems involved in the

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<sup>36</sup> Glaser, B. G. & Strauss, A. L. 1967, *The Discovery of Grounded Theory*, Chicago, Ill.: Aldine, in Blaikie, N. 2000, *Designing Social Research*, Polity Press, Cambridge, p. 137.

<sup>37</sup> Blaikie, N. 2000, *Designing Social Research*, Polity Press, Cambridge, p. 137.

<sup>38</sup> Denzin, N. K. 1970 *The Research Act in Sociology*, Butterworth, London, p. 14.

<sup>39</sup> Blaikie, N. 2000, *Designing Social Research*, Polity Press, Cambridge, p. 206.

production of those documentaries. Further cases were added in order to facilitate the emerging theory. These ‘further cases’ were not trawled for in a rigorous must prove sense, rather they seemed to present themselves as a result of the earlier research and professional contexts already established: the internet, conferences, the Australian Film Commission, the University of Wollongong, informal interviews with (international) subjects from within journalism and film and at film festivals.

Theoretical development through the ongoing interviews and the case studies involved comparison, finding trends and observing patterns. By applying theory as to how the case study might have experienced fewer problems legally and ethically, the findings provided more support to the participatory action research and the approach taken in *Delinquent Angel*. Once an appropriate number of cases were observed and found to satisfy the hypothesis formulated before the study, a universal causal relationship was established. This method, employed particularly by ethnography, is essentially a form of qualitative analytic induction. Cases were added while analysis, relevant to ethics and informed consent, was made until no further insights were being revealed and nothing new was being discovered.

Another way of looking at the approach is that the film and television current affairs journalism industry is the system and the interviews (particularly in Chapter Four) and the cases in Chapter Five are thin slices or biopsies drawn out for analysis. This grounded theory concept of sampling ‘slices of data’ from different places and different times, is known to give the researcher different vantage points from which to understand the system and then map its properties. A variety of slices drawn from the system are desirable in order to stimulate significant theoretical development. The number of slices, and which ones, is a matter for the

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<sup>40</sup> Glaser, B. G. & Strauss, A. L. 1967, *The Discovery of Grounded Theory*, Chicago, Ill.: Aldine, p. 45. in Blaikie, N. 2000, *Designing Social Research*, Polity Press, Cambridge, p. 206.

discretion of the researcher who, in this research, is participating as a social actor while also being the analyst.

#### 1.14 Research assumptions with the researcher in it

As previously stated, the primary research method (participatory action research) with its emerging body of grounded theory, provided validation for me to proceed as being part the research. Being part of it as manager, producer, camera operator, director and scriptwriter - meant that as researcher within the Australian film industry, I was able to immediately affect the system as a participant.<sup>41</sup> This was executed in terms of the film, its funding regime and its informed consent process, which was still being executed after the first version of *Delinquent Angel* had been completed and screened in the 2000 Sydney International Film Festival.

In 1998, a submission I made to the Australian Film Commission as part of its calling for public contribution, was duly 'noted' and then no further correspondence was entered into. My submission suggested the documentary industry allow more participation for all concerned in formulating an industry code of best practice in the process of filming actuality. Clearly, I needed to review more literature of a philosophical nature in order to provide a stronger and more attractive theoretical underpinning. Then I might render a more convincing argument for the AFC.

One popular source, also with Kantian roots, has been the work of Jürgen Habermas . . . Like many recent reviewers of social theory, Habermas (1972) points to the "objective illusion" of pure theory. Instead he espouses the Kantian posture that there are indissoluble links among knowledge, methodology, and human interests. . . Not surprisingly, therefore, Habermas explicitly eschews the objectivism of Cartesian science, with its attempts to describe the "universe theoretically in its law like order, just as it is".<sup>42</sup>

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<sup>41</sup> Hamilton, D. 1998, *Traditions, Preferences, and Postures in Applied Qualitative Research* in Denzin, N. & Lincoln, Y. (eds) 1998, *The Landscape of Qualitative Research – Theories and Issues*, Sage Publications, Calif. p. 126.

<sup>42</sup> Hamilton, D. 1998, *Traditions, Preferences, and Postures in Applied Qualitative Research* in Denzin, N. &

I found reassurance in the fact that Habermas has often philosophically returned to the “unmasking of the human sciences”.<sup>43</sup> He has recommended, for instance, that the “objectifying attitude in which the knowing subject regards itself as it would entities in the external world is no longer *privileged*”. He argues that the “paradigm of mutual understanding” should replace the Cartesian “paradigm of the philosophy of consciousness”.<sup>44</sup>

After Habermas (and other writers) the social sciences became more interactive, rather than being of a distanced, supposedly objective and controlled process. The participatory action research as applied to this PhD, of a form originally espoused by Habermas, has been about the “paradigm of mutual understanding” – the researcher amongst it.

The long production period for *Delinquent Angel* demanded an ability to adapt to changing story concepts, production regimes and styles. For me, as [participating researcher](#), it was unusual to be also writing, directing, producing and shooting the individual components of system under study - a documentary as complex as *Delinquent Angel*. This level of participation and sole operation, while mentally and emotionally challenging, tended to standardize the observation and response in each separate component of production. Another constant was the ever present need for informed consent in order to keep all the components moving and interacting: difficult film subjects, script, budgetary constraints, and legal and ethical filming considerations.

Habermas’s philosophical theory was useful in the context of considering and observing the social system of *Delinquent Angel*, and the wider contexts of documentary, current affairs and

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Lincoln, Y. (eds) 1998, *The Landscape of Qualitative Research – Theories and Issues*, Sage Publications, Calif. p. 126.

<sup>43</sup> Habermas, J. 1987, *The philosophical discourse of modernity: Twelve lectures* (F.Lawrence, Trans.), Cambridge, Polity, p.295.

<sup>44</sup> Ibid, p. 296.

reality TV. Habermas originally introduced the concept of 'crisis', in which modern society is not meeting individual needs, and where institutions in society are manipulating individuals. Participants within these systems eventually interact with and respond to this crisis, and sometimes they subvert it. Habermas calls this interaction Communicative Action.

Habermas represented the second wave of Critical Theory, which followed as a continuum after Marxist Structuralism. He was not directly aligned with the standard thinking of the Frankfurt school, of which he was a member.

Habermas added to Marxist theory by saying that modern human beings lack freedom, which is being eroded by institutions like government. Government is manipulating the rights of individuals and this is justified by some overriding consideration like national security. As Marxism fails to clearly consider the extent to which humans lack freedom, Habermas' thinking became a critique of Marxism. The Marxist assessment of human evolution was far too narrow, rather human societies evolve economically. "Where Marx supposed the move to be linear (one step at a time in a straight line), and deterministic, (with a known end), Habermas said it was unpredictable" and meandering.<sup>45</sup>

To Habermas, certain kinds of social research should be an interactive human process rather than being controlling, cold and objective. He has argued that the social sciences are unreliable in that they focus on the how and the form in an inquiry. This is done to the neglect of the substance and essence, which is overlooked as being self-evident. Social science, therefore, has drifted into becoming a technology that represents human beings as taken for granted social outcomes. By simply ignoring peoples' real interactions, social inquiry is reduced to serving

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<sup>45</sup> Adorno, T. Benjamin, W. Habermas, J. Horkheimer, M. & Marcuse, H. 2004, *The Frankfurt School*, Study Notes online, <http://home.cwru.edu/~ngb2/Pages/Intro.html> [Accessed 21/01/04]  
Ibid, *On Society and Politics* <http://home.cwru.edu/~ngb2/Authors/Habermas.html> [Accessed 21/01/04]



existing canons, stereotypes and power relations (Habermas 1971, 1973).<sup>46</sup> This lack of validity forces social inquiry into being subservient to the public relations spin of the power elite.

Because of critical research's agenda of social critique, special problems of validity are raised. How do you determine the validity of information if you reject the notion of methodological correctness and your purpose is to free men and women from sources of oppression and domination? Where traditional verifiability rests on a rational proof built upon literal intended meaning, a critical qualitative perspective always involves a less certain approach characterised by participant reaction and emotional involvement. Some analysts argue that *validity* may be an inappropriate term in a critical research context, as it simply reflects a concern for acceptance within a positivist concept of research rigor.

. . . *Trustworthiness*, many have argued, is a more appropriate word to use [sic: rather than *validity*] in the context of critical research. It is helpful because it signifies a different set of assumptions about research purposes than does *validity*.<sup>47</sup>

This notion of *Trustworthiness* is expanded in the next chapter, where analysis is applied in terms of trust to professionalism in documentary, to television journalism and specifically, to *Delinquent Angel*. Thus social research should have participants being able to trust through their being provided an understanding of the process and how their role fits as subjects (in the study). This is the essence of informed consent.

Scientific or research rigor is a commitment one traditionally makes to the established rules of inquiry. Traditional modernist research, writes Denzin, "has focussed on rigor to the neglect of the dynamics of the lived world—not to mention the pursuit of justice in the lived world".<sup>48</sup> This coming together and agreeing (communicative action) can substitute acrimonious and costly court actions, bloody coups and upheavals as modes of change. The communicative

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<sup>46</sup> Habermas, J. 1971, *Knowledge and Human Interests*, London: Heinemann.  
Habermas, J. 1973, *Theory and Practice*, Boston: Beacon.

<sup>47</sup> Kincheloe, J & McLaren, L. 1998 'Rethinking Critical Theory and Qualitative Research', Denzin, N. & Lincoln, Y. (eds) 1998, Introduction, *The Landscape of Qualitative research – Theories and Issues*, Sage, London, p. 287.

<sup>48</sup> Ibid

action philosophy also underpins the process of participatory action research and grounded theory.

A revolution involves a sudden and often violent change, traumatizing and permanently damaging those involved. The alternative Habermas philosophy is evolutionary and participatory. While it is incremental and unscientific, the researcher works at assuring that the study does not take a piecemeal or unfocussed path.

This type of researcher, journalist, filmmaker, educator, informs all parties in terms of group ownership. This forms part of an open and transparent decision-making. Subjects are told that the subsequent implementation of that decision will then be rapid because everyone has “bought into it” – everyone has agreed upon it after contemplating its ramifications.

An example of Habermas’ theory in action would be the end of the Iraq War (hopefully soon) – where enough people around the globe decided that the invasion theory was not workable, and was based on deception, and that too many civilians have suffered too long. The war would end as a consequence of the overwhelming mass opinion and pressure on governments. The collective thought, where people came to the same idea at the same time as a result of free and open information, is a common understanding through communicative action.

In applying the essence of Habermas’ theory to the context of this research, there appeared to be a growing social consciousness on the value of privacy and respect. This application was in response to many serious and public breaches in the news and related media and to John Perceval’s vigilance over the film process.

In the context of discussing privacy and respect, we collectively value our own space and time while simultaneously projecting onto others an invasion as we enjoy watching their private

stories on television. This screen-based desire is continually stimulated by the fly-on-the-wall and increasingly voyeuristic, if not prurient, one-way gaze of television.

According to the philosophy of Habermas, the population now afforded more media transparency may begin to see that producers of increasingly voyeuristic non-fiction material are behaving beyond what is accepted practice, that they are in fact practising exploitation. The case studies in Chapter Five indicate this is the case. Analysis around those studies shows how participants are relatively powerless in the production of government-funded documentary.

### 1.15 Checks and balances

One of the most famous phrases of the discourse ethics of Habermas is: “in discourse the unforced force of the better argument prevails.”<sup>49</sup>

Or to put it in the words of hermeneutic philosopher Hans-Georg Gadamer, who gives this a popular turn: What the Others are saying could be right! As everyone knows, this ideal is very difficult to achieve in scholarly and everyday discussions. But there is a obvious deficit in practical philosophy - namely, its fundamentally "unresolved openness" [*Unabgeschlossenheit*] concerning its problems and its various attempts at their solutions. This fundamental, unresolved openness becomes a great virtue in discussions . . .<sup>50</sup>

If participants, like John Perceval’s minder, Ken McGregor or Mosman Councilor, Harold Scruby (Chapter Five case study, *The Wonderful World of Dogs*), as social actors cannot recognize themselves, and others in this PhD, or in the film *Delinquent Angel*, then I may have produced a distortion of their account. This might have occurred if I had not gone back to them with each subsequent draft for their clarification. This process of checking with the social actors is referred to as ‘member validation’, or ‘member checks’.

In order to publish part of the Chapter Five data - obtained through a Freedom-of-Information-Application to the Australian Film Commission - an agreement was made with a documentary film subject, Mosman Councilor Harold Scruby. The agreement provided him the opportunity to ‘member check’ and ‘member validate’ the final Chapter Five case study - *The Wonderful World of Dogs*.

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<sup>49</sup> Gimmmler, A. *The Discourse Ethics of Habermas*,  
<http://caae.phil.cmu.edu/Cavalier/Forum/meta/background/agimmmler.html> [Accessed 21/01/04]

<sup>50</sup> Ibid

This 'member validation' process was also the basis for informed consent in *Delinquent Angel* and essentially amounted to an ongoing ethical dialogue of clarification and permission. Such ethical reflection is relevant to Habermas and his colleagues like Hans-Georg Gadamer, who simply maintain that participants, in a study or a film, do in fact have valid input. This democracy and egalitarianism fits easily within grounded theory in the process of developing a theory of ethical practice for the non-fiction camera professional:

Meta-ethical reflections could be interpreted as a propedeutic, one which clarifies the use of moral judgments in terms of language analysis [*Sprachanalyse*] - a clarifying that has to be followed by a normative ethics theory. But understanding meta-ethics as a pure theory, one that is convinced all moral questions could sufficiently be handled on the neutral and theoretical level of language analysis (especially in ideal language philosophy), is excluding an orientation to application even in its self-understanding.<sup>51</sup>

This process however, when coupled with filmmaking and reflection within participatory action research, can be fraught with disagreement, misrepresentation, inaccuracy and false conclusions - especially when moving between the theoretical and the applied.

Habermas chooses a specific way of combining theoretical meta-ethical statements with the practical world, the "lifeworld" contexts [*lebensweltlichen Kontexten*], in his discourse ethics. From this point of view, discourse ethics is neither pure meta-ethics nor applied ethics. It undertakes to combine the claim of universality that is inherent theoretical knowledge with the application of theory to practice. And it even claims to conjoin the sphere of theoretical justification of the theory with the sphere of practice.<sup>52</sup>

Alternative theory and sources for methodology were therefore sought to authenticate and validate my approach. This was done with the view that further checks and balances should always be available. Philosophers like Kohlberg (discussed in Chapter Two), Habermas, Boyd, Levine and Hower - all consider as paramount, that certain criteria are thoroughly established before concluding on empirical data in their process of formulating ethical theory. This is an ironic parallel to the arrogant claims on the real, and on public funding, that documentary filmmakers sometimes make.

. . . the psychologist must adopt a perspective and utilize concepts and truthfulness checks which are 'external' to the interpretive stance which facilitates the reconstruction of qualitative changes in how the performative attitude in justice reasoning is manifested.

. . . Habermas points out that the psychologist must at this point assume and be restricted to an 'objectivating' or 'third person' attitude, one that seeks to explain the data in a way which meets the relevant standards of propositional truth claims.<sup>53</sup>

My subsequent reading found Gadamer (1989) saying that the researcher can become a *mediator of languages* between everyday, lay language and the social scientific and technical language of the applied - in this instance, filmmaking.

Studying social life is akin to studying a text, and this involves interpretation on the part of the reader. The researcher actively constructs an account based on the accounts provided by the participants. This process of construction is not neutral; researchers have to invest something of themselves into their account. Social, geographical and historical locations, as well as the interests of the researcher, have a bearing on the nature of the account produced. Hence detached objectivity is seen to be impossible, as the author's voice will always be present in the researcher's account.<sup>54</sup>

In terms of this PhD and *Delinquent Angel*, I was then to be defined as a *reflective partner* who is committed to the social justice that the participants deserve.<sup>55</sup> In the case of professional filmmaking this model assists in providing social actors the social justice of informed consent. In the case study involving Harold Scruby, I was a *reflective partner*, able to build a reliable account of what transpired.

This provided Scruby with an alternative to the mainstream perspective provided through the film's broadcast, which favored the very successful producer of *The Wonderful World of Dogs* and its investor, the Australian Film Commission. Therefore, this PhD's *reflective partner*

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<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> Boyd, D. in Kohlberg, L. 1986. 'A Current Statement on Some Theoretical Issues' in Modgil, S. & Modgil, C. (eds.), 1986 *Lawrence Kohlberg, Consensus and Controversy*, Falmer Press, Philadelphia, p. 508.

<sup>54</sup> Blaikie, N. 2000, *Designing Social Research*, Polity Press, Cambridge, p. 53.

agreement gave Harold Scruby some closure and voice for the public record (see Chapter Five).

### 1.16 Benchmark in international law

It was felt that any discussion involving a global model for ethical and legal practice in filming people should acknowledge international law. In 1948, the General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights as ‘a common standard of achievement for all peoples and all nations’ ... to the end that every individual and every organ of society was to strive to promote respect for the rights contained within the Declaration by teaching and education.<sup>56</sup> The relevant clauses in the preamble read thus:

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, . . .<sup>57</sup>

All Member countries (including Australia) adopted the Declaration and were encouraged to publicize the text and ‘cause it to be disseminated, displayed, read and expounded principally

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<sup>55</sup> Habermas, J. 1972, *Knowledge and Human Interests*, London: Heinemann.

<sup>56</sup> **Universal Declaration of Human Rights** Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, <http://www.un.org/Overview/rights.html> [Accessed 21/01/04]

in schools and other educational institutions, without distinction based on the political status of countries or territories.<sup>58</sup> Relevant sections of the Declaration will be referred to throughout this thesis, the Declaration being too large to quote in its entirety within the confines of this work.

### **1.17 Literature: available discourses**

While ethical discussions abound in journalism literature, and at times in the media itself, discourse on an applied and more accountable process in documentary filmmaking, when using actual subjects, is not widely available. One of the few of international note, calling for change, is Brian Winston who, in the introductory section to his book *Lies, Damn Lies and Documentaries*, supports the position taken from the outset in this thesis:

This is an argument about documentary film— and video-makers and those who regulate them and it takes an evenhanded approach to these parties in that, regrettably, it wishes something of a plague on both their houses:

- a plague on documentarists who abuse their position as public communicators, less for lying to their audiences and more for duping those whom they involve in their projects
- and a plague on regulators who abridge the documentarists' fundamental right of free expression in the name of preserving some amorphous notion of public trust.

If documentarists are to be castigated for their unethical behavior and regulators for authoritarianism, the argument is bound to become somewhat complex.<sup>59</sup>

Over the last two decades the UK based Brian Winston, and Bill Nichols from the USA, have carried almost all the debate as far as English language discourse on documentary ethics is concerned. The small number of other voices is an indictment of the many documentary filmmakers and professionals in production, funding and broadcasting who formulate policy. Their preoccupation with commercialism combined with the fear of losing editorial control,

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<sup>57</sup> Ibid

<sup>58</sup> <http://www.un.org/Overview/rights.html>

<sup>59</sup> Winston, B. 2000, in the 'Argument' *Lies, Damn Lies and Documentaries*, British Film Institute, London.



seems to prevent them from discussing these matters with transparency, or indeed discussing them at all. Contractual obligations in filmmaking are also increasingly preventing open discussion, through the risk of breaching commercial confidentiality.

Some of Winston's discourse, published as early as 1988, remains relevant in today's multi-media environment, but since then not a great deal has been published on these issues. Internationally, only a few writers like Winston have continued to apply pressure to policy makers, regulators and documentarists, in calling for accountability as film genres dependent on actuality become increasingly voyeuristic and exploitative. Tim Gardam summed up a commercial motivation from the point of view of Britain's Channel Four.

The attacks of September 11th drew a line under this hedonist decade. History has returned. To me the past few weeks have reaffirmed why I became a television producer in the first place. But, before September, I believe there had been signs for some time that there was emerging among the audience what I would describe as a growing search for value. . . .

People are resistant to watching because they think these programmes may be "worthy". Yet, when they do, they find them "surprisingly enjoyable". If we are to attract the viewers we need to survive commercially in the future we need to distinguish between the "worthy" and the "worthwhile". That matters. We are a commercial broadcaster. If our programmes don't attract advertising revenue they don't get made.<sup>60</sup>

David Berry's editorial introduction to *Ethics and Media Culture: Practices and Representations* defines the problem in the context of a global mass media economy:

I begin with a discussion on the crisis that has emerged within the media in relation to the number of *faked* programmes in circulation in the public domain and consequently the impact upon truth in journalistic practice and trust between the public and the media to produce reliable information.<sup>61</sup>

He suggests that documentary in particular has come under criticism for the high levels of fake scenes, set-ups and distortions for increased dramatic and artistic value. The definition of truth,

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<sup>60</sup> Gardam, T. (Channel Four, UK), 2001, *The future of documentaries: survival and competition in the modern world*, Sheffield International Documentary Festival, 27 October 2001.

<sup>61</sup> Berry, B. 2000, Introduction to *Ethics and Media Culture: Practices and Representations*, Reed Focal Press (an imprint of Butterworth-Heinemann), Oxford, p. 3.

therefore, as a value in media practice and in the public's perception, is under constant change in response to new forms like Real TV, and from pressure to continue the commercialization of both documentary and journalism. Julianne Schultz expresses it this way:

The need for checks and balances, and scrutiny of those in power is greater than ever, but the task is beyond the scope of the media industry which is itself constrained by competing imperatives. The media is now a vast international business increasingly suspected of exercising self-interested political and economic power rather than acting as a disinterested check on the abuse of such power by others. The news media is increasingly driven by the expectations of entertainment. Even news is now often judged on its entertainment value.<sup>62</sup>

Newspapers, radio and television have always considered entertainment important to their direction, but now entertainment values shape the news. "It is not just a matter of getting the mix right between news and entertainment, personalities and issues, but inserting the values of entertainment into the news." (Schultz, 1998, p. 5) When this is happening at the perceived 'objective' end of journalism (news and current affairs) it has to asked, what level of shaping now occurs in current affairs and documentary?

Published from the UK, the Internet based Media Guardian ran a disturbing report on the trend of documentary, which suggests nothing short of a crisis. A documentary featuring explicit video footage of an alleged rape raised problems for the broadcaster, Channel 4, and inevitably for the integrity of international non-fiction film.

For the *Media Guardian*, two film reviewers (who were also broadcasters with Channel Four), wrote how rape is a criminal act and that no film dealing with the subject is ever going to be easy. They were referring to the American documentary *Raw Deal: A Question of Consent*, which posed particularly difficult ethical, editorial and legal dilemmas. This was due to its inclusion of an alleged rape, vividly recorded on videotape. The material was central to *Raw*

*Deal*, which was subsequently shown with acclaim at the Sundance and Edinburgh film festivals.

The documentary is a disturbing account of a sordid evening which commences with a strip show, goes on to feature drunken sexual behaviour, and culminates in an alleged rape. When we first viewed the original film, we were genuinely shocked and asked ourselves whether there was a legitimate journalistic and public interest justification in broadcasting it.<sup>63</sup>

Lisa Gier King was hired to perform at a Florida University fraternity house party in 1999.

After her performance she stayed on to party. The next morning, disheveled and missing clothes, she was claiming that she had been raped.

The official synopsis to the 105 minute, and as yet un-rated documentary film, describes the work thus:

Incredibly graphic, unquestionably powerful documentary about a charged rape case, where members of the Delta Chi fraternity allegedly gang-raped a stripper hired for a party. Includes intense video footage of the actual incident which raises more questions than it answers.<sup>64</sup>

Using the video material, shot by the fraternity boys on the night, *Raw Deal* tries to uncover what really happened from the visible evidence. It is this insightfulness and in depth analysis of visible evidence, if that is what is ultimately what can be concluded about *Raw Deal*, that sets journalism and documentary apart. Documentary, being in-depth is thought to interpret, argue, analyze, give voice and information beyond the news, or the banality of so called reality television or news and current affairs.

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<sup>62</sup> Schultz, J., *Reviving the Fourth Estate, Democracy, Accountability and the Media*, Cambridge University Press, 1998, pp. 4-5

<sup>63</sup> Barker, A. & Naik, P. 2002, *A Question of Consent* (Monday January 28, 2002) the on line Media Guardian. <http://media.guardian.co.uk/mediaguardian/story/0,7558,640354,00.html> [Accessed 13/08/03]

<sup>64</sup> Corben, B. & Spellman, A. 2001 *Director's Synopsis*, Reel Com Movies. <http://www.reel.com/movie.asp?MID=132953> [Accessed 13/08/03]

King spent most of the night in the company of two students, Tony Marzullo and Mike Yahraus, and engaged in sexual relations with both of them. King subsequently claimed that Yahraus had raped her, while Marzullo - who was present throughout - claims that what went on between King and Yahraus was entirely consensual. . . .

Despite our initial reservations, we believed the film presented an unparalleled opportunity to examine the question of consent. How do you judge whether one person's word is to be believed against another? What is the difference between a woman's and a man's interpretation of consent? How hard is it to judge when consent for certain kinds of sexual activity has been given, but not for others?

Before we could proceed we needed to satisfy ourselves that the film-makers had acted responsibly in gaining King's informed consent. In the UK it is an offence to publish any matters which are likely to lead to the identification of a rape complainant.

The law does allow victims to waive their right to anonymity provided this is in writing and it has not been improperly obtained. In this instance King had willingly participated in the film, and she had seen and approved of it.<sup>65</sup>

Hype is usually standard fare at Sundance [USA] film festival, but as reported, many agreed that *Raw Deal* is a film that pushed the boundaries of the extremes of what is prurient or informative, what is pornography or documentary, visible evidence or voyeurism, consenting sex or rape. It was said that it was one of the most graphically sexual films ever made.

It's also one of the most powerful doc's I've ever seen. The screening I attended started at 11:30 PM, followed by a Q&A that emptied out into the hallway, where the director and producers discussed it for another half hour or more. Of some documentaries, there is a final consensus, but with *Raw Deal*, it challenges the audience, and I think people find themselves (and others) not thinking what you'd think. In recent years, video has become something of a legal holy grail, but *Raw Deal* shows that it, like anything, can be manipulated and interpreted by both sides of a dispute, proving nothing. Director Billy Corben achieves this by doing what the Florida court did, showing us the footage so we can form our own opinions, even as all those involved tell us what they think we should see.

The video footage of the cut shown at Sundance verges on hard-core porn, with penises and vaginas fully visible, all within a drunken frat party atmosphere, with frat boys saying things like "we're going to rape a white trash whore." This is sensitive material, and one can feel a bit dirty seeing it, if not for the awareness that Alachua County not only didn't keep this under wraps, they released this video for public

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<sup>65</sup> Barker, A. & Naik, P. 2002, *A Question of Consent* (Monday January 28, 2002) the on line Media Guardian. <http://media.guardian.co.uk/mediaguardian/story/0,7558,640354,00.html> [Accessed 13/08/03]

viewing (acting under Florida's "Sunshine Law"), which became something of a sex industry sensation (the video has been sold on the Internet).

... the video, as edited by the frat members before they gave it to the police, shows Ms. King as being a consensual sex partner... maybe. The reason the questions of "consent" and "rape" are so difficult to ascertain is that the video is used by the fraternity members' lawyers as a weapon against Ms. King, and the argument (that she displayed a great deal of encouraging sexual behavior to the boys) is a powerful one. That raises another concept that rape cases face far too often; that idea that women ask to be raped by their behavior. You're not going to find answers in *Raw Deal*... just more and more questions, but by positioning the facts to us so frankly, the audience gets to consider the issues personally, without one side overwhelming the other.<sup>66</sup>

The story was picked up by women's organisations and grew to outrageous proportions, until arriving on the desk of Rod Smith, State Attorney, who made the extraordinary decision not only to make the tape public, but to release copies to whomsoever requested one. Billy Corben's film includes extensive footage from the video, along with interviews from many of the people involved.

It is a harrowing and unnerving experience watching this documentary. These are real people and, despite the uncertainty over the claim, real lives have been destroyed.

It is amazing to watch the different reactions of the people featured, and to realise that you cannot tell who might be "putting on an act" and who you can believe.

With so many opinions on offer, no conclusions can be reached, save from the fact that the original investigation was a shambles. Corben seems to point the viewer in a particular direction, yet suggests that a lot of covering up was done to safeguard political careers, in the end you are as good, or as bad a judge as anyone.

Can someone consent to sexual acts and then withdraw that consent? Did this happen on February 26th?

In a strange, yet insightful way, Corben shows us that videotape, far from providing solid evidence, is wide open to interpretation.<sup>67</sup>

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<sup>66</sup> Schmitz, G. 2001, *Greg's Preview*, Yahoo Movies. 18/02/01.

<http://movies.yahoo.com/shop?d=hp&cf=prev&id=1808405599> [Accessed 13/08/03]

<sup>67</sup> Reviewed by Trinity, 2000, *review site*, iofilm, UK

[http://www.iofilm.co.uk/fm/r/raw\\_deal\\_a\\_question\\_of\\_consent\\_2000.shtml](http://www.iofilm.co.uk/fm/r/raw_deal_a_question_of_consent_2000.shtml) [Accessed 13/08/03]

This early case study raises most of the issues in this PhD. These issues are magnified in the ill defined, virulent and newly arrived forms of non-fiction – like those of reality TV, the fakery genres and the sensationalist forms of tabloid current affairs.

This thesis argues how the public needs opportunities to consider whether these new forms are contributing nothing more than sensationalism, propaganda and commercial fraud? Is this negatively affecting television journalism and documentary, which now appear to simply embrace the practices of Reality Television. There is increasing evidence internationally, of the deliberate faking of scenes, misleading subjects in the film, endangering their lives by identifying them, or defaming them for exploitative reasons when its not in the public interest and when they cannot fight back.

1998 was, to put it mildly, an interesting year for the media in the UK in terms of the revelations exposing parts of the industry as producing fake television programmes. That discussion continued into 1999 with further discoveries that serious documentaries and talk show programmes used deceptive practices. Considering this, I want to examine the consequences that lying may have for the trust between society and the institutions which it relies on for information, believing it to be genuine.<sup>68</sup>

In *Lying In Public: British Television Regulators Invent a New Offence*, Brian Winston explains how in some instances, an eventual consequence of fakery is financial in the form of an expensive fine. He writes how a number of British documentary filmmakers working for the stations controlled by the Independent Television Commission were found to be misleading the public in contravention of the regulations governing the transmitting stations' commercial license.

Some of these supposed offences have involved actual mendacity but many simply arise from everyday documentary practice. The current situation in the UK is extremely paradoxical therefore – the entire documentary tradition is being called into question exactly at the moment when documentary series (docusoaps)

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<sup>68</sup> Berry, D. 2000, "Trust in media practices: towards cultural development" in *Ethics and Media Culture - Practices and Representations*, Reed Focal Press (an imprint of Butterworth-Heinemann), Oxford, p. 29.

are achieving a real penetration into the mainstream prime schedules for the first time.<sup>69</sup>

Winston argues that the arrogant claim made by filmmakers - that they are reliably representing reality because the camera records events naturally - is due to the claims originating with the Direct Cinema movement of the 1960s in the US (discussed in detail in subsequent chapters). Regardless of the origins of this claim on the real, the issue of representational accuracy to the event and the subjects being filmed is a constant in any critique of non-fiction film, and accordingly is a reoccurring theme in this thesis.

### **1.18 Importance of this study**

The apparent lack of ethical consideration coupled with the contradictions and problems within documentary filmmaking are at the core of this discussion. There is a need to expose the shortcomings of rights based thinking in current practice throughout the industry. There is also a need to expose the ethical dilemmas evident in previous documentaries so that education might assist people in avoiding the same error of judgment in the future.

Where informed consent is applied, as espoused in this PhD, the legal environment that really underpins the informed consent process is also explained to all those being filmed. This should be done with a transparency of all limitations, possible outcomes and benefits, or otherwise to the filmmaker, the subject and the culture of the industry generally. The process should be summarized so that everyone has some capacity to evaluate whether or not they should participate.

As most documentaries are made possible through public funds, the processes in making those works should also be made transparent. This would be laid out in funding applications on the

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<sup>69</sup> Winston, B. 1999, "Lying In Public: British Television Regulators Invent a New Offence", Speaker at the 1999 Visible Evidence Conference, Aug. 19. The Conference was the seventh in a series of major interdisciplinary conferences on non-fiction documentary, encompassing issues of ethnography, journalism, medical imaging, visible evidence and the law, advocacy, biography, autobiography, and the art of social representation. <http://www.cinema.ucla.edu/visible/winston.html> [Accessed 12 October 2002]

Internet in terms of informed consent and ethical practice. The same accountability measures would apply as the process for budgetary matters. This thesis advocates more transparency in this domain and to protect subjects, it need not be made available after the film has been launched. This thesis proposes that ethical accountability not only reduces risk in terms of unnecessary psychological trauma for the social actors, it also reduces the potential for unforeseen litigation (some of which is covered in the usual film Errors and Omissions Insurance).

The prevalence of similarities rather than differences between television journalism and documentary filmmaking, as this study shows, leads to a need for a uniform ethical scrutiny of both. The thesis demonstrates, given the urgency of the situation, that the journalistic codes and standards of practice can be applied to documentary filmmaking in the meantime, while we are bereft of any otherwise standardized and agreed upon standard of practice.

The issues as set out here revolve around representation, truth and fairness, and privacy verses publication in the public interest. Discussion avoids the inaccessible extremes of academic postmodern commentary around subjectivity and objectivity, or the philosophical debate on freedom of expression and the public's right to know (now bogged down in issues of national security). Rather, there is a need for applied discussion of situational ethics, virtue ethics and consequential ethics relevant to filming someone with the view their image and voice being part of a public screening in some form.

As the broad genre of non-fiction filming now includes new and market aggressive forms of real TV or reality television, a scrutiny must also take them into consideration. Competing alongside each other in similar markets, traditional documentary and even current affairs journalism are affected by the camera aggressiveness of these new genres. Coupled with this, the actual way in which the portable, inexpensive and unobtrusive digital cameras (digi-cams, Mini DV, hidden cameras, on-line video streaming) are now used, heightens the urgency for review and re-definition of the ethics of the camera's gaze. This applies to the range of professionals practicing documentary filmmaking and video-journalism – journalists, camera people, editors, writers, producers and those working on the funding side.



Two subsidiary arguments emerge from this. First, the need for a Code of Ethics for documentary filmmakers (even if these workers are employed in real TV), enabling the professionalism to be transportable to the next and related profession. And second, if ethical standards are met in the filmmaking process, the likely benefit to everyone is noted for all, highlighting the potential minimization of legal and other costly problems resulting from the psychological trauma after broadcast.

Important also, is the continuing evolutionary change within a context: that an ethical code's overall development is focused as a tool for making ethical decisions and acting in the public interest. Journalists and filmmakers (see Chapter Five *Cunnamulla* case study) should then be able to immerse themselves in this overriding definition and principle of public interest every time they are engaged in some questionable conduct, particularly when it involves invasion of privacy and failing to properly identify as journalists or filmmakers. The development of a code of practice then, must anticipate these kinds of glitches and have a flexibility shaped by ongoing dialogue from all involved.

The professional demands of documentary and journalism (where these issues are discussed minimally), often requires agents to work on the boundaries of what is morally correct. Journalists and filmmakers often face agonizing choices where their personal and professional convictions clash. It is on such occasions that a code of ethics can be used as a guide to assist in making tough ethical decisions. Such a code could also serve funding bodies and broadcasters when deciding over ethically dubious documentary funding applications.

Few could argue against the importance of the public also having access to camera journalism codes of practice, providing a benchmark and definition for the public's view of the profession. This transparency has political importance in a democratic society. Public confidence in journalism and documentary should be reinstalled, so it is commonly held that both actually serve a social and cultural imperative. In short, the public has a right to know what their political and public service representatives (like the broadcasters and the government film funding bodies) are doing.

Without a familiarity with the context, ethical rules are not easy for camera journalists or filmmakers to follow,<sup>70</sup> especially when the camera operators are inexperienced. This reinforces the need for these imperatives to be continually taught, simulated, discussed, and when breached, enforced, to ensure they are effective and understood thoroughly. Young journalists starting out shouldn't see an ethics code as simply a list stuck on the filing cabinet, or in a web site, and forgotten.

Broadly, this thesis argues that today's non-fiction media industries must build a culture where ethics are widely and openly discussed. This may be through a simulation of scenarios where young journalists are encouraged to seek ethical advice in the same way they might seek guidance on the most entertaining way to script a story.

Ethical process must be presented as the way that enables subjects to voluntarily decide whether or not to participate in filming. As a part, informed consent is fundamental to ensure respect for those participating in their voluntary act of being filmed or allowing their copyright to be used in background research.

The *Delinquent Angel* process, and so this thesis, was focused to underpin the notion that the procedures used in obtaining informed consent should be designed to inform the subject. This is so they can understand what will happen to their image, likeness and voice. Therefore, as argued here, informed consent language and its documentation should be written in "lay language".

This thesis sets down the argument for ethical documentary filmmaking. Here, any written clearance must contain transparent information so that it documents the basis for consent and is accessible for the subject's future reference. The consent document should be revised when deficiencies are noted or when additional information comes to light in respect to the film's structure and tone.

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<sup>70</sup> Olen, J. 1988, Journalism and Moral Reasoning, in *Ethics in Journalism*, Prentice Hall, New Jersey, p. 6.

### **1.19 The following chapters**

The next chapter expands on the issues as defined in this chapter, from the position that documentary and journalism have a common ground - a responsibility to truthfulness in respect to the camera subject. The chapter includes a section that explores a context for truthfulness. As a complicating action to the whole thesis, Chapters Two and Three set the background for the epistemological and case study analysis that follows in subsequent chapters.

Chapter Four deals with the history of documentary and current affairs camera journalism. It shows that the two professions are culturally and historically inseparable and have identical responsibilities to the viewing public and the participating social actors. This responsibility is related through professional practice and the ethics of non-fiction filming.

Discourse analysis in these chapters centers on a socio-cultural and technical systems approach. This concentrates on the technical system (technological development, vision acquisition methods, editing, format of distribution), and the social and cultural system (workers, communication flows, cultural, industrial and filming negotiation, needs, beliefs, motivation). It also includes scrutiny of the production interface (work, contracts, design, tasks, process, flow, autonomy) of the two non-fictional areas of moving image journalism and documentary film.

Chapter Five presents the in-depth case studies. The cases are analyzed in terms of epistemology, ethics, informed consent and the law. As previously mentioned, one of the studies involved the use of the Freedom of Information Act to obtain data. Another case study

involves participatory action research of my film *Delinquent Angel*. The film took six years to develop: written, filmed, directed and produced by me.

Chapter Six looks specifically at the production issues of *Delinquent Angel* and the experience of its ethical and legal processing. Chapter Seven concludes with the recommendations as a result of this work.

## **Chapter two: the state of the Art**

2.1 Truthfulness as a starting point	64
2.2 Documentary filmmaking and journalism – truth as a measure	66
2.3 Documentary, Social Realism and Real TV – their claims on the real	71
2.4 The politics of constructing realities	79
2.5 The psychology and sociology of the traditional consent rip-off	83
2.5.1 The scene	83
2.5.2 Ethical positions	84
2.5.3 A blend could do it	90
2.6 Defining public interest for public interest	91
2.7 Reliance on virtue and honesty	95
2.8 Technology, Truth and <i>Cinéma-Vérité</i>	96
2.9 Truth	100
2.10 Reference and Sense	103
2.11 Truth as accuracy	106

## Chapter two: the state of the Art

### 2.1 Truthfulness as a starting point

**A testimony:** In 1997, a colleague and I were researching news media bias during the hand-over of Hong Kong to China. In curriculum design, we examined in particular the fear of China, generated possibly by UK - biased and related Western media. During that inquiry we found a testimony to the international culture of documentary filmmaking that deserves a prominent place in this thesis:

I had spent several days with the BBC crew in Hong Kong, filming a segment for their documentary about how certain people were viewing the handover (1997). The filming took place several months before the handover, at a time when I was extremely distraught over being part of a group of ethnic minorities who had been told we were not eligible for full British citizenship. The tone of those interviews was naturally serious – I was very, very concerned about what might happen if things went horribly wrong in Hong Kong, and me, with a Hong Kong passport that would not give me the right of abode anywhere in the world except Hong Kong, would have nowhere else to go. I was angry with the British Government, and said so during the course of the interviews, hoping to justify just why I felt they should give non-Chinese Hong Kong-belongers full British citizenship.

I was part of a group (Indian Resources Group) to lobby the British Government to pass a bill giving us full British passports. That bill finally came through in February 1997. The documentary hadn't been screened yet, so a few changes had to be made to make it more relevant. I was asked to go into the BBC studio in Hong Kong, and the director phoned me there from London to coach me through what I needed to say. By this time, I was feeling, naturally, quite re-assured about my future. But the director wanted me to maintain the level of panic that had been in my voice during the earlier filming... so she asked me to use certain words (like “traumatic”) to explain how I felt. I had to rehearse it a few times, while she encouraged me to sound a bit more dramatic, more desperate. Perhaps it was all a question of maintaining a level of consistency in the tone of the documentary, but I do recall feeling somewhat manipulated at the time.

Source: confidential.

This anecdote provokes one to ask, as does Mieth: “Why are we prepared in everyday life and common law to invoke at one moment, the norm of truthfulness as the basis for fair practice

and journalism, while at the next moment and context, justify the right to lie, depending on the circumstances and contexts?”<sup>71</sup>

According to the Macquarie Concise Dictionary, a documentary film is “a factual presentation of a real event, a person's life, etc., in a television or radio program, film etc”. This brief definition indicates three points where a documentary film relies on truthfulness: the person or people portrayed are real, the events portrayed are real, and the presentation is factual.

While some documentaries don't have all of these elements, it is fair to say that truthfulness is, generally, a basic norm of non-fiction communication. A communication deliberately based on an untruth is misleading, potentially dangerous, and can be construed as being unfriendly and deceptive action.

In documentary film, the extent to which truth is compromised by pressures derived from motives such as profit, art, the protection of certain interests, public relations, good story telling or the enhancement of one's own reputation - is the extent to which the finished film deviates from the accepted definition of documentary (above).

The UNHCHR Declaration of Principles of the Contribution of the Mass Media establishes an international reference for this thesis. Basically, it acknowledges the argument for retaining the norm of truthfulness as a benchmark in communications fair practice:

The mass media, by disseminating information on the aims, aspiration, culture and needs of the peoples, to make nationals of a country sensitive to the needs and desires of others (are) to ensure the respect of the rights and dignity of all nations, all people, and all individuals.<sup>72</sup>

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<sup>71</sup> Mieth, D. 1997, 'The Basic Norm of Truthfulness, Its Ethical Justification and Universality' in Christians, C. & Traber, M. (eds.) *Communication Ethics and Universal Values*, Sage Publications, New Delhi, p. 87.

<sup>72</sup> UNCHR, 1978, *Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War*, Art.III, Cl.2, [http://www.unhchr.ch/html/menu3/b/d\\_media.htm](http://www.unhchr.ch/html/menu3/b/d_media.htm) [Accessed 19th June 2002]

Despite the credentials of this discourse, over the last decade in particular, public relations as an information source has become the main influence controlling information and truth and it does so while dressed as journalism presented in public interest.

Now the truth is that in the United States, journalism is in vast demise. I don't think very many journalists will disagree with that. There's been tremendous downsizing, tremendous conglomeration; journalism is in demise, and its collapse is opening ever more opportunities for PR practitioners to increase their influence in the newsroom.<sup>73</sup>

In this instance Stauber refers to Ben Bagdikian,<sup>74</sup> who in 1983, wrote a landmark expose entitled *The Media Monopoly* in which he looked at the tremendous concentration of the news media in the United States, increasingly in the hands of a small number of power brokers. It is now accepted that this change in the very nature of the news media, journalism and camera journalism - has solidified throughout the western world. This has also become a contributing factor to the unhealthy state of the Australian documentary industry, where producers conform to certain agendas in order to attract diminishing funds in a fiercely competitive environment.

## **2.2 Documentary filmmaking and journalism – truth as a measure**

As explained in greater detail in Chapter Four, in Australia at least, documentary filmmaking and television journalism are linked culturally, historically and professionally. Both forms as filmic texts make similar claims on the real and both place the director, or journalist, in a similar relationship to the subject: the interviewee, the social actor or source. Journalists producing television news and current affairs, like documentary filmmakers, work with teams whose craft and expertise is based on the culture and technique of film. Their understanding of

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<sup>73</sup> Stauber, J. 1997, *Conflict Environment - Corporate PR a threat to Journalism. A point of conflict and potential sensationalism*, The Australian Centre for Independent Journalism, at the University of Technology, Sydney; cited in Blackall, D. 1999, *Readings and Resources* in Television Journalism (teaching subject), Graduate School of Journalism, University of Wollongong, p. 128.

<sup>74</sup> Bagdikian, B. 1983 *The Media Monopoly* Beacon Press.



camera-work and editing is informed by the film industry rather than by journalism. There is a close working relationship between journalists, camera operators and editors, as there is between documentary film directors and production staff.

Throughout this thesis, an argument is put: that not only is the production method of documentary filmmaking identical to those of television journalism, both are also entertainment professions claiming to represent reality through the experiences of actual people rather than paid actors. There are, however, three main differences as established in Chapter One and defined in case studies or in the participatory action research throughout this PhD.

Firstly, journalists over the last two-decades are increasingly more likely to be trained at university journalism schools, where ethics form part of the curriculum. Filmmakers, editors and camera operators, on the other hand, are trained in art and film schools, also in universities and tertiary colleges, where, if ethical perspectives were present in the curriculum, they would form a small part. The journalist, therefore, is the professional most likely to have considered ethics as part of their vocationally oriented university-based education. Journalists are again more likely to encounter ethical codes at work, as set down by the union, and in many situations, by the employers.

Secondly, documentary filmmakers, who are more likely to be trained informally, place a higher priority on their finished work as their art or as cultural artifact, as distinct from the raw footage being journalistically presented in public interest. Completed documentaries as opposed to current affairs stories are more likely be on-sold into as many markets as possible, and there is a lower priority on the journalistic ideal of providing information accurately, fairly and in the public interest. Filmmakers aspire to artistic self-expression, producing new insights to the form, which arise from high levels of editing and reinterpreting the raw material.

Thirdly, filmmakers do not have associations or professional bodies that aspire to a set of best practice guidelines, principles, codes of practice or codes of ethics (as elucidated upon in the latter sections of Chapter One). While both professional contexts are obliged to consider the

charters and codes of practice of the broadcaster on which their product is screened, and of the standards laid down by the Australian Broadcasting Authority – the documentary filmmaker is less likely to be exposed to, nor contemplate ethics, in a context of awareness, like that of codes as disseminated by the MEAA or the Press Council.

This PhD examines the social phenomenon of the documentary film industry placing legal obligations, creativity, commercial agendas and film excellence in aesthetic terms as its dominant paradigms. This is documented in the ethos of discourse in filmmaker's and government-funding production agreements.

While documentary films, and television news and current affairs programs have an elevated requirement to tell the truth if they are to maintain their integrity, documentary films are also vehicles for personal and artistic self-expression. Very little discourse about this difference has occurred in Australia, but in the UK film commentator and academic Brian Winston maintains that ethical and representational aspects of the journalist's profession are at odds with the broader, creative practices of documentary filmmaking.<sup>75</sup>

For journalism and documentary, different styles and forms have different contracts on 'truthfulness' with the audience. This agreement can only be fair when the form being offered to the audience is truthfully defined and marketed in the first place. The audience's faith, or the public trust in documentary and television journalism - depends very much on whether the public is currently seeing observational filming, for instance, as being "a fair rendition, or pretty accurate rendition, of what the filmmaker saw and heard when they filmed".<sup>76</sup>

In Australia, Gillian Leahy suggested the public's trust in the accuracy of filming may first be dependent on the passionate values held by filmmakers - over issues of filming style, definition, genre and what constitutes the truth or the boundaries of being 'unethical'.

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<sup>75</sup>Winston, B. 2000, *Lies, Damn Lies and Documentaries*, British Film Institute, London, p.128.

<sup>76</sup>Leahy, G. 1996, 'Fidelity, Faith and Openness, Rescuing Observational Documentary', *Media International Australia*, No 82 – November, p. 43.

At the 1995 Australian Screen Directors' Association Conference, David Caesar launched a vitriolic attack on the observational documentary style during a discussion of the 'Deco Doc' – films like his own *Bodywork* (1990), *Fences* (1993) and *Car Crash* (1995), which are highly art directed, obviously and intentionally set up, and avowedly, at least partially, fictional. Caesar's documentaries are also reflexive, in a way most observational documentaries are not, in that they draw attention to the fact of their construction by the use of such devices as chapter headings, emblematic close ups, and the use of projected slides as backdrops for interviewees. In contrast to his own documentaries, Caesar described observational films as unethical, exploitative and ambulance chasing – 'snuff movies for middle class people'. I felt stung into arguing for tolerance for observational films. Debate ensued on the attraction of the 'real' to audiences, and the way observational films can offer up scenes the filmmaker would never think to script.<sup>77</sup>

Avowedly art directed and stylized, Caesar's 'Deco Doc' films, like other non-fiction forms, ultimately rely on actual people rather than actors. These people are unpaid and have to be themselves as subjects for the filmmaker's creativity. In the process of explaining to subjects the nature of a forthcoming film, an ethical journalist (or director) might differentiate for them, the documentary genre or television current affairs journalism style that the end product will most likely reflect.

By explaining to film subjects how each filmic form can only represent or incorporate a degree of truth and how, the resultant dialogue can assist in visualizing for the camera subject, what a director or journalist wants. This dialogue on truth can be informed by scholarly work, provided to the subjects, as their wish.

The issues worth discussing here are illustrated by William Routt in his paper, *The Truth of the Documentary*. Routt proposes that journalism tells the story, the facts and details, while documentary film, with longer durations, uses creative techniques of fiction and attempts to answer more open-ended questions:

Truth-telling is one of the most commonplace and most complex situations we get ourselves into. If you ask me the time, I tell you the truth as accurately as my

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<sup>77</sup> Ibid, p. 40.

watch will allow, and I do it without the slightest twinge of moral agony. If you ask me how I am, however, I may lie (again with no hesitation or self-doubt) and say, "Fine" even if I am not feeling so good, just to avoid complicated explanations.<sup>78</sup>

Writing about documentary and video camera journalism in this context sharpens our theoretical position on ethics - putting scenarios and case studies to the test of critical examination.

In a later session [the 1995 Australian Screen Directors' Association Conference], observational filmmaking team Robyn Anderson and Bob Connolly showed some of their work, including a clip from a *Lion's Holiday* (1979), a film Connolly had made while working at the Australian Broadcasting Commission (ABC, now Australian Broadcasting Corporation). His footage concerned a group of very young Aboriginal children taken away on a holiday to the big city, leaving behind their families in their small country home town. In the bus the children look relatively merry. The camera follows one boy as he meets the white family he is to stay with. At lunch the boy uncontrollably breaks down, putting his hands in front of his face. The white mother tries to dismiss this distress as something that will pass, and continues to try and serve him food. The camera went on filming, seemingly endlessly, as the boy maintained his level of distress, also seemingly endlessly. The power of this footage was immense. I could not control my own tears. Now why is this?<sup>79</sup>

There are two types of truths applying to these sorts of filmic texts - of moving-image camera-journalism and documentary. The first, *reference*, largely in video based texts, is practical and journalistic. If this was adopted as the sole source of information, then it may prevent people from discovering a truth that journalism by its nature usually fails to completely reveal. This is the case, because the practice of journalism as a precursor for information and history, and with its implied objectivity, cannot always lead to informing of hidden truths in the public's interest. On occasions, the more extended form of documentary can deliver where other forms fail:

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<sup>78</sup> Routt, W. 1991, "Introduction: The Truth of the Documentary in Continuum", in Alec McHoul (ed) *The Australian Journal of Media & Culture*, Vol.5 No.1. Delivered originally as part of "The Line Between Documentary and Fiction", an event organized in 1987 by the Australian Film, Television and Radio School in Melbourne, p. 1.

[Accessed 12/8/03] <http://www.mcc.murdoch.edu.au/ReadingRoom/5.1/Routt.html>

<sup>79</sup> Leahy, G. 1996, 'Fidelity, Faith and Openness, Rescuing Observational Documentary', *Media International Australia*, No 82 – November, p. 40.

I think this is the experience of most people. From time to time I have shown Luis Bunuel's documentary, *Las Hurdes* (1932) to students, and without fail it has provoked in some an utter disbelief. No human existence could be so awful as that film portrays. The commentary says that none of the inhabitants smiled or laughed during the time the film makers were in Las Hurdes, but students say this could not be so. They say that in some shots some of the mentally defective people shown are smiling.<sup>80</sup>

While journalism deals with factual and informational truth, documentary filmmaking deals with a deeper and more artistic truth that is expressed more comfortably on extended film. When defending higher production values, documentary filmmakers are therefore more likely to cite artistic integrity as justification in achieving this deeper and more artistic truth. They are less likely to be aware of, and are more likely to hold in contempt the practical responsibilities journalism has to the public interest and benefit, and related ethical considerations. The documentary case studies provided in Chapter Five, and subsequent argument, will support this observation. Despite all this, the two broad areas of screen based journalism and documentary film are dynamic systems and they regularly overlap in respect to definition. This increases the importance to investigate specific examples (through case study research) that might reveal conflict between the producer/journalist and the people who become essentially, filmed and exploitable material and how this conflict might be resolved or avoided in future films.

### **2.3 Documentary, Social Realism and Real TV – their claims on the real**

To further explore the notion of reference and sense, one documentary film that explores a deeper truth to that of journalism, is *The Land of the Wandering Souls*<sup>81</sup> directed by Rithy Panh. This beautifully crafted film uses impossible to fake actuality to tell a powerful story around the arrival of information technology to the third world. The film firstly establishes the

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<sup>80</sup> Routt, W. 1991, "Introduction: The Truth of the Documentary in Continuum", in Alec McHoul (ed) *The Australian Journal of Media & Culture*, Vol.5 No.1. Delivered originally as part of "The Line Between Documentary and Fiction", an event organized in 1987 by the Australian Film, Television and Radio School in Melbourne, p. 1.

[Accessed 12/8/03] <http://www.mcc.murdoch.edu.au/ReadingRoom/5.1/Routt.html>

<sup>81</sup> Panh, R. 1999, *The Land of Wandering Souls*. Documentary. Producer: Cati Couteau. Cinematographer: Prum Mesar. Print source information: INA - 4, Avenue de l'Europe, 94366 Bry Sur Marne Cedex, France.

main characters as a writer would in a fictional narrative, setting the scene for a restrained, poignant and dramatic story.

Set in Cambodia, once ravaged by war and now rife with dislocation, hunger and unexploded bombs, the film follows a group of workers digging a trench for a fiber-optic cable across their country from the Thai border to Vietnam. This traveling work-site employs many itinerant workers, whose labor is hauling their country onto the information super-highway.

The film tells of those who have not the most basic education, but who long for homes with electric lights and smoke-free cooking. The linking of Cambodia to the global system, via another cable running to Europe along the route of the Silk Road, is one theme of the documentary. Ironically, the information super-highway will leave many in Cambodia forgotten along with their poverty.

For most of the world's population, the Internet - touted as a revolutionary technology, accessing everything from medicine to education, from rural farming methods to journalism - is irrelevant. The film draws attention to the social impact of previous networks, such as the telegraph and the Silk Road, and it parallels the way in which those networks developed and the way the Internet is developing. These itinerant workers will never use the technology that is said to be bringing knowledge and power to all. Despite this bleak future, *The Land of the Wandering Souls* is 98 minutes of optimism told by the workers, and their children, whose lives are momentarily connected, not by the Internet, but by digging its trench.<sup>82</sup>

These documented, and then purportedly factual accounts in the final film come from filming real peoples' lives. The understood truthfulness of documentary, and of camera based journalism, means audiences assume the subjects, such as the Cambodian workers, are unpaid, providing their accounts without coercion, willingly and in the cause of greater good,

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<sup>82</sup> Blackall, D. 2001, 'The Land of Wandering Souls', *Review* for the program for the Second Sydney Asia Pacific Film Festival, 9<sup>th</sup> – 18<sup>th</sup> August.

accountability and truth. They reveal their contemporary culture and, in fragile Cambodia, may be doing so as testimony to their commitment and hope for a better life for their children.

With fictional film - scripts are written, images constructed and 'actors' used to tell the story. While the accuracy and truth of the represented reality and characters in social realism is based on reality, the audience understands the actors are, most likely, paid in some way and the characters are an interpretation of the real people whose lives the story is written around. Many writers like David Berry have contrasted this with documentary film, which attempts to capture social life and present factual accounts in a manner employed by the fictional narratives, while using the subjects who believe in their stories and who are not paid as actors.<sup>83</sup>

With new technologies emerge undefined filmic forms with merging margins. These new non-fiction forms compete with more established current affairs and documentary. Former UK documentary maker turned Real TV producer, Alexander Gardiner,<sup>84</sup> says that the traditional current affairs and documentary forms are dead. The future, he says, involves only the new and commercially viable mutations of real TV in an ever-changing global environment.

On March 28, 2002, the ABC's *Media Report* announced that documentary filmmaker David Goldie, with Sohail Dahdal, was producing an interactive documentary about refugees, *Long Journey, Young Lives* for the broadcaster's web site.<sup>85</sup> According to the interview, filmed material is edited and organized in an interactive non-linear structure with graphics and links to related web sites elsewhere. Viewers, or users, can manipulate the sequence, the structure and the depth of the story to suit, thus reducing the power of the director to decide the level of

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<sup>83</sup> Berry, D. 2000, "Trust in media practices: towards cultural development", *Ethics and Media Culture - Practices and Representations*, Reed Focal Press (an imprint of Butterworth-Heinemann) Oxford, p. 29.

<sup>84</sup> Gardiner, A. 2003, speaker at the *Truth is a Special Effect* session at the Australian International Documentary Conference 2003, Byron Bay. Alexander Gardiner works as an EP for LWT in the UK. The most recent production made in Australia, the Reality TV production *I'm a Celebrity... get Me Out of Here*. His notable documentaries include *Inside New Labour*, *The Mo Mowlam Story*, *Michael Heseltine: Life in the Political Jungle*, and *A Kosovo Journey*.

<sup>85</sup> Australian Broadcasting Corporation, Website  
<http://www.abc.net.au/rn/talks/8.30/mediarpt/stories/s515937.html> [Accessed 15th July 2002]

insight communicated.<sup>86</sup> Despite all this optimism, I have yet to successfully access the documentary in a way as related in the ABC Radio National *Media Report* interview with Goldie and Dahdal.

This raises various questions: Is the Internet yet capable of delivering quality equal to television in real time and trouble free for the average house? If not, then why is a public broadcaster investing in unworkable projects while the technology is undeveloped? Is this project about refugees (*Long Journey, Young Lives*), merely an opportunity to demonstrate and indulge in the ideas and the technology? Is the issue, which is already sensationalized, suitable for interactive story telling? Is there a danger in viewers self-selecting their own view of the material? Could images of refugees and asylum seeker subjects, obtained with their consent in the best possible way, be re-used by the interactive viewer, for example, to create new sequences with racist or violently anti-immigration positions? Given this, what are the implications for the filmed subjects and their consent to participate? These questions and their ethical ramifications also summarize the issues, which are constantly arising throughout the discussion in this thesis.

Chapter One for this thesis introduced the problems with the recently emerged genre of reality television, which at best employs new technologies and challenges traditional definitions on non-fiction filming. Reality television sees real people placed in locations such as urban homes, shared households, law courts, deserts, jungles, desert islands - or wherever the imaginations of producers take them. The subjects' reactions to set-up and stressful situations are caught on surveillance cameras. Each camera impersonally records hundreds of hours of its fly-on-the-wall view of a personal world, which are then edited to a few minutes. A fictitious but extreme example is the satirical film, *Series 7, The Contenders*,<sup>87</sup> in which firearms are given to the participants who are selected at random by a government lottery, placed under

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<sup>86</sup> [http://www.abc.net.au/longjourney/index\\_flash.html](http://www.abc.net.au/longjourney/index_flash.html) [Accessed 15th July 2002]

<sup>87</sup> Site Promotion for the film *Series 7, The Contenders*, R rated. Sensational Productions, USA. [Accessed 15/8/03] <http://www.series7movie.com/>



psychological stress and assigned a cameraman to record the process where the last one left alive - wins.<sup>88</sup>

Despite using non-actors and following the codes and conventions of non-fiction documentary film, most real TV (or reality TV) programs are set in a constructed space. According to exposés in the mass media, they also use scripted scenes, entrapments and stand-in actors. The original claim on reality, used in their marketing and in defining the genre as non-fiction, has evaporated. Reality television is a genre of fiction, its so-called reality deliberately tampered with to maximize drama. It is also a commodity of spectacle with goods and services that have value and potential for profit. The spectacle becomes addictive to the audience so that more episodes have to be consumed, and higher levels of spectacle have to be created to sustain audience desire.

Actor Jim Carey's character in the 1998 movie, *The Truman Show*,<sup>89</sup> directed by Peter Weir, was a fictional and yet defining example for real TV. *The Truman Show* also served as a parody of the genre. The story involved the total manipulation of the main character's life by television producers. This was to produce sensationalism and ratings in order to make money. It did so by providing a voyeuristic view of a whole life - sleeping and awake, from birth to when the main character Truman, discovered he was simply a camera subject, a fictional form and a commodity – totally exploited. He had no real human relating: his significant-others, from parents to friends, all actors.

Debord<sup>90</sup> gives various 'definitions' of 'the spectacle', including the following three: 'everything that was directly lived has moved away into a representation'; 'it is the common ground of the deceived gaze'; and 'it is not (merely) a collection of images,

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<sup>88</sup> Byrne J. 2001, Interview with Daniel Minahan, *Foreign Correspondent*, ABC Television, 25th April, <http://www.abc.net.au/foreign/stories/s284834.htm> [Accessed 24th October 2002]

<sup>89</sup> Weir, P. 1998, *The Truman Show*. Paramount Pictures. Promotion site: [http://www.imdb.com.Title?Truman+Show+The+\(1998\)](http://www.imdb.com.Title?Truman+Show+The+(1998)) [Accessed 14/8/03]

<sup>90</sup> Debord, G. 1967, *The Society of the Spectacle*. One of the main theorists of the Situationist International, of Western Europe, which conceived that the 'spectacle' was an extension of the Marxist concept of the commodity. Debord contended that in modern Western societies everything centers on production of commodities. The product of the camera's gaze is one such profit-making commodity.

but (rather) a social relation amongst people mediated by images'—each further embellishes the idea that things are not what they seem. Does this sound suspiciously like *Big Brother* and other reality TV shows?<sup>91</sup>

Documentary films of today are now competing with reality television in similar, or very much the same, broadcast environments and programming time slots. This affects the competing genres to the extent that cross-fertilization occurs, giving rise to new and virulent strains that are likely to be more exploitative of the human subject before the camera.

The spectacle is the moment when the commodity has attained the *total occupation* of social life. Not only is the relation to the commodity visible but it is all one sees: the world one sees is its world. Modern economic production extends its dictatorship extensively and intensively. In the least industrialized places, its reign is already attested by a few star commodities and by the imperialist domination imposed by regions which are ahead in the development of productivity. In the advanced regions, social space is invaded by a continuous superimposition of geological layers of commodities. At this point in the "second industrial revolution," alienated consumption becomes for the masses a duty supplementary to alienated production. It is *all the sold labor* of a society which globally becomes the *total commodity* for which the cycle must be continued. For this to be done, the total commodity has to return as a fragment to the fragmented individual, absolutely separated from the productive forces operating as a whole.<sup>92</sup>

Sarasota, Florida is home to Jerry Springer and a murder victim who had appeared on his show with the murderer. The summer of 2000 episode of the *Jerry Springer Show* was entitled *Secret Mistresses Confronted*. Three months after it was recorded, one of the three subjects in the drama, husband Ralph Panich, saw the show televised in a bar. Even though his wife Nancy was humiliated on the program, Ralph lost control, sought her out and bludgeoned her to death.<sup>93</sup>

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<sup>91</sup> McGregor, P. 2003, 'The Truman Show as a study of 'The Society of the Spectacle'' in *Screen Education*, ATOM & the Australian Centre for the Moving Image (ACMI), p. 113.

<sup>92</sup> Debord, G. 1967, *The Society of the Spectacle*. On-line version. Chapter 2, p. 42.  
[http://library.nothingness.org/articles/SI/en/pub\\_contents/4](http://library.nothingness.org/articles/SI/en/pub_contents/4) [Accessed October 30, 2003]

<sup>93</sup> 'The Jerry Springer Show', in *Foreign Correspondent*, ABC Television, 2001.  
<http://www.abc.net.au/foreign/stories/s284834.htm> [Accessed 24th October 2002]

'This is entertainment,' he [Jerry Springer] says, 'it's not a counselling service. Before they come on, we tell them, "Jerry is not going to be able to help you. You have to help yourselves."' Not all do: earlier this year, a woman appeared on a show entitled 'Secret Mistresses Confronted!' in which she was taunted by her ex-husband and his new bride. Soon afterwards, she was found beaten to death at her home in Florida - the ex-husband and his wife later turned themselves in to the police to face first-degree murder charges. 'It was not to do with the show,' says Springer. 'The police report said so.'<sup>94</sup>

A lawyer associated with the case, Geoffery Fieger was interviewed on the ABC program

*Foreign Correspondent*:

The facts that I know about the show itself are entirely consistent, almost parallel, with the Jenny Jones Show. That show took a known, already volatile relationship and exploited it, and re-enacted it, and re-created it, and created more hurt and more fear and more embarrassment. And to what end? So an audience could hoot and holler, so that somebody could watch it on television and be some kind of sadistically amused by it [sic]. To what end? What? Might as well throw the Christians out there, let them be eaten by the lions. Same thing.<sup>95</sup>

In 1992, MTV began to broadcast *The Real World*, portraying a group of young people sharing accommodation in New York City. Despite its documentary style and a slogan proclaiming that it is "as real as it gets", reality was fabricated. People who appeared on the series say it was manipulated to enhance excitement and encourage conflict and that its loyal fans grew to accept and even expect this. Footage is often used out of sequence, distorting the timing of events. Some situations are edited to look more dramatic while others are completely stage-managed. When the forever-videoed roommates volunteered to work at a youth center, for example, the initiative came not from the cast members but from a producer.

Norm Korpi, a homosexual man who participated in the first season, says the producers scripted and directed interactions among the roommates. He says, "They were very afraid there wouldn't be enough drama... They were very nervous about having a gay. The sponsors were

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<sup>94</sup> The Weekly telegraph On line, 2000, *Tales of ordinary outrage* (Filed: 30/11/2000)  
<http://www.telegraph.co.uk/health/main.jhtml?xml=/health/2000/11/30/tljerry30.xml> [Accessed 14/8/03]

<sup>95</sup> Frostrup, M. 2001, 'Reality Television', *Foreign Correspondent*, ABC Television, broadcast 2001.

nervous, too.”<sup>96</sup> Late at night during filming, a participant stole into a studio and found story lines laid out weeks in advance. The *Real World* co-creator Jon Murray, a documentary filmmaker, says they were merely “outlines” depicting future episodes, based on available footage, and that Korpi was never told what to say. Murray said that production methods were drawn from the entertainment industry and then ‘produced’ as documentary filmmaking, using directors and others from that tradition. According to the MTV web site, Korpi later co-wrote, co-directed and co-stars in *The Wedding Video*, a commentary on gay marriage and the reality genre.<sup>97</sup>

The central drama of the eighth season, set in a beach house in Hawaii, involved Ruthie Alcaide, a 21-year-old Rutgers University student. According to the MTV web site, she had a difficult family background and was “the only native born Hawaiian in the cast”.<sup>98</sup> On her second night, Alcaide became unconscious after drinking too much alcohol and was taken to hospital for emergency care. Later, when she attempted to drive a car while intoxicated, the production crew warned her not to drive and yet kept filming as she drove off.<sup>99</sup> The drama grew as roommates encouraged Alcaide to enroll in an alcohol treatment program and see a therapist.

One can only speculate on whether she was selected calculatingly to provide drama and one can only assume that she consented to be filmed while driving under the influence. The MTV web site operated an audience feedback survey, where Alcaide was well ahead in the voting for the Best Nude category! Reality television moves to fantasy and soft porn, and with the

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<sup>96</sup>Farhi, P. 1999, ‘The Spin on Real World Cast Members Say The MTV Show Adds Its Own Spice To a Duller Daily Life’, *Washington Post*, 4 November, p.C01 14.

<http://www.washingtonpost.com/wp-srv/WPlate/1999-11/04/1711-110499-idx.html>

[Accessed 7 March 2002]

<http://www.mtv.com/onair/realworld/archive/season1.jhtml>

[Accessed 15 July 2002]

<sup>98</sup><http://www.mtv.com/onair/realworld/archive/season8.jhtml> [Accessed 15 July 2002]

<sup>99</sup>Farhi, P. 1999, “The Spin on Real World Cast Members Say The MTV Show Adds Its Own Spice To a Duller Daily Life”, *Washington Post*, 4 November, p.C01

<http://www.washingtonpost.com/wp-srv/WPlate/1999-11/04/1711-110499-idx.html>

[Accessed 8 Oct, 2002]

exception of documentaries like *Raw Deal*, reality television is a long way from its family origins - the traditional forms of documentary filmmaking. Meanwhile, documentary cites the intrusive and voyeuristic methods of real TV in an attempt to be competitive and dramatic, and so the defining boundaries between the forms continue to blur.

Arguably, the effects of reality television on current affairs and documentary will be felt for years, however, this has some irony when the reality TV form itself may be at an end:

. . . two weeks into official ratings for 2004, television's much-hyped reality boom has busted.

Shocked executives at Channels 10 and 7 are contemplating why viewers are shunning local reality shows for overseas crime series.<sup>100</sup>

There are likely to be discrete reasons to explain the apparent demise, other than the success of crime dramas and a rising interest in world news and current affairs. As Fidgeon wrote in his conclusion: Channel Nine's programming head, Len Down, thought viewers were disenchanted with the all too similar and unoriginal reality shows with a parochial outlook. "The originals do well, while the copies falter - and I think that's largely what we're seeing here," he said.

## **2.4 The politics of constructing realities**

*The Real World* and its 'Best Nude' audience survey notwithstanding, criticism and audience response to a documentary or journalism piece can trigger political, moral, ethical and legal debates that in turn affect the way subsequent viewers see the genre. These responses may then feed back into the culture of journalism and film production. As Winston points out, documentary filmmakers and journalists are not free agents. They are workers in an evolving

culture, doing the bidding of broadcast managements, commissioning editors, sponsors and funding bodies in a minefield of legalities and self-imposed ethical and story obligations.<sup>101</sup>

The individual viewer is thus part of a complex relationship that includes the filmmaker, the subjects, previous viewers, critics and the filmmaking culture. To some extent, the viewer may become immersed in, and subject to, the editorial position of the film, which is the product of issues that include political ideology, commercialism, production values, legal restraints and ethics. The critical questions for the documentary film should become: what editorial spaces do these issues occupy in terms of ethics? How honestly and accurately does the filmmaker or journalist present the edited interviews and other records that are incorporated into the film? What politics or ethics are now attached to them? Is reality represented fairly? For what purpose has this imaginary world been created? How have the camera subjects been treated? Have they been truly informed in respect to their consent release? Or, if subterfuge was applied to the production, can the deceit be defended in a law court in terms of the public interest?

These questions raise key epistemological issues on the value and quality of the knowledge produced from these moving image cultural forms (documentary, current affairs and real TV). Producers must be challenged and judged as to their role in aiding the historical, socio-political, economic and cultural development of a society. As we saw in Chapter One, these challenges in production are defined by journalism codes and, to a limited extent, broadcast charters and codes of practice. More debate and interaction is needed as reform can only work in the public interest when the process is transparent.

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<sup>100</sup> Fidgeon, R. 2004 "Viewers shun reality" *The Mercury*, newspaper on line, Hobart, 21 February.  
[http://www.themercury.news.com.au/common/story\\_page/0,5936,8746619%255E10431,00.html](http://www.themercury.news.com.au/common/story_page/0,5936,8746619%255E10431,00.html) [Accessed 24 February 2004]

<sup>101</sup> Winston, B. 2000, *Lies, Damn Lies and Documentaries*, British Film Institute, London, p. 128.

Media products, however, rarely expose the methods behind their construction to audiences, relying instead on the conventions of non-fiction to hide construction, and making the story entertaining, seamless and believable. In any case, the images in the product cannot show all the politics, the totality of the axiographics behind its making. Nichols is right when he says that the process behind it politicizes the final product. He concentrates on the relationship between the filmmaker (or journalist) and the viewer:

The viewer's relation to the image, then, is charged with an awareness of the politics and ethics of the gaze. An indexical bond exists between the image and the ethics that produced it. The image provides evidence not only on behalf of an argument but also gives evidence of the politics and ethics of its maker. . . . Axiographics, then, is an attempt to explore the implantation of values in the configuration of space, in the constitution of a gaze, and in the relation of observer to observed.<sup>102</sup>

In *Lies, Damn Lies and Documentaries*, Winston instead focuses on the relationship between the filmmaker, or journalist, and the subject before the lens, as the central issue:

It argues that, while documentarists ought to be exposed and pilloried if they lie about the status of their footage, nevertheless such exposure must depend on a proper acknowledgment of the complexities of filming. It cannot rest on the basis of a naive belief that screen truth equates with non-mediation or that the latter is even possible in any meaningful way. The real difficulties of ethical documentary production turn on the degree and nature of intervention not on its absence or presence; and they rest far more on the relationship between documentarist and participant than between documentarist and audience.<sup>103</sup>

For this thesis and its argument – both positions are relevant and both are in crisis. Television journalists and documentary filmmakers, rarely acknowledge their editorial position, or the influences behind the relationship between them and their subjects on the other side of the lens. The viewer usually cannot see this culturally bound relationship, which is often complex, especially in circumstances surrounding the subject's consent to participate. Quoted by Peter Putnis, Thomas Waugh suggests that:

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<sup>102</sup> Nichols, B. 1991, 'Axiographics' in *Representing Reality - Issues and Concepts in Documentary*, Indiana University Press, pp. 77-78.

<sup>103</sup> Winston, B. 2000, 'Argument', *Lies, Damn Lies and Documentaries*, British Film Institute, London.

Traditional consent contracts signed by documentary subjects during filming have usually formalised more than consent. In fact they formalise the subjects' surrender of their images, the agreement that filmmakers may impose their own voices over the image of their subjects. In the lesbian gay movements, the ethical lessons we have learned about individual freedom, the respect we have developed for the variety of human sexual and cultural expression, have encouraged our filmmakers... to seek alternatives to the traditional consent rip-off... and seek means by which they might let their subjects speak rather than speak for them, let their subjects control their images rather than control them for them.<sup>104</sup>

Subjects who offer their reputations, experiences and biographies to a filmmaker are usually unaware of all the eventualities that may occur after signing a release document. The right of the filmmakers to commercially exploit the acquired material is either stated explicitly in, or implied by, this contract or agreement. Most subjects do not obtain legal advice before signing the release, presumably because this would be at their expense and not in the filmmaker's interest. Filmmakers sometimes use pressure on their subjects at the time of signing, emphasizing altruism and public service. By saying the release is a mere formality and downplaying their own prospects of profit, the filmmaker or journalist may simply be hiding the main motivation for production – increasing their career prospects. The release is usually to secure the producer's right to exploit the subject's story and copyright in as many territories and markets as possible.

There is a commonly held view amongst television journalists and filmmakers: that to lose editorial control is to lose objectivity, expression, power and accuracy. The journalist or filmmaker controls the final media product and hence the subjects within the product – doing things for them, being vigilant over them – but never allowing them to take control. Commercialism, career gain and political ideology are increasingly the main motivations for production. To lose control is to lose the ability to exploit the material commercially and express a point of view as the director. Rare is the director (producer) who lets subjects speak for themselves. The culture of film and television, the training, the policy-making and funding processes, have not encouraged such a pragmatic arrangement.

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<sup>104</sup> Waugh, 1988, p. 259 cited in Putnis, P. 1992, 'Television journalism and image ethics', *Australian Journalism Review*, Vol.14 No.2 July–December, p. 7.



## **2.5 The psychology and sociology of the traditional consent rip-off**

### **2.5.1 The scene**

The film industry has no formal code of ethics (relating directly to filming real people as camera subjects) and there are no ethics committees involved in the government based funding of documentary film. Therefore ethical supervision is non-existent compared to the practice in universities, hospitals and medical research centers, where ethics committees are mandatory and must approve research projects before they can proceed.

Like documentary filmmaking, the culture of journalism assumes freedom of speech and expression as a starting point but, unlike documentary filmmaking, journalism acknowledges the need for ethical supervision. While the revised journalists' union-based code of ethics and other independent charters for journalism apply to professional conduct, only very general and flexible standards are applicable to related fields. These include journalistic opinion writing, documentary filmmaking and other mass media practices involving real people and their biographies, images, likenesses and voices. It could then be proposed that there is less ethical supervision in documentary filmmaking than there is in journalism.

Conflicts between the exercising of freedom of expression and ethical and legal restraints emerge from both the broad cultures of television journalism and documentary. In journalism, they are discussed in the context of the medium itself, its codes of practice and regulatory regimes, but in the more obscure context of documentary filmmaking, they are rarely mentioned. Journalists and their employers use traditional arguments – freedom of speech and the public's right to know – rhetorically to resist legal restraints such as the laws of defamation and confidentiality, as well as the restraints imposed by the codes of professional practice. Encouraged by academics and some journalists, this debate continues publicly and openly, resulting in a plethora of ideas about practice but no real consensus at a professional level. The imposition of ethical supervision in documentary filmmaking would be as difficult as it is in journalism, because documentary filmmaking claims the same mandate based on investigation, freedom of expression and the public's right to know.

Professionals like filmmakers with no binding codes of practice will most likely base their approach to ethical dilemmas on personal systems of ethics. These might be derived from religious beliefs, from the examples of past practitioners and policy makers, or from the filmmaker's socialization and personal development. This can be extremely problematic.

### 2.5.2 Ethical positions

Drawing on the work of Jean Piaget (1896-1980),<sup>105</sup> who contributed greatly to modern understanding of cognitive development in children, Lawrence Kohlberg wrote extensively on character-based (personal) or virtue ethics, producing a hierarchy of six moral stages.

Our focus on moral justice; our desire to tie justice or interpersonal operations to Piagetian Theory or cognitive operations, and to define stages through the 'rational reconstruction of ontogenesis' as levels of perceived adequacy led us to define the stages in terms of increasingly reversible operations to resolve justice problems . . .<sup>106</sup>

There are two stages in each of three levels, Pre-conventional, Conventional and Post-conventional (or Principled).<sup>107</sup> People in the first stage of the Pre-conventional level believe in not breaking rules, obedience for its own sake, avoiding physical damage to persons and property, and the superior power of authorities. Their motivation to act correctly is the avoidance of punishment. They do not consider the interests of others or recognize these interests might be different to their own. Stage 2 is characterized by concrete individualism. For those in this stage there is awareness, that, as everyone pursues their own interests, there are conflicts. One's rights are relative to the rights of others.

At the Conventional level, the concept of mutual interpersonal expectations arises, summed up by a belief in the Golden Rule, "Treat others as you would have them treat you." It is important

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<sup>105</sup> Gruber, H. & Vonèche, J. (eds.) 1977, *The Essential Piaget*, Basic Books, New York.

"... an earlier stage is neither discarded nor displaced nor 'grown out of' – rather, a later stage is "grown into," and depends on the prior attainment of earlier stages, hence the idea of necessary order." Introduction xxiii.

<sup>106</sup> Kohlberg, L. 1986. 'A Current Statement on Some Theoretical Issues' in Modgil, S. & Modgil, C. (eds.), 1986 *Lawrence Kohlberg, Consensus and Controversy*, Falmer Press, Philadelphia, p. 486.

<sup>107</sup> Ibid, p. 488.

to live up to the expectations of family, friends and colleagues. In Stage 4, the second stage of the Conventional level, this interpersonal responsibility becomes generalized to a responsibility to keep the system functioning. Acting correctly includes contributing to the group, institution, or society. It becomes possible to differentiate societal points of view from interpersonal agreements and motives.

Stage 5 is the first stage of the Post-conventional or Principled level. There is a concern that, while rules should generally be upheld in the interests of impartiality and the social contract, they should be based on a rational calculation of overall utility – the greatest good for the greatest number. Moral and legal points of view are considered and the difficulties of integrating them through the formal mechanisms of agreements, impartiality and due process are acknowledged. The final stage of moral development, Stage 6, is characterized by the recognition of universal ethical principles of justice, equality of rights, and respecting the dignity of all individual human beings. Rules are likely to have been broken if a person violates these principles and at Stage 6 there is a sense of personal commitment to the rules.

Kohlberg has since acquiesced over the adequacy of his Stage 6, which has been critiqued by philosophers like Lock and Carter (1980). However, Kohlberg says Stage 5 is adequate ‘as a basis for the rational reconstruction of ontogenesis’.<sup>108</sup> Thinking from other existentialists like Nietzsche would not provide for Stages 5 and 6, as they would apply to part of a higher religious level, theoretically beyond good and evil.

... both Kohlberg’s and Rawl’s theories start from the premise that no one view of the good can be taken as overriding. Choice of the good is seen as fundamentally subjective and pluralistic, and the moral point of view is seen as objectively seeking, interpersonal, and adjudicatory. They both start, I submit, from what Stawson has called a ‘minimal interpretation of morality’. . . .The problem of morality is justice, the problem of considering and choosing between the claims or *rights* of other persons. . . .(Boyd, 1980, pp 187 –207)<sup>109</sup>

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<sup>108</sup> Kohlberg, L. 1986. ‘A Current Statement on Some Theoretical Issues’ in Modgil, S. & Modgil, C. (eds.), 1986 *Lawrence Kohlberg, Consensus and Controversy*, Falmer Press, Philadelphia, p. 512.

<sup>109</sup> Boyd, D. 1980 in Kohlberg, L. 1986, ‘A Current Statement on Some Theoretical Issues’ in Modgil, S. & Modgil, C. (eds.), 1986 *Lawrence Kohlberg, Consensus and Controversy*, Falmer Press, Philadelphia, p. 512.

The problem with justice as the central moral construct, as the case in this thesis, is that justice as fairness and as the first virtue of a social institution, is by definition, of morality as set social rules. This is dependent on the origin and the authority of those certain rules. A 'rules' based model therefore invites conflict in any arbitration, as it relies on common agreement on the rules. However, the main idea according to Boyd is that justice is the core perspective through which competing claims can be mediated. This idea structures a framework for a process of resolution where people in conflict are seen as being equal and where they respect in each other and their particular freedom in thought. They are acting toward each other as if the other's interests and ends were their own. This is based on a substantial conception of justice, which in turn leads to codes of ethics and international covenants on civil and human rights and Kohlberg's Stages 5 and 6.

Social psychologists, such as Gilbert Harman, on the other hand argue that the ethics of the situation are more important than character, and further, that there is no such thing as 'virtuous' character.<sup>110</sup> They cite evidence against the existence of character, such as the Milgram experiment.<sup>111</sup> This experiment, which has been repeated many times, shows that people's actions are determined more by circumstances (external to the person) than by innate and solid character traits. The proponents of situational ethics use this to deny the existence of character traits, leading to the assertion that an individual's approach to ethical professional

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<sup>110</sup> Harman, G. 1999, 'Moral Psychology Meets Social Psychology: Virtue Ethics and the Fundamental Attribution Error', *Proceedings of the Aristotelian Society*, No.99, p. 316

<sup>111</sup> Milgram, S. 1974, *Obedience to Authority: An Experimental View*, Tavistock, London.

Stanley Milgram's subjects were told they were part of a study on the effects of punishment on learning. They were introduced to another volunteer, who was secretly, a hired actor. They all drew lots. These were set up to pre-determine who would be the learner and who the teacher. The learners (the actors) had electrodes attached. Their task was to memorize word pairs, which the teacher then asked them to recall. If they made a mistake they are given an electric shock. The first shock was set at 15 volts and with each subsequent shock the intensity had been increased by 15 volts, up to a lethal amount. In actual fact the elaborate apparatus, like the drawing of lots and indeed the entire experiment, were set up. The impression that severe shocks were being administered, was reinforced by the agonizing cries of the actor. At 150 volts, the actor demanded to be released. As the voltage increased, protests became more desperate. At 285 volts, they screamed, and following that, they make no sound as if unconscious. Milgram expected that most 'teacher' subjects would refuse to administer shocks once the 'learner' demanded to be released. Milgram had planned to urge them to continue. He expected that the instructions would be disobeyed in most cases. Despite his optimism over the human condition, subjects were far more compliant to his instructions than he expected. Around 65% of all subjects continued to administer the shocks all the way up to 450 volts. This was after the 'learner' had been reduced to the state of 'unconscious'. Almost all subjects administered shocks up to 300 volts. Tragically, the experiment has been repeated all around the world, with similar results.

conduct should be determined by circumstances. What is ethical in one set of circumstances may be entirely inappropriate in another.

This is attractive for executive producers, editors, journalists and filmmakers who are then able to justify misrepresentations in the interests of a greater public benefit, altruistic profit or for art's sake. Instead, practitioners dealing with interviewees or subjects in their filmic work need to be aware that each misrepresentation, when revealed, undermines their credibility, the credibility of the work, the credibility of the form, the profession and their industry as a whole.

If misrepresentation is condemned in one situation and tolerated in another, it could be argued that practitioners require a code of ethics to help them make such decisions. Since the role of individual character traits is discounted, mechanisms are also required to assess the ethical status of a project before it is undertaken. Further, mechanisms should be put in place to apply sanctions to practitioners whose product is repeatedly judged as having insufficient public benefit to justify the deception used in its production.

Situational ethics is especially attractive for the employers of journalists and the producers of documentary films, who by nature of their job with its overwhelming commercial agenda, regard commercial and contractual obligations as overshadowing the ethical ones. The situational approach enables employers and funders to argue that supplying entertainment product to a globally competitive mass media market, sadly, gives ethical behavior a low priority. The extension of this argument to commercial entertainment is very difficult. A product that derives its entertainment value from deliberately deceiving and betraying its subjects or its viewers should not use the public benefit as justification. Sadly, this problem now applies to real TV forms as much as it can to news, current affairs and documentary. To make matters worse (as previously discussed), it is quite acceptable that all these forms have an important role now to simply entertain, while often letting slip, standards of accuracy and fairness.

There are two other views of ethical behavior that need to be mentioned – consequential ethics and rights-based ethics. Consequentialism requires that the choice of action is governed by

utilitarian considerations. The correct decision is the one that delivers the greatest good to the greatest number. Here the public interest and public benefit considerations come to the fore with similar arguments to those applying to situational ethics.

Consequentialism and rights-based approaches to ethics, still the best known moral theories, focus directly on the notion of right *action*. Consequentialism provides a *positive* theory of right action. It tells us that we are to do that action which, of the alternatives open to us, maximizes utility (or whatever other good it aims at). Rights-based theories provide a *negative* account of right action. That is, they do not dictate a unique course of action to us, but instead place constraints on what we may do. Whatever we do, we must not violate anyone's rights.<sup>112</sup>

Rights-based ethics being more proscriptive, forbidding any action that violates a person's rights, would prohibit many investigative tools, including deception, that documentary or journalism might require in order to fulfill a useful role in democracy serving the public right-to-know.

Ethicists are now backing away from Harman's proposition that there is no such thing as character. Neil Levy of the Centre for Applied Philosophy and Public Ethics at the University of Melbourne believes the original findings merely demonstrate that virtue is more difficult to achieve and practice than Lawrence Kohlberg might have hoped and that a blend of the two might apply.

Virtue theory is one of the most ancient approaches to reflection on morality. However, it is only quite recently that it has reasserted its presence in Western philosophy. Now, together with consequentialism and rights-based approaches, it occupies centre stage in moral philosophy; its influence felt nearly everywhere. Professional ethics has been no exception to this rule. Here, too, virtue ethics is increasingly successful, and practitioners as much anyone are called upon to behave virtuously.

... Virtue ethics has been particularly attractive to those people interested in delineating the ethics of the professions. Professional ethics has been dominated by so-called role-morality, which holds that professionals ought to act in a manner appropriate to their function as professionals, to the roles they play in society, rather than be guided directly by more universalistic concerns. Virtue ethics, as it is usually

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<sup>112</sup> Levy, L. 2002, *Good Character: Too Little, Too Late*, paper presented at the Inaugural International Media Ethics Conference, 3 – 4 July, Old Parliament House, Canberra, p. 1.

understood, is not role-morality, since the virtues to which it appeals are understood to be valid for everyone, no matter what position they occupy in society. Nevertheless, role-morality and virtue ethics seem natural allies, the more so since role-morality can be spelt out by asking professionals to cultivate the character traits that enable them to perform their tasks.<sup>113</sup>

Levy argues that we should not place too much trust in virtues to guide working journalists, it is better to concentrate on changing culture by institutional constraints of unethical conduct. This is argued because of evidence like the Milgram experiment and that a virtuous high-moral-ground stand seems to be used by the power elite to justify certain actions, usually with a hidden commercial agenda. This virtuosity is abused by many: moralizing journalists, pedophile priests and their churches and war mongering politicians. However the imposition of rules and regulations by the state, or some other governing body, does not provide a model without threatening journalism's role in serving the public interest and democratic institutions.

. . . the public is better served when journalists perform well because of good character than because of sanctions, threats, rules, laws, regulations, and the like.<sup>114</sup>

Virtue ethics do not ask us to guide our lives by alien principles and rules like that of defined codes, regulations, international law or international covenants on civil and human rights. Rather, as discussed above, virtue ethics are attuned to the phenomenology of pre-reflective moral experience, and so can be relegated to doctrine or religious belief, rather than the 'street wise' practical wisdom and judgment necessary to act appropriately in difficult circumstances as applied to journalism or documentary filmmaking.

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<sup>113</sup> Levy, L. 2002, *Good Character: Too Little, Too Late*, paper presented at the Inaugural International Media Ethics Conference, 3 – 4 July, Old Parliament House, Canberra, p. 1.

<sup>114</sup> Beauchamp, T. & Kladman, S. 1987, *The Virtuous Journalist*, Oxford University Press, New York, p. 18.

### 2.5.3 A blend could do it

A reliance on either character or situation based ethics in isolation is not a good strategy for journalism (or, by extension, documentary filmmaking), rather as mentioned before, a blend of the two might assist. This is based on the premise that:

Journalism is a morally dangerous profession. That is, journalism is one of a range of professions in which practitioners are regularly subjected to moral risks of one sort or another. In some professions, these risks involve the constant temptations of bribes, or of abuses of power. In journalism, the moral dangers stem from the constant temptations to use deception. Deception is, *prima facie*, ethically objectionable; the more so in a profession whose entire *raison d'être* is the production of truth.<sup>115</sup>

Professional ethics therefore cannot rely on character alone, rather a workable ethical model requires effective codes of conduct, education and even awareness of the common ground that ethics shares with the law in order to induce and encourage fair and responsible professional behavior. Kohlberg's principled or post-conventional level of moral development might require years of study to attain, during which journalists or film-based cultural workers need immediate and effective guidance. Issues of conduct arise when personal code conflicts with professional or commercial imperatives. These conflicts are inevitable, particularly when employers, broadcasters and film funding bodies attempt to enforce their commercial demands through employment contracts, culture, funding contracts and other commercially oriented agreements.

Situational ethics require a code of ethics, and these would provide camera-based journalists with a set of standards that they could use when assessing a situation, or when their project is being assessed at the proposal stage. Ideally, these standards are written professional benchmarks, agreed upon by the industry and the wider society in an inclusive and consultative process. Individual practices or breaches can be evaluated against these benchmarks and judged as acceptable or rejected. All of these ethical models for journalism or film can be

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<sup>115</sup> Levy, L. 2002, *Good Character: Too Little, Too Late*, paper presented at the Inaugural International Media Ethics Conference, 3 – 4 July, Old Parliament House, Canberra, p. 5.



breached when the information is obtained illegally unless it is being obtained in overwhelming public interest. Again the code provides definition for the justification in public interest. Levy:

If journalism has a goal, it is the production of truth. According to the 'fourth estate' model of the media, its aim is to provide the public with information which will enable it to elect a government that represents its interests, and to act as a watchdog, guarding against abuses of power, both public and private. Both these functions require the production of truth: truth concerning what politicians say and do, concerning the behavior of business and bureaucracy . . .<sup>116</sup>

In cases where deceit has ensued, for instance where no real consent is obtained because exposure of a subject's corruption or criminality is the purpose of the journalism or film, the right to know becomes the sole justification in both a situational ethics context and in a virtues context. In some instances a court of law may also decide if punishment is to be waived when the right to know justifies fundamental misrepresentations. This would be based on the premise that the subjects are themselves so morally and criminally culpable as to no longer warrant the protection that the law and informed consent gives to more innocent parties. In exceptional cases, this is a legitimate exception for breaching privacy laws.<sup>117</sup>

## **2.6 Defining public interest for public interest**

Tehelka.com as a brief case study can set a frame of reference in respect to this PhD for its understanding of the notion: 'in public interest' or 'in public benefit'. Tehelka.com demonstrates how there can be a legitimate public interest exception for breaching privacy laws and ethical considerations. In cases like this, the subjects of the filming are so morally and criminally culpable that they no longer should enjoy the protection afforded other citizens. A journalistic or film based subterfuge in cases like Tehelka.com, is therefore in public interest

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<sup>116</sup> Levy, L. 2002, *Good Character: Too Little, Too Late*, paper presented at the Inaugural International Media Ethics Conference, 3 – 4 July, Old Parliament House, Canberra, p. 4.

only when that public interest can be clearly demonstrated as one would in court in making a defamation defense. The Tehelka.com case study establishes a benchmark from which I can underpin and define the argument ‘in public interest’, and this will develop in the following chapters.

In 2001 as a result of the Tehelka.com filming with hidden cameras, of corrupt high-level Indian military and Government officials, Tehelka were able to prove that the officials, routinely, took bribes. The defense of public interest was established through interactive response from the public via the Tehelka.com website and other mass media outlets. After this verifiable Internet-based public reaction, the subterfuge was deemed to be in public interest. Despite this, the Indian authorities tried to prove the subterfuge and publication risked national security and that Tehelka was an enemy linked with Pakistan.

The case demonstrates how instances of subterfuge should be analyzed in terms of public interest outcomes, before a final arbitration is made. In the case of the Tehelka.com subterfuge, the arbiter was the international community and, especially, Indians throughout the international community. The computer based voting indicated the public believed the journalists acted in public interest.

The Tehelka.com journalists, armed with bribe money and concealed video and sound recorders, held meetings with officials in hotel rooms with the aim of exposing certain Indian defense personnel. Naturally, many from both sides said it was entrapment. Tehelka exposed politicians, senior defense personnel and fixers who had allegedly corrupted many defense deals. After floating a fictitious company selling non-existent thermal imaging binoculars, and even Joseph Heller’s ‘Lepage gun’, the investigative team found it didn’t matter what was

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<sup>117</sup> Tucker, G. 1992, *Information Privacy Law in Australia*, Longman Professional, Melbourne, pp. 90-2.

being sold, it was the delights of corruption that mattered, including the involvement of prostitutes. Tehelka exposed conspiracies of corruption in the highest office. From the novel *Catch 22* by Joseph Heller we see the inspiration in naming the new weapons for the subterfuge:

Yossarian sidled up drunkenly to Colonel Korn at the officers' club one night to kid with him about the new Lepage gun that the Germans had moved in.

"What Lepage gun?" Colonel Korn inquired with curiosity.

"The new three-hundred-and-forty-millimeter Lepage glue gun," Yossarian answered. "It glues a whole formation of planes together in mid-air."<sup>118</sup>

We at Tehelka.com managed to sell the Lepage 90, the ALION and the Krueger 3000 to the Indian defence establishment - ostensibly fourth generation hand-held thermal cameras and, needless to add, non-existent.<sup>119</sup>

The Tehelka case illustrates the importance of real public interest being measured in outcomes. In spite of their efforts to demonstrate public interest, the Tehelka organization was scorched, as Tarun J Tejpal, its Editor-in-Chief wrote on the 2003 site:

In the last two years tehelka has seen everything. Overwhelming goodwill, great fame, and global accolades. It has also faced relentless victimization at the hands of a powerful establishment following its defence expose. In two years tehelka's staff has gone from 120 people to three; its office has been vacated; its staffers arrested and harassed; and its debts have spiraled. Yet its support has grown, as has its resolve.

We are now determined to rebuild. We intend to launch a Sunday paper and revamp the website, so we can continue practicing independent, aggressive, public interest journalism.<sup>120</sup>

At the time of the expose, the Tehelka site displayed - transcripts, digital stills from the concealed cameras, other details, and most significantly, a transparent display of responses.

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<sup>118</sup> Heller, J. 1961, *Catch 22*, Scribner Paperback Fiction, New York.

<sup>119</sup> Quote from Tehelka.com, <http://www.Thelka.com/> [Accessed 8 April 2001]

This were placed in categories - from the public, from professionals, from lawyers and from other news media organizations. These opinions were written and sent to Tehelka in support and in discussion of the legitimacy of the public interest defense.

No journalist I know (except perhaps for the odd government-loyalist) disputes that Operation Westend is the most important journalistic scoop of the last five years. Nor do most of us doubt Tarun's motives or his intentions in proceeding with the sting.

The disquiet is with his methods. Brought up on the old rules about on-the-record and off-the-record and uneasy about the use of concealed cameras, (to say nothing of the use of call girls) journalists have always been cautious in their praise of Tehelka. It is significant that despite the huge impact of Operation Westend, not one journalistic organisation of repute has seen it fit to adopt Tehelka's methods.<sup>121</sup>

The case studies that follow in Chapter Five illustrate how filmmakers, like journalists, can find themselves in ethical dilemmas like those faced by Tehelka.com, and that there are few benchmarks for them to establish whether deception is warranted. Even when armed with a code, a journalist may not be able to determine in advance how important certain information could be, as they slowly uncover a nest of vipers. It is difficult out in the field to determine whether a particular activity falls within the domain of the public interest. There may be no one that a journalist/filmmaker agent can consult, given the secrecy of the operation in the need to protect sources, or that senior producers and editors are not supportive of a planned subterfuge, or that in another case, they are insisting on it to increase the story's dramatic value. Therefore, the opportunities for self-deception proliferate and the non-fiction storyteller is left isolated, with no guidance, no benchmarks or higher authority. Later, after the success of the story going to air, and after receiving peer recognition in awards, the agent might then become addicted to deceptive methods, seeing them on the slightest of pretexts as the only viable method in gathering information.

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<sup>120</sup> Tejpal, T. 2003 Editor-in-Chief, Tehelka.com <http://www.Thelka.com/> [Accessed 12 April 2003]

<sup>121</sup> Sanghvi, V. 2002, *The Persecution Of Tehelka* <http://www.Thelka.com/new/march/7/ca030703persecution.htm> [accessed 10 March 2003]

## 2.7 Reliance on virtue and honesty

Academics who emphasize the importance of the journalist's character would say that by ensuring journalists have the educated virtue of honesty, it can guarantee they will not use deception lightly, only to use it when it serves noteworthy truth (in public interest). Levy says, however, that it is precisely these features, which "ensured that the character of the participants in the Milgram experiments had little to do with the way they behaved" and this pertains to the use of deception in journalism, particularly in respect to young professionals starting out.

What are the features of the Milgram experiment that made disobedience unlikely? Essentially, there were three, each of which has an analogue in the situation of the journalist considering the use of deceptive means. In the first place, participants in the Milgram experiment were reassured that the electric shocks they were apparently inflicting on the learner were harmless: painful but not dangerous. Of course, there was countervailing evidence to this assertion, ranging from the screams and apparent lapse into unconsciousness of the 'learner', to the labelling of the voltage meter ('Danger: Severe Shock' being not the highest but only the third highest shock the subject was asked to give). On the other hand—and this is the second feature of the experiment which made disobedience difficult—the reassurance as coming from an authority figure, a scientist in a white coat, invested with all the prestige that science has in our society. Finally, there was the feature which Harman himself points to, the fact that the shocks increased in intensity gradually, so that the subject never had a clear sense that they were crossing an ethically significant line. As social psychologists like Ross and Nisbett argue, says Harman,

‘the step-wise character of the shift from relatively unobjectionable behavior to complicity in a pointless, cruel, and dangerous ordeal’, mak[es] it difficult to find a rationale to stop at one point rather than another.<sup>122</sup>

These three factors combine to intensify the situational pressures, almost guaranteeing that they will outweigh the resources of character, if indeed there any such resources to be had.<sup>123</sup>

By simply canvassing the range of personal backgrounds, religion and beliefs at Film Australia, or in a regional television station, or even in a journalism ethics class: it is easy to

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<sup>122</sup>Harman, G. 1999, 'Moral Psychology Meets Social Psychology: Virtue Ethics and the Fundamental Attribution Error', *Proceedings of the Aristotelian Society* 99, p. 322 in Levy, L. 2002, *Good Character: Too Little, Too Late*, paper presented at the Inaugural International Media Ethics Conference, 3 – 4 July, Old Parliament House, Canberra, p. 6.

<sup>123</sup>Levy, L. 2002, *Good Character: Too Little, Too Late*, paper presented at the Inaugural International Media Ethics Conference, 3 – 4 July, Old Parliament House, Canberra, p. 6.

conclude that variability is wide, consistency non existent and reliance on character alone, for the most part, is unworkable.

A code thus comes to the fore and serves two functions: as a guide to which the agent aspires and as a prescribed ethical standard. This duality was recognized over forty years ago by Melbourne journalist Geoff Sparrow, the past general president of the Australian Journalists' Association:

It was to give Australian journalists a sense of support and, at the same time, a prescription for proper conduct in carrying out their duties that the AJA, in 1944, embodied a Code of Ethics in its constitution and rules.<sup>124</sup>

## **2.8 Technology, Truth and *Cinéma-Vérité***

My own ethical behavior and assertion that *Delinquent Angel* is a truthful *cinéma-vérité* representation of John Perceval, depends in part, on the definition of *cinéma-vérité*. As subsequent chapters tell, my arrived at definition of *cinéma-vérité*, with its associated legal and ethical issues, were more critical to the making of *Delinquent Angel* than any 'official' checks and balances on my filmmaking, as provided through a code of ethics.

Proponents of *cinéma-vérité* claim that it is able to tell the truth where others cannot because it uses unobtrusive, lightweight equipment with an involved, if not a provocative crew of one or two people, who use the camera to get close to and interact with the subject. The relationship between filmmaker and subject is more direct, supposedly enabling a revealing, truthful and dramatic representation of the subject. This problematic and simple technological proposition will be expanded upon and qualified in subsequent chapters.

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<sup>124</sup> Sparrow. G. (ed), 1960, *Crusade for Journalism*, AJA, Melbourne, p.131.

The claim *cinéma-vérité* as a form makes on reality is these days often confused with a multiplicity of other descriptive clichés, including the popular expression ‘fly-on-the-wall’. One hundred and thirty years ago, the task of representing reality was simple. Eadweard Muybridge made the first continuous photographs to see if all of the galloping horse's feet were off the ground at any instant. Commissioned to find the scientific truth, he eventually did so in 1877, using a series of a dozen cameras fitted with high-speed shutters. The history of *cinéma-vérité* testifies to the use of smaller cameras, and crews, and these related more closely to the filmed subjects, bringing new truths through this relationship. This kind of claim, however, is older than any form of cinema. Early photography also made similar claims, as did various schools of painting and drawing.

In the 1920s, the Russian filmmaker, Dziga Vertov used all available cinematic resources, new inventions and methods in his attempts communicate film truth. He wrote of using a kino-eye, not for its own technological sake, but in the quest for truth through the possibilities it offers. Vertov's *Kinopravda* (film-truth) meant more than filming life unawares, or candid camera voyeurism, but showing people without masks or makeup, catching them in moments when they are not acting.<sup>125</sup> Vertov wished to make films based upon the ability of the film camera, which “gathers and records impressions in a manner wholly different from that of the human eye”.<sup>126</sup>

In a very simple summary of history, to establish a context, the Russian *kinopravda* developed and became the French *cinéma-vérité*.<sup>127</sup> Vertov's mission to see beyond the scope of the

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<sup>125</sup> Vertov, D. 1984 (originally published in 1924), ‘The Birth of Kino-Eye’, in *Kino-Eye: the Writings of Dziga Vertov*, University of California Press, Berkeley, p.41.

<sup>126</sup> Vertov, D. 1984 (originally published in 1923), “Kinooks: A Revolution”, in *Kino-Eye: the Writings of Dziga Vertov*, University of California Press, Berkeley, p.15.

<sup>127</sup> Routt, W. 1991, Introduction, ‘The truth of the documentary’, in *Continuum: The Australian Journal of Media & Culture*, in McHoul, A. (ed.) Media/Discourse. Vol.5 No.1, (delivered originally as part of The Line

human eye became the *cinéma-vérité* mission too. Both current affairs and documentary journalism today rely on this showing people without masks to convey another layer of truth beyond the first and simply apparent. As Vertov explains, film truth is more, it can:

...read their thoughts, laid bare by the camera. Kino-eye was to make the invisible visible, the opaque transparent, the hidden manifest, the disguised overt, the falsehood truth. Kino-eye was the union of science with newsreel to further the battle for the communist decoding of the world, as attempt to show truth on the screen.<sup>128</sup>

The well-known American filmmaker Frederick Wiseman suggests that, when portable wind-up 16mm film cameras appeared in the 1960s, they allowed a new truthfulness, closeness and mobility for what Americans called 'direct cinema':

It just seemed to me so obvious that here's this new technology through which you could make a record of ordinary experience. And ordinary experience has in it all the elements of great drama if you happen to be lucky enough to be around when it's happening and recognize it for what it is.<sup>129</sup>

Technological refinements have given film (and then tape and solid state data storage), the capacity for increased accuracy and veracity. This has occurred in numerous ways throughout history: including the politics inherent in the ability in 1960 to present unscripted television material from outside the controlled studio environment, to situations today where miniature digital cameras record data in situations where larger technologies were excluded. As subsequent chapters of this dissertation demonstrate, however, the presentation of unscripted material in documentary film and, in particular *cinéma-vérité*, does not necessarily provide the finished product with a greater claim on truth and accuracy. Television news, current affairs, direct cinema, documentary, social realism, reality television and advertising: all may claim a level of truthfulness, albeit different aspects of it. These non-fiction forms use the fly-on-the-

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Between Documentary and Fiction event organized by the Australian Film, Television and Radio School in Melbourne, 1987, p.4.)

<sup>128</sup> Vertov, D. 1984 (originally published in 1924), 'The Birth of Kino-Eye', in *Kino-Eye: the Writings of Dziga Vertov*, University of California Press, Berkeley, p.41-42.

<sup>129</sup> Wiseman, F. interview.

<http://www.popped.com/articles98/cinemavérité/véritéwiseman.html>. [Accessed 5 May, 1999]



wall camera, by design, to reinforce a truthful claim with ‘tele-literate’ audiences, who are ‘trained’ to see the implied ‘truth’ in the fly-on-the-wall style.

Half way through the filming of *Delinquent Angel*, the Sony Corporation released the first high quality, three optical chip, digital video camera - the VX1000 Mini DV. Very small and economically priced, its portability made filming a subject like Perceval much easier. Perceval was notorious for his intolerance of journalists, photographers and videographers. In order to continue filming him for the six years of production, it was necessary to discuss the methodology and ethics of the filmmaking process with him on a regular basis. In response to this dialogue, Perceval requested that I become less obtrusive with the camera through blending into his surroundings. This method enabled, but did not ensure, his continued co-operation. The new camera technology provided a fresh closeness and was particularly useful when filming the interior scenes in Wales under low light conditions. The presence of lights would have changed the dynamics and further, the cottage in Wales had no mains power.

A new attitude and ‘truth’ in filmmaking arrived with this Mini DV technology. Some practitioners, who used Betacam as current-affairs television journalists in the 1980s - or as documentary filmmakers in the early 1990s - found the new digital mode of filmmaking quite disconcerting. They regarded the single person crews with self-operation digital editing as set to reduce employment and encourage *prima donnas* and subjectivity. In spite of this, the new DV cameras quickly became part of the technology-driven rationalization of consolidated global media corporations - fulfilling demands for immediate coverage at a fraction of the expenditure. The subsequent outsourcing of newsgathering to individual journalists created a system of freelancers who were able to acquire material at a fraction of the cost of the earlier Betacam crews. These issues are examined in epistemological detail in Chapter Four.

Throughout the late 1990s, this new generation of image-makers began to work as single-person news-gatherers in career making locations like war zones. Theirs became a fashionable lifestyle where risk was associated with glamour. Many trained within the culture of film rather than journalism, they set out to pursue the intimate, they communicated with relish the intensity of private lives caught up in a context of military conflict and public affairs. News,

information, community discourse, political exposé, public interest and entertainment became blended and branded into a new style of television product.

These new filmmakers were encouraged to be provocative and subjective, putting themselves into the text, and so they subverted established practice. The young tabloid journalism, armed with new camera technologies and backed by the emerging non-linear digital environment, was set against the old, serious, expensive and supposedly objective mainstream journalism.

## 2.9 Truth

In filming *Delinquent Angel* I attempted to ethically represent John Perceval and his associates by truthfully re-constructing and revealing a slice of their characters – thin but deep. It shows, as Vertov says, “their thoughts, laid bare by the camera”,<sup>130</sup> rather than the wider, shallower facade of daily life. William Routt asks how can this be done:

But this truth may at second glance seem somewhat at odds with what is revealed by the inhuman kino-eye, which Vertov had described prowling through the world in search of the hitherto unseen. How indeed can the camera show the thoughts of its objects? How can it “decode the world” which imprints itself upon its lens?<sup>131</sup>

Images and sounds captured on film or videotape provide actuality, but the editing process brings out and represents their truth. As Nichols and others have shown, the boundaries are blurred between fiction film and the supposedly objective actuality in the edited reality that is constructed in news and current affairs, or documentary film. The scripted and filmed fictional representations of reality, such as police drama, have influence over the more recent

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<sup>130</sup> Vertov, D. 1984 (originally published 1924), ‘The Birth of Kino-Eye’, in *Kino-Eye: the Writings of Dziga Vertov*, University of California Press, Berkeley, p.41-42.

<sup>131</sup> Routt, W. 1991, Introduction, ‘The Truth of the Documentary’, in *Continuum: The Australian Journal of Media & Culture*, in McHoul, A. (ed.) Media/Discourse. Vol.5 No.1, (delivered originally as part of The Line Between Documentary and Fiction event organized by the Australian Film, Television and Radio School in Melbourne, 1987, p.4.)

productions of documentary and current affairs, while documentary also influences the fictional forms (*Thin Blue Line*).<sup>132</sup>

Editing alters the reality of the filmed actuality by selectively emphasizing or juxtaposing images, voices and sounds. In this process filmmakers, more than journalists, use highly stylized editing to create evocative and subjective sequences for commercial, political and artistic success. *Delinquent Angel* went through a reforming process in editing, and this created a new and subjective filmic perspective as summarized by filmmaker and academic David MacDougall:

The modes of *perspective* in film are sometimes difficult to disentangle because in narrative they need not conform to literal point of view and in description they can be confused with the filmmaker's first person role as the source of the film's narration. Thus, perspective is not a function of who is seeing or speaking but rather an indicator of a primary locus of expression. It can be most usefully understood as an emphasis placed variously upon first person *testimony*, second-person *implication*, or third person *exposition*. In this sense, it is not inherent but *assigned*. It represents the filmmaker's direction to the viewer to grasp the primary perspective of the narration. Does it lie in someone addressing the camera directly (the "I" of direct-address testimony)? Does it lie in the viewer being drawn into the film experientially, through such devices as shot and countershot (the "you" of implication)? Or does it lie in the activities of others studied from a certain distance (the "they" of exposition)?<sup>133</sup>

For Susan Dermody, the perspective that documentary film addresses is the of unconscious mind:

...what emerges in all of the films I would see as engaging partly or wholly with this mode is a "voice" in the film that addresses the inner voice of the viewer. And that helps to release the imagery from a strictly referential function, to the

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<sup>132</sup> Morris, E. (director) 1988, *Thin Blue Line* documentary, Anchor Bay Entertainment. "This landmark award-winning documentary, which revolutionized the form and helped acquit an innocent man of murder, came about almost by accident. . . . Morris's innovative use of repeated dramatization, multiple points of view, talking-head and phone interviews, and symbolism--in concert with Philip Glass's haunting music--establishes that a combination of communitarian zeal and overly eager testimony persuaded the jury to find Adams, a "drifter" from the Midwest, guilty of the crime, instead of his underage (and, for the death penalty, ineligible) acquaintance, David Harris, who had a criminal record." -- written by Robert Burns Nevelandine. Amazon.com editorial review.

<http://www.amazon.com/exec/obidos/tg/detail/-/6305972451/102-6722001-9151339?v=glance#product-details>  
[Accessed 5/11/03]

<sup>133</sup> MacDougall, D. 1995, "The Subjective Voice in Ethnographic Film", *Fields of Vision, Essays in Film Studies, Visual Anthropology and Photography*, Devereaux, L. & Hillman, R (eds.) University of California Press, London, p.227.

point where a line is crossed and we are reading the image and sound track from the perspective of the unconscious.<sup>134</sup>

These voices Dermody argues, such as those of television anchor people and reporters are a kind of compliant worker who represents reality in terms of their employer and their institutional authority, rather than providing a truly personal witness in a humanized form. Bill Nichols says that opportunities for ethical and human witnessing do exist, especially throughout the longer editing process of documentary:

This privileging of the world faces a crisis with every edit. With each cut the opportunity exists to re-inscribe the filmmaker's presence rather than excise it. Each cut opens the gap between human agency and cinematic evidence only to anneal it again through continued exclusion. Documentary convention upholds the expectation of presence, of an ethic of witnessing, of a situated view, and yet exercises the bodily evidence of presence.<sup>135</sup>

In quoting a perhaps romantic text from Antonioni (1964), William Routt suggests how film can deal with this issue of witness, of truth, of visible evidence:

We know that underneath the revealed image another image is found, one which is more faithful to reality, and beneath that another, and yet another underneath this last. And so on, unto the true image of reality, absolute, mysterious, which no one will ever see. Or perhaps again unto the decomposition of all images, of all reality, which would be a reason for an abstract cinema.<sup>136</sup>

Routt argues that this is the deification of the kino-eye – Vertov in extreme. “It is also, with the words ‘the true image of reality... which no one will ever see’, a profession of realist faith or realist idealism, which declares truth ever beyond human apperception”.<sup>137</sup>

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<sup>134</sup> Dermody, S. 1995, ‘The Subjective Voice in Documentary: The Pressure of the Unconscious upon the Image’, *Fields of Vision, Essays in Film Studies, Visual Anthropology and Photography*, Devereaux, L. & Hillman, R (eds.) University of California Press, London, p.292.

<sup>135</sup> Nichols, B. 1991, ‘Axiographics in Representing reality’, *Issues and Concepts in Documentary*. Indiana University Press, Indianapolis, p. 90.

<sup>136</sup> Quoted in Amangual, B. 1971, *Clefs pour le cinema*, Seghers, Paris, p.53. in Routt, W. 1991, ‘Introduction, The truth of the documentary’, in *Continuum: The Australian Journal of Media & Culture*, in McHoul, A. (ed.) Media/Discourse. Vol.5 No.1, (delivered originally as part of The Line Between Documentary and Fiction event organized by the Australian Film, Television and Radio School in Melbourne, 1987, p.4.)

<sup>137</sup> Routt, W. 1991, Introduction, “The truth of the documentary”, in *Continuum: The Australian Journal of Media & Culture*, in McHoul, A. (ed.) 1991, Media/Discourse, Vol.5 No.1.

## 2.10 Reference and Sense

In the later stages of its filming process, *Delinquent Angel* entered the *cinéma-vérité* mode. As discussed and re-defined with the advancing argument in subsequent chapters, *cinéma-vérité* was for *Delinquent Angel*, a response to industry trends and instructions from the AFC film funding body. The intention was not to replicate John Perceval's life, but to use the new mini DV camera technology to tell an extended truth, which television current affairs could not access. The proposed film was to tell Perceval's story, in a filmic way that the art programs of ABC television could not. This capability is largely due to the depth achieved in documentary in its extended duration, compared to the running time in most current affairs journalism. Detail such as the duration of each camera take, in documentary, provides audience understandings at a greater depth in meaning, greater reflexivity and sometimes, greater quirky self-consciousness.

When an image lingers it eventually calls attention to itself, to its composition, to the *hold* it exerts over its content, to the frame surrounding it.<sup>138</sup>

Audience preconceptions of genre can lead to certain understandings, or misunderstandings that are hard to anticipate in designing the film. Everyone knows, for argument's sake, the current affairs journalism context is different to the context of documentary, and that television is a different mode of delivery to that of the big projected screen in the cinema – but there are few public understandings over how this occurs, beyond what goes without saying.

Audiences understand any one text as part of a larger institutional web, in which connections are constantly being made between one text and another, whether that other be televisual or part of a different discursive formation. While a documentary screened at the cinema may be regarded by the audience as a special event, to which they respond with particular attention, on television it may simply be part of an evening's flow viewing.<sup>139</sup>

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<sup>138</sup> Nichols, B. 1993, p. 60. 'Getting to know you . . . ' Knowledge Power, and the body, in *Theorizing Documentary*, ed Renov, M. Routledge, London, 174-191, in Leahy, G. 1996, 'Fidelity, Faith and Openness, Rescuing Observational Documentary', *Media International Australia*, No 82 – November, p. 45.

<sup>139</sup> Hughes, P. 1996, 'Strangely Compelling Documentary on Television', *Media International Australia*, No 82 – November, pp 49-50.

This suggests, says Hughes, different forms of attentiveness, different camera gazes, and consequently, different levels of truth across all the genres, all of which have blurred boundaries of form and definition. Thus in the process of acquiring any filmic actuality, there can be many possibilities for the filmmaker or journalist at the construction end of the production process. It is accepted that this shift in meaning, as read by audiences, can be quite removed from the original intention at the time of filming. This is the critical and ethically dangerous point where the camera subjects' understanding of the intended film can have a radical deviation from that of the director or journalist.

To assist in keeping this deviation under control, the director or journalist could be trained to be able to have dialogue with subjects on direction in editing. The dialogue should refer to these academic issues of truth in camera actuality, in a form that is commensurate with the camera subject's interest and ability.

As discussed earlier in this chapter, there are at least two aspects of truth, or representations of reality and this corresponded to the concepts of reference and sense.<sup>140</sup> Truth as *reference* is journalistic truth or accuracy. Truth as *sense* refers to creating an interpretation or an understanding – making sense – of an experience or a set of experiences. It is the communication of a true insight that is sense: helpful, interesting, compelling, poignant, powerful - or of some other relevance for the viewer that journalistic truth or accuracy cannot deliver. Sense depends on an angle, a vision that will prevail over the filming, editing, shaping, structuring and assembling of the material. When this is successful, a new truth emerges, truth as sense. Every recorded sentence or image contains both types of truth, ready for the editor to reveal them.

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<sup>140</sup> Ricoeur, P. 1976, 'Interpretation Theory: Discourse and the Surplus of Meaning' (Fort Worth: Texas Christian University Press), pp.19-22. His usage here follows that of Gottlob Frege, in Routt, W. 1991, *Introduction. The truth of the documentary* in Continuum: The Australian Journal of Media & Culture. Vol. 5 no 1 (1991). Media/Discourse. Edited by Alec McHoul, A. 1987, - delivered originally as part of *The Line Between Documentary and Fiction* event organised by the Australian Film, Television and Radio School in Melbourne, p. 4.

As well as recording what takes place before it, the camera also influences that actuality. Its presence alone compels the filmed subjects to respond, to behave differently than they would if the camera was not there. Most viewers of *Delinquent Angel*, for example, will realize that some of what they see was provoked by the presence of my camera. In some scenes, removed for broadcast (version II), Perceval's daughter Alice reveals her feelings, made mostly by her body language and enhanced through camera framing and subsequent editing. These signs seem to have been made because the camera was there and in the hands of her former husband to whom she may have simultaneously felt affection, resentment, obligation and guilt. Her decision for consent to be filmed was motivated, in part, by her obligation to her son, his father and Alice's desire to be part of her father's filmed story.

When I returned from leave in 1996, to continue work as a journalism teacher, after filming the Wales sequences and making the rough cut, it was impossible to precisely predict the nature of the finished film. A thorough professional editing, as promised by the AFC, was essential to enable the filmed poignancy and *sense* to emerge. At this point the varying proportions of *sense* and *reference* are adjusted to the extent that *sense* is dramatically increased

The editor places selected images and sounds into a structured sequence that conveys meaning in varying proportions of *sense* and *reference*. The audience reads each image and sound in combination and with the images and sounds that precede it. Editing refines these filmed images and sounds, comprising of conversations and responses, into a new text, adjusting and highlighting *sense* so that a new interpretation or understanding emerges.

As editing proceeded, the filmmaker's subjective involvement and voice became the focus of the story. This is a characteristic of *cinéma-vérité*. As a result of the *cinéma-vérité* epistemological definition, *Delinquent Angel* insists on being read as a factual account of human interaction, a result of close and personal relationships between (primarily) the filmmaker, the painter and his manager. The film uses interview sparingly as a basic mode of address and contextual authentication, relying more on editing to construct the story. The interview with David Boyd at the exhibition became a tense and dramatic central element to

notions of family, history, conflict and character - as if his interview was a dramatic device in a fictional film.

In this way, through the technology which grounds the cinema, some kind of truth which differs from the truth of everyday life, from life as it is lived, is revealed... This truth is clearly related to the camera's ability to gather and record. ... It is also related to what Vertov calls the "structuring of the film-object" which "enables one to introduce into a film study any given motif – political, economic, or other."<sup>141</sup>

John Grierson<sup>142</sup> describes this as the "creative shaping" of natural material, "which more explosively reveals the reality of it" than does mere surface description of a less shaped form like television news. Interestingly, the ABC documentary division still defines its product through a discourse that echoes Grierson. However, no matter what reality is finally constructed in editing, a residual truth stays with the real people before the camera – their lives and reputations put to the test after the film is screened to large audiences.

## 2.11 Truth as accuracy

Generally speaking, journalism strives for truth as reference, documentaries strive for truth as sense. It may be that both these statements are false and that some filmmakers (and audiences) do not recognize this, or are disinclined to admit it. Journalists, for example, can lead an audience to a particular opinion by selecting the facts for a news report. Choosing a single fact for emphasis can create a false report even though the fact itself is not disputed.<sup>143</sup> While extended current affairs pieces as journalism strive for truth as *reference*, like documentaries, they might also be striving for truth as *sense*.

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<sup>141</sup> Vertov, D. "Kinooks", pp. 20-21. from Routt, W. 1991, *Introduction. The truth of the documentary* in Continuum: The Australian Journal of Media & Culture. Vol. 5 no 1 (1991). Media/Discourse. In McHoul, A. (ed.) - delivered originally as part of The Line Between Documentary and Fiction event organised by the Australian Film, Television and Radio School in Melbourne, 1987, p. 6.

<sup>142</sup> Grierson, J. 1976, 'First Principles of Documentary', in Barsam, R. (ed.), *Nonfiction Film: Theory and Criticism*, Dutton, New York, pp.19-30 (These quotations pp.20 & 23)

<sup>143</sup> Coté, W. & Simpson, R. 2000, *Covering Violence: A guide to ethical reporting about victims and trauma*, Columbia University Press, New York, p.109



The process of production in *cinéma-vérité*, like the processes in reality television, is characterized by “an excess of material”, leaving the final edited version open to question. As filmmaker Michelangelo Antonioni said: “in selecting, you falsify it”.<sup>144</sup> Rather than remaining faithful to the intentions and desires of the participants, editors act as gatekeepers, allowing only their interpretation of the story through. Critic Paul Rotha goes further:

No documentary can be completely truthful, for there can be no such thing as truth while the changing developments in society continue to contradict each other. Not only this, but technical reasons also preclude the expression of a completely accurate representation... The very act of dramatizing causes a film statement to be false to actuality. We must remember that most documentary is only truthful in that it represents an attitude of mind. The aim of propaganda is persuasion, and persuasion implies a particular attitude of mind towards this, that, or the other subject. To be truthful within the technical limits of the camera and microphone demands description, which is the aim of the instructional film, and not dramatization, which is the qualification of the documentary method. Thus, even a plain statement of fact in documentary demands dramatic interpretation in order that it may be brought alive on the screen.<sup>145</sup>

One does not have to accept Rotha’s assertion that documentary filmmaking necessarily involves dramatization, but a constant position for this thesis, is that facts on film, once they are scripted and edited into a coherent structure, become discourse with intentions beyond mere factual representation. They are no longer facts on film, but complex multi-level signs and symbols. Truthfulness then, in respect to my position in film journalism and in this participatory action research - depends on an ethical accuracy to what is represented, that is, a concurrence between the finished film and the actual world that was filmed.

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<sup>144</sup> Antonioni, M. 1964, ‘Le cinema direct et la realite’, *Attitudes Cinematographiques*, n.36-37. pp. 3-6; this quotation, p.3.

<sup>145</sup> Rotha, P. 1987, ‘Some Principles of Documentary’ in R.M. Barsam (ed.), *Nonfiction Film: Theory and Criticism*, Dutton, New York, pp.42-55; this quotation p.53. in Routt, W. 1991, *Introduction. The truth of the documentary* in McHoul, A. 1991, (ed.) *Continuum: The Australian Journal of Media & Culture*, vol. 5 no 1 (1991). Media/Discourse - delivered originally as part of The Line Between Documentary and Fiction event organized by the Australian Film, Television and Radio School in Melbourne, p. 4.

## **Chapter Three: Perceval - A Delinquent Angel**

3.1 Introduction	109
3.2 Art and Artists: Public and Private	111
3.3 Story telling	113
3.4 Finding a suitable case for a film treatment	114
3.5 The effects of obtaining funding	118
3.6 Fortress Perceval or willing social actor	125
3.7 Audience desire	127
3.8 Evolution of an informed consent process	129
3.9 Truthfulness again - a reality check	132
3.10 Competency to give informed consent	133

## Chapter Three: Perceval - a delinquent angel

### 3.1 Introduction

The first chapter served as an introduction to this study, and in particular, the consent issues involved in camera based journalism and documentary. It established the manner in which the research methodologies were enacted for this PhD, at the start of both the filmmaking for *Delinquent Angel*, and then for the qualitative analysis of the ethical issues for the non-fiction moving film industry, and finally, for the selected case studies.

Chapter two analyzed the issues of film truth and ethical theory, emphasizing the lack of literature on informed consent and ethics. This is a sad indictment on an industry very much in need of truthful reflection and professionalism through ethical practice, rather than through a commercial focus. Chapter two also demonstrated the varying nature of non-fiction film forms and so examined the nature of truth in journalism and documentary.

This chapter (three) examines my professional situation as a filmmaker negotiating with the fragile and elderly painter John Perceval. This chapter illustrates how it is important to discuss the generic options that were available to telling Perceval's story, and the ethics associated with each option. Ethics related to his consenting in an informed sense to each of the different options of style in filming. With each slightly different mode of filming, the representational and ethical issues would change accordingly.

In deciding the option of story telling mode that would best suit *Delinquent Angel*, I tried to consider Perceval's wishes, along with my own vision in the context of creative direction and audience expectations. As discussed in the latter stages of Chapter Two (see Hughes page 95), what audiences are responding to will arise through established realities from other creative works already in the market. Deciding on the ideal story mode for *Delinquent Angel* was

assisted through dialogue with my television journalism post-graduate students. They were learning to script news stories based on the Perceval footage that I had shot. These students were a first audience who provided valuable feedback on the footage.

Audiences are active agents in the production of meaning, in a relationship which is historically determined. In the material world of everyday life the process of negotiation is very rarely open-ended but works within limits and boundaries in a context in which power is not distributed equally. It is the same as the discursive realm of the negotiation of meanings. Here the limits or boundaries to the process of negotiation include all the various aspects of the context of production and the reception of the individual text . . . .<sup>146</sup>

Participatory action research and grounded theory principles were useful in reaction to these student responses. In respect to the ethical use of the images, we referred to professional benchmarks established in the MEAA codes and in the international conventions (at times in law) running across professions and cultures. Ultimately, these students as the first audience, and their responses, would assist in informing the *Delinquent Angel* process. As Peter Hughes wrote:

Audiences are ‘produced’ in the sense that although people exist, they enter into the category ‘audience’ by virtue of various forms of research and classification; or being addressed by a range of textual and extratextual strategies as if they belonged to such categories. Like definitions, categories seek to establish boundaries and police them.<sup>147</sup>

My repetitive screening of the Perceval material to students and my seeking their responses to the different film visions - reinforced the notion that ‘audience’ is not an unproblematic sphere - it is a politicized and complex construct. The ethical considerations associated with this footage, centered around the difficulty in understanding Perceval’s voice, his frailty due to alcoholism and his reluctance in filming.

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<sup>146</sup> Hughes, P. 1996, *Strangely Compelling – Documentary on Television*, Media International Australia, No 82, P. 52.

<sup>147</sup> Ibid, p. 50.

### 3.2 Art and artists: public and private

The person's body, and the image inherent in its representation, is unquestionably an essential component of self-identity. It is also true to say that media images of the body, especially in advertising, shape the individual's understanding of what it means to be a 'normal' human being. The media also constructs what it is to be 'normal', as opposed to an alcoholic, a drug taker, a terrorist, gross, untidy, poor, mad, perverted and of 'the other'.

It is important to recognize that the subject who is required to demonstrate agency in various regimes of body monitoring, body maintenance and body improvement is, above all, a *rational* subject. Demonstration of one's ability to 'take care' of one's own body through rationally directed action has become an important marker of identity in contemporary society; a reflection of one's inner self. Conversely, evidence of failure to take care of one's body is indicative of a flawed individual and of 'irrational' thinking.<sup>148</sup>

In the process of planning a film on John Perceval, I looked at other stories about similar characters and how those stories had been told. The American writer and journalist Charles Bukowski wrote the following description of his interview with a Nobel Prize-winning poet, Bernard Stachman. This forms a discursive parallel to my early interviews and filming of the late John de burg Perceval. As a young man Perceval changed his name from Heck South and became the regal person worthy of the name John de burg Perceval. As a man of achievement he was inducted into the Order of Australia and given an Emeritus Award for his contribution to the arts. Despite these accolades, he could quite easily be the character as described here by Bukowski:

He poured the wine. Then he lifted the glass and emptied it. "Yes, that's much better. I see you brought your camera. I guess you came to photograph me?"

"Listen" he said, "I been meaning to piss for hours. Bring me an empty bottle." There were many bottles. I brought him one. He didn't have a zipper, just

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<sup>148</sup> Petersen, A. 1974, "Governing Images – Media Constructions of the 'Normal', 'Healthy' Subject." In Jacka, E. & Mathews, J. (eds.) *Media Information Australia*, No 72, May. Sydney, p. 36.

buttons, with only the bottom button fastened because he was so bloated. He reached in and got his penis and rested the head on the lip of the bottle. The moment he began to urinate his penis stiffened and waved about, spraying piss all over - on his shirt, on his pants, in his face and, unbelievably, the last spurt went in his left ear.

"It's hell being crippled," he said.

"How did it happen?" I asked.

How did what happen?"

"Being crippled."

"My wife. She ran over me with her car."

"How? Why?"

"She said she couldn't stand me anymore."

I didn't say anything. I took a couple of photos.

"I got photos of my wife. Want to see some photos of my wife?"

"All right."

"The photo album is there on top of the refrigerator."

I walked over, got it, and sat down. There were just shots of high-heeled shoes and a woman's trim ankles, nylon-covered legs with garter belts, assorted legs in panty hose.<sup>149</sup>

While Perceval's art occupied the public domain, he was a private person. Yet his reputation for outlandish behavior was well known. There was an expectation within the film industry, among those who knew of him, that a film about him would follow a narrative in the vein of Bukowski's description of Stachman.

Perceval's works, though relatively small in number, had also become his identity, his authority and his authenticity – and they had considerable monetary value. Superficially, the finished documentary *Delinquent Angel* was to be about the painter

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<sup>149</sup> Bukowski, C, 1998 'The Great Poet' in *Hot Water Music*. Black Sparrow Press, CA USA, p. 31.

Perceval and how this *enfant terrible* related to his friends and to his sixty years of work.

This brought an ethical dilemma in that most public figures, like famous artists, actively court publicity, especially when it stands to lift sales of their work. “Difficult ethical questions, however, arise about the degree to which all parts of a person’s life and the lives of their families or intimates should become public property.”<sup>150</sup>

When filming began in 1994, Perceval’s attitude toward journalists, stemming from past experiences, was very negative. Perceval and his manager, Ken McGregor, testified that verbal agreements made with journalists prior to filming, were to avoid a focus on Perceval’s alcoholism and time in a psychiatric hospital. In spite of the agreement, these story lines became critical to the story<sup>151</sup>. After his major retrospective show in 1989, when people camped on the doorstep of Melbourne’s Victorian National Gallery to have a first viewing, some television coverage ignored that loyalty; instead concentrating on his mental health and on the potential for conflict and exploitation by his minders. Perceval’s habitual use of alcohol had negative consequences. It gave currency to news or current affairs pieces that, according to Perceval and McGregor, did not fairly represent the artist, the minders, or the art.

### 3.3 Story telling

Over the six-year filming process for *Delinquent Angel*, Perceval was consulted and involved to the extent that he effectively controlled what was filmed and when. This amounted to continuous ethical monitoring; without it the production would probably

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<sup>150</sup> White, S. 1991, *Reporting in Australia*. Macmillan, Australia, p. 15

<sup>151</sup> McGregor, K & Perceval, J. 1995 Interview. Melbourne.

have stalled and the film would not have been finished. Referring again to Charles Bukowski's description of the great poet Stachman, we can begin to glean an understanding of the issues of public and private in Perceval's story. I had to calmly negotiate ongoing filming permission from the great painter John Perceval, while also containing my anticipation over the occasional rich and provocative filmed sequence arising from recording his day-to-day life. Bukowski:

It was difficult for him to stand but he managed by holding onto the night table.

"Are you still writing, Barney?"

"Hell, I write all the time."

"Don't your fans interrupt your work?"

"Oh hell, sometimes the women find me but they don't stay long."

"Are your books selling?"

"I get royalty checks."

"What is your advice to young writers?"

"Drink, fuck and smoke plenty of cigarettes."<sup>152</sup>

### **3.4 Finding a suitable case for a film treatment**

Like Stachman, Perceval was an important artist, known for wild innovative work and occasional eccentric public appearances within a vigorously defended privacy. A documentary film about his work and life had never been made – no one had been given permission. The completed film would position the audience as witness to the artist's last creative years. This testifies to his occasional but powerful bursts of creative energy as a painter and to his vulnerabilities and sensibilities as an old man.

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<sup>152</sup> Bukowski, C. 1998, 'The Great Poet' in *Hot Water Music*. Black Sparrow Press, CA USA, p. 33.



From the outset, it was apparent that the story had currency and was capable, eventually, of attracting funds. Because of the close relationship between the artist, the manager and the writer, it was unlikely Perceval would co-operate with any other filmmaker, so time was not an issue. He and McGregor understood how famous names make news and this knowledge, exploited when selling paintings or organizing publicity for exhibitions, would be used for the film in seeking government funding.

Choosing the appropriate mode of documentary representation was difficult, made more so by the knowledge that it had to comply with industry trends to attract funding, particularly funding for post-production. Perceval's speech posed another problem. Poliomyelitis and the long-term effects of alcohol had left him with speech that was difficult to comprehend, so it was difficult to know if *cinéma vérité*, or any actuality-based filming would be sustainable as an on-screen finished product without endless subtitles. Many felt that subtitles would be patronizing or demeaning for such a master, who essentially spoke English. On the other hand, it could be argued that a multitude of films could never accurately portray an extraordinary person like Perceval.

Thus, in 1994, the idea of presenting Perceval in a documentary film evoked interesting possibilities and combinations of possibilities. One could have immediately written a film script about paintings, and what Perceval was absorbing while he produced fifty years of work. Essentially, this mode of representation would be an art history or it might be an essayist film. Another attractive angle was to show his anarchic and fascinating life story and his bursts of energy with their (nearly always) provocative results. The film might include other influences: loneliness in childhood, his anti-fascist views or his rebellion against the elitist politics of the art establishment. A film that looked at his opposition to the establishment could provide a refreshing insight into that period of Australia's art history.

A different approach would be to consider how Heck South, the boy from a wheat farm, became a master painter under the name of John de burg Perceval. An investigative journalist's approach might be to ask how he was treated in his institutionalized loneliness, his Silent Years, in a Melbourne psychiatric hospital. This would be in response to recent journalistic investigations made on numerous mental health institutions that proved to be highly negligent and exploitative of patients. Yet another mode of film could show how his influence on his children and grandchildren lead to most of them becoming painters. These aspects had been regularly discussed in his paintings, drawings or ceramic pieces, and again in books and newspapers.

His 'delinquent' attitude was famous. He was known for his indulgences. Aside from a sado-masochistic indulgence of committing himself for a decade in a mental institution, he pursued pleasure with voracity. A film along these lines was always at the back of my mind and there was a social expectation that this theme was inescapable, despite the ethical and legal difficulty in showing his deviance and indulgence in the name of pleasure.

This mode of film could be voyeuristic, even exploitative, providing the audience with the pleasure of seeing into the secret life of such a person as Perceval. Many feminist<sup>153</sup> writers argue that this is the stock and trade of the camera when filming the female body, as if the audience were empowered and condoned as a peeping tom. The theories of Freud and Lacan are lurking behind this motivation. Roland Barthes has also written on the notion of pleasure derived from the text, by those consuming it. He uses the words *plaisir* and *jouissance* to distinguish between two types of pleasure, saying that pleasure is not found "in the text itself, but in its conspiratorial agreement

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<sup>153</sup> Mulvey, L. 1975 *Visual Pleasure and Narrative Cinema*.

with the reader (audience); the theory is concerned not with what the text *is* but with what it *does*.<sup>154</sup>

Pleasure is, in Western societies, typically classed as an indulgence, the expression of selfishness, idleness, vanity and thus productive of guilt. The Church's constant attempt to curb the "pleasures" of the flesh was eagerly taken up by capitalism and transformed into the protestant work ethic with its acceptance of only that pleasure which has been "earned" and which was used responsibly.<sup>155</sup>

John Perceval railed against all of this. His indulgences and his simple seeking of pleasure gave him identity and escape, which masked his pain. His consuming copious amounts of alcohol and cigarettes, his pleasure derived from painting and his dialogue and charm directed to women or drinking mates, contributed to his overall public character. These pleasures were also lived to the extent that he could politicize them and use them to make further statements.

The first film script, *Perceval AO*, was written in 1994. It was a respectful and tame application written in seeking film investment. It was to interpret a documentary-drama approach, reconstructing Perceval's association over the years with powerful and famous figures of the Melbourne establishment. Between then, and the completion of *Delinquent Angel* in 2000, there were three shifts in style, genre and, subsequently, directorial approach. Thus there were three scripts and application packages. These resulted from the practical aspects of financing the production, the changing audience perceptions of the form of documentary, and the cultural and industrial changes in the Australian documentary industry over the period of the mid to late 1990s.

The inaugural proposal constructed a routine model of a publicly acknowledged, successful and implicitly impeccable citizen: Perceval AO. This initial script was developed from books and catalogues rather than personal experience and observation, despite my established

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<sup>154</sup> Fiske, J. 1987 *Television Culture*, Routledge, London, p. 227.

involvement with Perceval over several years. His significant formal achievements were embodied in art books, reviews, art gallery documentation, exhibition catalogues, and his Australian Order citation. The sources were generally literary and formal, but failed to illuminate many personal aspects in oral history, letters and diaries. The developing script for *Perceval AO* was infused with some personal aura through my involvement and my beginning to know and anticipate Perceval and his lifestyle. His legendary reputation in the community as an *enfant terrible* provided some leavening public expectation of a perhaps bland and safely conventional, if not instructional treatment.

### **3.5 The effects of obtaining funding**

This original script, *Perceval AO*, was submitted to the Australian Film Commission (AFC) early in 1995. This was before the Guerilla Initiative was announced; an initiative supporting very low budget films and which eventually funded *Delinquent Angel*. The original idea in the *Perceval AO* film was to make a complex historical documentary drama (docu-drama), perhaps even an essayist film. Scripted dramatic vignettes, including re-enactments of his earlier years, were to be juxtaposed with interviews and observational material. Voice over would be of an elegiac story telling and it would be philosophical and essayist - not the voice of journalism.

This mode of documentary was popular in Australia during the late 1980s and early 1990s. Dramatizations were shot on film, were heavily directed, and very expensive to make. Many 55-minute documentary dramas of this nature were being funded at the AUS\$325,000 level.

*Perceval AO* had been developing for a year and a half when, later in 1995, the Australian Film Commission (AFC) financed the film's research and development.

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<sup>155</sup> Ibid

This grant of \$20,000 enabled my ‘research’ filming in a loose and observational manner. Perceval and some of his friends and associates were aging and there was little of this material available as a record, creating an urgency to obtain it. The dramatizations in *Perceval AO*, which would be stylized and expensive, could be produced later. Max Harris, Barrett Reid, Mirka Mora, Barbara and Charles Blackman, Arthur Boyd, Albert Tucker and Lady Mary Nolan (Sidney Nolan’s widow and Perceval’s first wife) - were all approached for inclusion in the film. Mirka Mora and, just two weeks before his death, Barrett Reid were the only ones able to participate.

The *Perceval AO* script and application was informally reviewed by the AFC as being strong and innovative. Later, external assessors for the final application assessed it as being well researched but too academic, complex and highly constructed. This contradiction may have arisen because the script visualized some dramatized scenes that were designed to conceal long grabs of Perceval’s voice, which was impossible to follow. The assessor may not have understood that the script contained many dramatic devices that would tell Perceval’s story for him. The assessor may not have understood the extreme difficulty that audiences would have in understanding Perceval’s voice and the difficulty in saying this in a treatment without defaming him.

One scene from the intended documentary-drama (*Perceval AO*) is cited below to illustrate the deliberately constructed style. The scene was set in a thronging 1945 Melbourne café, owned by the painter Mirka Mora and her husband. Before the unfolding of this dramatized scene, there would be some grabs of actuality (Digital Betacam) with Mirka Mora in dialogue with Perceval, taken from my 1995 research filming. Mora and Perceval discussed the café as it was in 1945. These pieces of actuality were to be packed around the dramatized scene as contemporary reference points amongst the history.

## **MORA**

Do you remember John, when you came to the Mirka Studio at nine Collins Street and you were wearing a big scarf, a mohair scarf and you looked divine and I ate some of your scarf because I didn't dare to eat you up? And then, [at] the Mirka Café where you did all your cups and saucers?

### PERCEVAL

I also did some drawings there.

### MORA

Yes lots of drawings in the Mirka Café. We couldn't sell anything, nobody wanted to buy anything, it was terrible. Then we did sell one of your beautiful paintings to ....what was the name of that person? And everybody stole your cups and saucers and took it [sic] overseas.<sup>156</sup>

The *Perceval AO* dramatized Mirka Café scene was to employ an actor as the young Angry Penguin publisher and poet, Max Harris. The dramatized scene, in black and white film, was to be juxtaposed in editing with the contemporary color video of the aged Perceval in comical outbursts with friends like Mora and McGregor. The video actuality (like the Mora/Perceval interview above) was recorded as part of the \$20,000 AFC-funded research in 1995, while the Harris actor centered scene would be constructed later in the expensive docu-drama mode. The actor (Harris) was to stand up in the Mirka Café and deliver this dramatic tribute to Perceval:

The painter I think I loved the best, even though my daily life was almost constantly in the companionship of Sidney Nolan... was Perceval.

He was young amongst us old young people. He lived always being touched by a palpable pain, which was partnered by a seethe of anger. With a deformed leg from polio, supported by irons, he was not a Byronic figure. Rather, one felt he felt himself to be an inside outsider.

Yet there was a rich store of love in him. Confused he may have been. Prickly he was. Tenderness kept battling with rage, and I loved him for the way he fought the losing fight with a sort of lonely courage.

In my view he painted the first unequivocal masterpiece of Australian Modernism, *Boy with Cat*. Here was a painting which anticipated Francis Bacon, but which excelled Bacon's later work in the control of intolerable tensions. It

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<sup>156</sup> Mora, M. 1995, *In dialogue with John Perceval*, filmed by Blackall, D. funded by the 1995 AFC research grant.

has associations with the fashionable *Scream*, which Perceval had never seen, but the scream in Perceval's painting is a silence.<sup>157</sup>

The patrons and the contemporary aged John Perceval in the Mirka Café that day, were to ignore Harris's dramatic moment, at a point considered appropriate, continuing their conversation and business until he was respectfully drowned out.

Filming occurs with a style in mind for the finished film, and the editing process relies on that premeditated camera style. Continuity must prevail so that material will match in the edit. This is especially the case for long-term observational film projects like *Delinquent Angel*. If there is a shift in the industry parameters and these subsequently determine a change in filming style, continuity problems may eventuate in editing. This was especially the case when the expensive, constructed essayist filming style was favored in 1994 for *Perceval AO*, later, guerrilla low budget filming was conceived in 1995, but at the time of editing *Delinquent Angel* in 1999, the requirement had evolved to a *cinéma vérité* style. While *cinéma vérité* alluded definition, it also required it in post-production (the editing phase), thus *cinéma vérité* is referred to, defined and redefined at relevant points throughout this thesis until a reliable definition is arrived at in terms of *Delinquent Angel*.

In 1960 the anthropological filmmaker Jean Rouch took his sound recordist and a new Éclair 16 mm camera into the street culture of Paris where he shot the controversial *Chronique d'une éte* (1961). It was the first time a light weight synchronized film unit was used in France. The Paris film movement was in awe, calling it *cinéma vérité* or 'film truth', where the camera was consciously used as a catalyst for dramatic action. This development was coupled with increasing world cultural pluralism and a flexibility to the way things were done. Suddenly, the filmmaker was free to film events and shoot a sequence continually with synchronized sound -

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<sup>157</sup> Harris, M. 1988, in Reid, B. 1992, *Of Dark and Light: The Art of Perceval*, National Gallery of Victoria, Melbourne, p. 15.

a small mobile unit could now capture the ‘actuality of the moment’.

The new technique was called ‘living camera’ . . . pioneered in the early 1960s by French filmmakers who eschewed trained actors, sets and big budgets. Working on location, they used small hand-held cameras. The technique crossed over into documentaries. You followed the action without editing. It didn’t matter if the camera wobbled a bit, in fact, it was almost better if it did.<sup>158</sup>

In the USA a similar movement emerged. Filmmakers Richard Leacock and Don Pennebaker defined ‘Direct Cinema’ when they made *The Chair* (1963). Their style was characterized like the French: working as a two-man crew without a script, following their subjects and finding out what was dramatic about the subject’s situation rather than imposing a narrative. The new 16 mm cine cameras like the Éclair were ideal: portable, unobtrusive and observational, and this became an important factor in the development of a style of documentary and TV news reportage.

Television, wrote Peter Hughes has redefined documentary, and certainly in Australia, this began in the 1960s:

Despite the name, ‘direct cinema’ itself was fostered by television . . . and elements of direct cinema are evident in such ‘reality television’ programming as the US series *Cops*. The distinct generic status of documentary and its putative moral authority are problematised by the television context.<sup>159</sup>

This ‘problem’ in definition occurs through the notion of the public sphere - that documentary texts are broadcast into a public sphere - but television by its very nature, sits inside a private space, watched by families, and sometimes individuals alone, in their homes. This means it is not a ‘social’ act in a participatory sense like the cinema, yet documentary has a mass social objective by its historical definition.

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<sup>158</sup> Little, J. 2003, *The Man Who Saw Too Much – David Brill, Combat Cameraman*. Hodder, p. 56.

<sup>159</sup> Hughes, P. 1996, *Strangely Compelling – Documentary on Television*, Media International Australia, No 82, p. 48.



The most common origins of the documentary form aimed to socialize and ‘lecture’ the audience. These origins can be located in the propaganda films of the (John Grierson founded) British Documentary Movement of the 1960s and these found their best medium in television. As the ‘mission’ of documentary was to create maximum impact on audiences, to initiate public action through persuasion, television was far superior for this purpose than cinema. “Without a mass medium the social project of documentary does not really exist”<sup>160</sup>.

Thus, the inherent levels of obtrusiveness in the camera’s style for *Delinquent Angel* responded to each AFC induced redesign. Filming began in 1994-95 on Digital Betacam, Super-8 film and Super VHS, with a final docu-drama in mind. When documentary guidelines shifted it was feared that some of the earlier material would become useless. The \$20,000 research grant was made as plans were underway in the ABC and the AFC for starting what was being coined - the Guerrilla Initiative. This initiative supported films with very low budgets and with a potential for deploying an observational or *cinéma vérité* approach.

The Guerrilla Initiative came through the vision and guidance of executives like Mike Rubbo of the ABC, and from the AFC itself. The more evolved imperatives of the Guerrilla Initiative were evident in the 1999 review written by Jeni Thornley, supporting my proposal for final funding (see Appendix 2).

As discussed earlier, there was an unwritten consensus and a cultural expectation amongst film and art people who knew Perceval, about how the film might represent his outrageous nature. But with my camera around he rarely offered anything more than self-conscious and contrived versions of what we all knew he could deliver. The

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<sup>160</sup> Bluem, A.W.1965, *Documentary in American Television: Form, Function, Method*, Hastings House, NY, p. 14. in Hughes, P. 1996, *Strangely Compelling – Documentary on Television*, Media International Australia, No 82, p. 48.

pressure of responsibility grew in respect to filming his moments of anarchy, could they be captured on camera like Bukowski's words captured the great poet - Stachman:

"What do you think of Women's Liberation?"

"Any time they're willing to work the car washes, get behind the plow, chase down two guys who just held up the liquor store, or clean up the sewers, anytime they're ready to get their tits shot off in the army, I'm ready to stay home and wash the dishes and get bored picking lint off the rug."

"But isn't there some logic in their demands?"

"Of course."

Stachman poured another drink. Even drinking from the glass, part of the wine dribbled down his chin and onto his shirt. He had the body odor of a man who hadn't bathed in months. "My wife," he said, "I'm still in love with my wife. Hand me that phone, will you?" I handed the phone to him. He dialed the number. "Claire? Hello, Claire?" He put the receiver down.<sup>161</sup>

To capture this type of dialogue was, reputedly, one of the aspirations of guerrilla documentary - in close, quirky and personal. Despite this as a minimal descriptor, guerrilla documentary was never clearly defined by the government bodies that initiated it - the ABC Documentary Unit and the AFC. My repeated requests for solid definition merely produced information on budgets and technology - guerrilla documentary was something everyone was simply expected to know. The funding bodies signaled the clearest definition through lowering the ceilings for film budget commitments in response to government cuts. For filmmakers, a low budget style and approach was inevitable, eliminating the option for documentary drama and essayist forms.

The 1999 *cinéma vérité* proposal for the final funding of the post-production phase was based on the following story idea:

The famous old master painter was dependent on his minder-manager more than he was prepared to admit, and this film is something that he, in fact, really wants. Despite his outwardly reluctant and uncooperative nature, the manager

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<sup>161</sup> Bukowski, C. 1998, 'The Great Poet' in *Hot Water Music*. Black Sparrow Press, CA USA, p. 33.

and the documentary filmmaker work as his *de-facto* family to get the reclusive and sometimes bad-tempered master painter to participate in a film about his life. Eventually they take Perceval around the world to Wales to see his other family – daughter Alice and her children. With her teenage son, born years before when she lived with the writer, Alice coaxes the old man into some beautiful documentary moments.<sup>162</sup>

The process of responding to the final 1999 (Thornley) assessment made by the Australian Film Commission, and the subsequent triumph in securing an investment grant for the post-production stage is dealt with in detail in Chapter Six.

### 3.6 Fortress Perceval or willing social actor

I helped Bernard Stachman get into an old brown overcoat. All the buttons were missing off the front. It was stiff with grime. It was hardly an LA overcoat, it was heavy and clumsy, it must have come from Chicago or Denver in the thirties.

Then we got his crutches and we climbed painfully down the YMCA stairway. Bernard had a fifth of muscatel in one of the pockets. We reached the entrance and Bernard assured me he could make it across the side-walk and into the car. I was parked some distance from the curbing.

As I ran around to the other side to get in I heard a shout and then a splash. It was raining, and raining hard. I ran back around and Bernard had managed to fall and wedge himself in the gutter between the car and the curbing. The water swept around him, he was sitting up, the water rushed over him, ran down through his pants, lapped against his sides, the crutches floating sluggishly in his lap.

“Its all right,” he said, “just drive on and leave me.”

“Oh hell, Barney.”

“I mean it. Drive on. Leave me. My wife doesn’t love me.”

“She’s not your wife, Barney. You’re divorced.”<sup>163</sup>

Because of the social marginalization of the *Delinquent Angel* subject, Perceval, the need for additional duty of care in filming was required. There was an imperative to avoid stress due to a perception that he could be easily exploited, or even damaged. Put

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<sup>162</sup> Blackall, D. 1999, ‘Synopsis’ *Delinquent Angel*, Post Production Treatment for the AFC.

<sup>163</sup> Bukowski, C. 1998, ‘The Great Poet’ in *Hot Water Music*. Black Sparrow Press, CA USA, p. 34.

under undue exposure from film crews, put at risk in certain dramatic locations and being misrepresented in the final cut could have put him in hospital. This was taken very seriously, yet it was only a voluntary consideration - there were no guidelines from the government film and broadcast bodies with whom I had been dealing. The Australian Broadcasting Authority and the charters and codes of practices of the broadcasters did not have guidelines that were in any way specific enough to provide guidance. Despite this, my decisions were based on reading about ethical theory coupled with a sense of pragmatism in order to guarantee that filming could continue. This response was based on my experience in filming elderly Aboriginal Oral History subjects in the late 1980s.

While Perceval had reached the pinnacle of his career, and at times had commanded a great deal of wealth: during the six years of filming he owned very little and may have been vulnerable to further mental illness triggered by a predatory camera.

He was not in a position to brief defamation lawyers. His main protection was through his friend and astute manager, Ken McGregor, with whom he would consult regularly about the filming process. It must be noted that despite an appearance of frailty, Perceval was very perceptive. He had a sharp memory, especially in regard to previous occasions in which he felt he had been double-crossed. These occasions left him bitter and angry.

Inevitably, there would be complex ethical considerations in any film about him. If the film voyeuristically and distastefully focused on any of his deviant indulgences or his bad behavior in public, he would most likely have become stressed. This could have been a problem for his health and safety. In a desire to match his immortalized Angry Penguin contemporaries: Arthur Boyd, Sydney Nolan, Joy Hester, Albert Tucker and Charles Blackman; Perceval wanted his own film. In this film he could put straight, from his perspective, his superior artistic ability, his familial connections and his politics.

### 3.7 Audience desire

Penetrating accounts of famous peoples' personal space brings with it a filmic currency. Given Perceval's family connections, his behavior, his complex psychological dimensions, his potential for conflict or betrayal – the documentary material captured by my camera had the potential for constructing dramatic elements in the vein of *Big Brother*, or documentaries like *Raw Deal* and *Kim and Harley and the Kids*.

In 2000 *Delinquent Angel* was nominated for a Dendy Award, as part of the Sydney Film Festival. As if to emphasize a shift in the nature of Australian documentary over two years, a challenging new work, *Kim and Harley and the Kids*, was a 2002 Dendy nomination. The producer, Steve Thomas,<sup>164</sup> said the camera director, Katrina Sawyer, had close access to Kim and Harley because Katrina was a family friend. Only in such a relationship could the camera get so close to this grueling insight into family life and its effects on the four children growing up in a bleak western Sydney suburb. The 2002 Sydney Film Festival Dendy-Awards program read thus:

When you're battling to survive with four kids, Hep. C and no money or support, frustration can turn inwards and the ones you love most get hurt.

The producer, Steve Thomas, shared a panel on ethics with this writer at the Ninth Visible Evidence conference in Brisbane, 2001. He said that when asked about their brawling being made so public, the family replied: "Ah, we're nothing, you should see the neighbors."

Parts of the documentary were screened at the conference. Speaking from the audience at question time, one delegate said she was an ethicist in the area of community welfare. She suggested the family was clearly unable to understand the consequences of their consent in filming, especially in terms of the children and their future. In regard to competency to provide

informed consent, there may well have been an ethical imperative for not proceeding with the funding of such a film. It may also come to pass that it was unethical for the parents to allow their children to be seen in this light. The Visible Evidence delegate (in the audience at our session) argued that the children were clearly identified, and that the depiction of the difficulties under which they lived (domestic violence, poverty and drug abuse) could be harmful for them in their future.

Mike Rubbo, director of *Waiting for Fidel* (1974, about Cuba's Fidel Castro), was the commissioning editor at the Australian Broadcasting Corporation in the mid to late 1990s. In conjunction with the Australian Film Commission, he initiated the guerilla documentary concept (expanded upon in Chapter Six). Rubbo said that he and others, from time to time, had hoped to make a film on John Perceval. He said it would have to be with the closeness and familiarity to which guerilla documentary aspires. Perceval was known for his potential for conflict, and for denying cameras access to him, in the most direct and unambiguous terms. Providing that my filming avoided a final confrontation such that there was no chance of a return on the investment, his known behavior would serve dramatic value.

Perceval's manager, Ken McGregor, drove Perceval to a lunch for the dignitaries and the illuminati of Melbourne's art establishment. In a stately hotel, delicacies such as oysters were laid out for the occasion. On one oyster Perceval began to choke. He started one of his coughing fits, for which he was notorious. He felt he was choking. A chunk of oyster came out onto his plate.

"What's that Ken?" he inquired.

"That's your oyster" Ken calmly replied.

"Oh fuck, I thought it was my lung. That's disgusting."

He flicked it with his knife and it landed on someone's plate at the next table. They all left.<sup>165</sup>

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<sup>164</sup> Steve Thomas produced *Kim and Harley and the Kids* in 2001 as part of a half hour documentary series, *Family Foibles*, in which emerging and therefore inexperienced directors tell intimate stories of families close to them.

<sup>165</sup> McGregor, K. conversation, in Blackall, D. 1995, diary notes.

The demonstrated intimacy I had as filmmaker with the subject, combined with the ABCs' encouragement over the *cinéma vérité* proposals, was eventually noticed by the Australian Film Commission. They enacted the assessment process. The assessment review recommended funding.

Despite the consideration of causing Perceval psychological injury, or a loss of reputation, a film about him in this *cinéma vérité* context reads like a journalist's good story checklist: high levels of potential for voyeurism, celebrity, conflict, immediate impact and currency, proximity, the possibility of moral breach coupled with eccentric behavior generally.

### **3.8 Evolution of an informed consent process**

In contrast to applications to fund the work of scientists, medical researchers, animal laboratory testers and many other professionals - film funding applications are devoid of attention to ethics. Though I would have been only too happy to comply, the application process for *Delinquent Angel* with the AFC required none of the checks required of me as a researcher at University. In-house proposals for television programs or proposals to government bodies like the Australian Film Commission (AFC), Film Australia (FA) and the Film Finance Corporation (FFC) do not require close consideration of ethics, privacy or informed consent beyond the overall standards set in the Australian Broadcasting Authority and the broadcasters' charters and codes of practice. The overriding preoccupations in commissioning are budgetary, marketing, legal and aesthetic; in terms of audience appeal and film innovation. In an international context, Winston emphasizes the ambiguities and inadequacies of such an overwhelmingly mercenary orientation:

For film and video-makers caught in the Griersonian tradition of seeking social amelioration through the documentation of society's victims, the law, given the amplification of message possible with current technologies, allows too much latitude. Documentarists, by and large, do not libel and by and large, do not steal images. Yet they are working with people who, in matters of information, are

normally their inferiors – who know less than they (the filmmakers) about the ramifications of the filmmaking process. It seems appropriate that an additional duty of care be required of them.<sup>166</sup>

The power imbalance, by its existence, according to this ten-year study, generates an additional duty of care required of the filmmaker towards the subject. The border between what is and what is not ethical conduct narrows around the filmmaker. In a practical sense, crossing that line and invading, for example, Perceval's privacy risked tension, misunderstanding and even the collapse of the partnership between subject and filmmaker. These dangers are compounded when either side has a different understanding of when the line is crossed.

Article 12 of the Universal Declaration of Human Rights, adopted by the United Nations' General Assembly in 1948, declares:

No one shall be subjected to arbitrary interference with their privacy, family, home or correspondence, nor to attacks on their honour or reputation. Everyone has the right to the protection of the law against such interference or attacks.<sup>167</sup>

These conventions define, Winston suggests, "the filmmaker's duty of care to his or her subject".<sup>168</sup> Filming of victims constitutes interference, "but only in rare cases of extreme abuse would an action lie, arising from the basic human rights documents; for, in most instances, consent would continue to operate protecting the filmmaker". Winston draws analogies from medical and social science procedures wherein codes are refined and values fleshed out under the Nuremberg Code:

The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise the free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or any other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as

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<sup>166</sup> Winston, B. 1988, 'The Tradition of the Victim in Griersonian Documentary' in Gross, L., Katz, JS. & Ruby, J. (eds.), *Image Ethics - The Moral Rights of Subjects in Photographs, Film, and Television* Oxford University Press, New York, p. 52.

<sup>167</sup> Brownlie, I. 1971, *Basic Documents on Human Rights*, Oxford University Press, London, p. 109.

<sup>168</sup> Winston, B. 1988, 'The Tradition of the Victim in Griersonian Documentary,' in Gross, L., Katz, JS. & Ruby, J. (eds.), *Image Ethics - The Moral Rights of Subjects in Photographs, Film, and Television*. Oxford University Press, p. 52.



to enable him to make an understanding and enlightened decision. This latter element requires that, before acceptance of an affirmative decision by the experimental subject, there should be made known to him the nature, duration and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.<sup>169</sup>

By replacing “experiment” with “film” or “filmmaker” as Winston suggests, a plausible definition of the documentary-maker’s responsibilities with respect to informed consent emerges. Filmmakers might reject such an emphasis on the rights of the subject, arguing that the film’s editorial independence and integrity would be adversely confined. Winston argues that ultimately, “the law distinguishes public and private personae”:

Public and private personae should be afforded different degrees of protection. At the moment, ordinary people are left naked in the glare of publicity. Conversely, public figures sometimes use the scant protection the law intends for ordinary persons to inhibit or prevent what would be, in their cases, quite proper exposes.<sup>170</sup>

Social deviance is an essential element in the victim tradition of filmmaking. The degree of deviancy depends upon context and venue, so what is permissible in private becomes deviant, even illegal, in public. The effect of publication (broadcast), of otherwise permissible actions, ought to be considered. Are the actions deviant in themselves or does publication, make them deviant?<sup>171</sup> Again, this judgment is colored by the status of the subject relative to the filmmaker – as a social victim in the Griersonian sense, and as a deviant entitled to protection from exploitation by strict application of the principles of informed consent.

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<sup>169</sup> Reynolds, P.D. 1988, ‘Ethics and Social Science Research’ (Englewood Cliffs, N.J.: Prentice-Hall, 1982),143. in Winston, B. ‘The Tradition of the Victim in Griersonian Documentary’ in Gross, L., Katz, JS. & Ruby, Jay (eds.), *Image Ethics - The Moral Rights of Subjects in Photographs, Film, and Television*. Oxford University Press, New York, p. 53.

<sup>170</sup> Winston, B. 1988, ‘The Tradition of the Victim in Griersonian Documentary’ in Gross, L., Katz, J Stuart, & Ruby, J. (eds.), *Image Ethics - The Moral Rights of Subjects in Photographs, Film, and Television*. Oxford University Press, 1988. P. 54.

<sup>171</sup> Ibid

### 3.9 Truthfulness again - a reality check

In justifying decisions and saving face, directors and journalists in trouble ethically, might revert to the public interest defense or they might use a simple deflection strategy - blaming others and blaming circumstances. This is contrary to the spirit of journalism and collegiality. In chapter one we saw how in sworn evidence to the ACT Supreme Court, television current affairs journalist Richard Carleton used budgetary constraints to justify the use of deception in his coverage of a Bosnian massacre.<sup>172</sup> He had taken the ABC television program *Media-Watch* to a defamation court. The court ruled that indeed Carleton had been defamed in the *Media-Watch* statement: that he (Carleton) had plagiarized and produced lazy journalism. The court allowed the defense of fair comment to prevail in the name of public interest, leaving Carleton's reputation restored and no damages being awarded.

As discussed in Chapter Two, in an odd overturning of what is commonly held in truthfulness: we demand truth in advertising, in trade, in journalism, in marriage, in law, but very little, it seems, in documentary filmmaking. Benchmarks of truthfulness are also codified in international convention:

The UNESCO Declaration of 1978 establishes a cultural reference or discourse as to why we should stay with just the norm of truthfulness as the basis for fair practice... The mass media, by disseminating information on the aims, aspiration, culture and needs of the peoples, to make nationals of a country sensitive to the needs and desires of others (are) to ensure the respect of the rights and dignity of all nations, all people and all individuals.<sup>173</sup>

Imagination and creativity are positive things but when used in the context of producing distortions or lies, they are morally negated and rendered impotent. Untruthful or morally flawed art, in film, is then relegated the status of public relations, commercialism and

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<sup>172</sup> Tabakoff, J. 2002, 'Who's talking'. *Insight*. Sydney Morning Herald. 26 March. p. 13

propaganda. A public tribunal might ask: why are we prepared in everyday life and at common law to invoke the norm of truthfulness as the basis for fair practice at one moment and at the next moment justify the right to lie, on the basis of changed circumstances and contexts?

### 3.10 Competency to give informed consent

In the light of the issues raised in the process of formulating and then discussing the primary (participatory action) research in *Delinquent Angel*, further analysis of the concept of informed consent was required. This continued to focus on the issue of my ongoing ethical practice, in a process of filming a vulnerable old man.

Obtaining a potential subject's consent to participate in the making of a documentary film, on an informed basis, should beg the question as to whether or not that subject, or their legal guardian, is competent to grant consent for filming. Information regarding the nature of the film (and the filmmaker's intentions) and the subject's role and ability to assess that information must be present for the consent to be truly informed. In the contexts of potentially risky medical procedures or research techniques, a person who is unable to understand the nature, implications and consequences of the medical procedure or interview is, *ipso facto*, regarded as incapable of giving informed consent and so is excluded.

In the research context, Ranjit Kumar summarizes this as follows:

It is important that the consent should also be voluntary and without pressure of any kind. Schinke and Gilchrist write:<sup>174</sup> "Under standards set by the Commission for the Protection of Human Subjects, all informed-consent procedures must meet three criteria: participants must be competent to give consent; sufficient information must be provided to allow for a reasoned decision; and consent must be voluntary and uncoerced." Competency, according to Schinke and Gilchrist, is concerned with the legal and mental capacities of

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<sup>173</sup> UNESCO Declaration of 1978, quoted in Perez, G. J. 1997, 'Communication Ethics in Latin America', p.43, in Christians, C. & Traber, M. (eds.) *Communication Ethics and Universal Values*, Sage Publications, California, p. 163.

<sup>174</sup> Schinke, S. & Gilchrist, L. 1993, "Arrics in Research" in Grinnell, R. (ed.) *Social Work, Research and Evaluation*, (4<sup>th</sup> ed), F.E. Peacock Publishers, Illinois, p. 83

participants to give permission. For example, some very old people, those suffering from conditions that exclude them from making informed decisions, people in crisis, people who cannot speak the language in which research is being carried out, people who are dependent on you for a service, and children, are not considered to be competent.<sup>175</sup>

A person's competence to consent to medical or psychiatric treatment, or to participate in research, is usually assessed professionally, using tests and assessments with the ability to gauge rationality. Competency is assessed using the patient's ability to balance risk against possible benefit. In the filmmaking context, a subject may decide to risk entrusting his or her story to a filmmaker with the possibility of publicity, or even glamour as the benefit.

Ruth Macklin argues that the dominant philosophical conception of rationality in the Western analytical tradition is of the instrumental kind: "Rational acts are ones that best accomplish the chosen ends".<sup>176</sup> The patient's own rationality has been of lesser importance when assessing competence to give informed consent than the desirability of outcomes. "The agent's means are not relevant. It is the ends themselves that confer rationality or irrationality."<sup>177</sup>

It should be noted that the quality of the outcome for the patient after a breakthrough medical procedure, is not affected by the means of obtaining consent. The wider public benefit after a successful treatment is diffused and outweighed by the immediate benefit to the patient. In respect to filming, the quality of a finished film; its ethical integrity as a social document, its public benefit and perhaps its commercial success; may depend very much on the process that led to the agreement of crucial subjects to participate.

If filmmakers use the grounds of a greater public benefit to justify deceptive conduct or less than open communication with a subject, they are assuming, on behalf of the public, a beneficial protector role. Surely this is rather patronizing. As we saw in the Tehelka.com case, the potential

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<sup>175</sup> Kumar, R. *Research Methodology*, Longman, London, p. 193.

<sup>176</sup> Macklin, R. 1983, *Philosophical conceptions of rationality and psychiatric notions of competency*, Synthese, vol.57 no.2, p. 214

<sup>177</sup> Macklin 1983, p.211

public benefit needs to be demonstrated in some transparent and public manner and this should far outweigh the threat implied by robbing the subject of their privacy.

In the medical research context, the public benefit may be easier to quantify and there may be direct benefit to the participant, but there remains strong parallels to the documentary film situation. This is especially the case in relation to competence and informed consent. The Nuremberg Code of 1947 was a response to the discovery of human experimentation on involuntary concentration camp inmates conducted by German physicians during World War II:

[T]he person involved should have the legal capacity to give consent and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him (sic) to make an enlightened and informed decision... [including an appreciation of]... all inconveniences and hazards reasonably to be expected.<sup>178</sup>

Western scientists, however, continued to use children as research subjects, despite the fact the law does not consider them capable of giving informed consent. The Nuremberg doctrine, nevertheless, continued to inform professional and governmental codes of conduct throughout the 1950s and 1960s. At this time in Australia, experimentation flourished on Indigenous children and adults without consent.<sup>179</sup>

As research and experimentation continued, the World Medical Association adopted a revised guide in 1964, the Helsinki Declaration, which distinguished between therapeutic (combined with patient care) and non-therapeutic (purely scientific) research. This declaration requires the explicit consent of the subject before commencing non-therapeutic research.<sup>180</sup>

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<sup>178</sup> Nuremberg Code 1947: Section 1, reprinted in Grodin and Glantz, eds (1994), *Children as Research Subjects: Science, Ethics, and Law*, New York, Oxford University Press, Appendix B, p. 218.

<sup>179</sup> *Ibid* 16 FN.

<sup>180</sup> Faden, R. and Beauchamp, T.; with King, N. 1986, *A history and Theory of Informed Consent*, New York, Oxford University Press, p. 156

The National Health and Medical Research Council (NHMRC) paper, *Statement on Human Experimentation and Supplementary Notes*, was published in 1987 and set the Australian standard for competence and consent:

Before research is undertaken, the free consent of the subject should be obtained. To this end, the investigator is responsible for providing the subject at his or her level of comprehension with sufficient information about the purpose, methods, demands, risks, inconveniences and discomforts of the study. [With regard to those under the age of majority, some research programs] may offer direct benefit to the individual child, while others may have a broader community purpose. In appropriate circumstances both may be ethical.<sup>181</sup>

The NHMRC requires all institutions undertaking research on humans to have a duly constituted Institutional Ethics Committee (IEC), to which all such projects are submitted. The IEC's members should have a range of expertise, including legal and religious. One role of the committees is to review each proposal in order to eliminate, or at least minimize, potential harm to research subjects.<sup>182</sup> This section of the statement refers to a "broader community purpose", which can be related to the journalistic concept of public benefit or public interest.

The NHMRC statement makes special provisions for obtaining third party consent to conduct research on vulnerable subjects. These are children under the age of majority, the mentally ill, those in dependent relationships (such as elderly residents of nursing homes, prisoners and hospital or laboratory staff) and unconscious patients. Consent should be obtained from the person involved where possible:

It is always desirable to obtain informed consent from a person who has the intelligence or capacity to make this practicable.<sup>183</sup>

The availability of third party consent in certain cases could undermine the validity of a consent obtained from the subject on an apparently voluntary and informed basis. Nonetheless, the *Statement on Human Experimentation and Supplementary Notes* places an ethical

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<sup>181</sup> National Health and Medical Research Council, 1987, *NHMRC Statement on Human Experimentation and Supplementary notes*, Canberra ACT, pp. 3,7.

<sup>182</sup> (NHMRC 1987: 5 FN)

<sup>183</sup> (NHMRC 1987: 8)

obligation to first determine a potential subject's competence to consent. In the documentary film context, the subject's ability to balance risk and benefit may be a sufficient test of competence but, in the final analysis, this will depend on the nature of the relationship between subject and filmmaker.

For John Perceval, it was definitely a process of informed consent in association with his minder and manager Ken McGregor, who had power of attorney. This process is expanded, examined and analyzed in Chapter Six and Seven, with reference to the Case Studies in Chapter Five.

## **Chapter four – informed consent and Australian camera epistemology**

4.1 Rationale	139
4.2 An overview	143
4.3 The early years of non-fiction 1896 – 1920	144
4.3.1 Australia’s first screen production unit	144
4.3.2 Edison’s technology	146
4.4 Actuality films	154
4.4.1 Documentary and journalism	155
4.4.2 Industrial/commercial	155
4.4.3 Tourism and promotions	157
4.5 The developing ethic of exploration and adventure 1920 – 1930	158
4.6 Film heritage	161
4.7 The coming of sound to the factual film heritage	163
4.8 War journalism 1940 – 1950	169
4.9 The combat camera after 1960	177
4.10 Current affairs and Four Corners	179
4.10.1 The Freewheeling 1970s	191
4.11 New technologies, forms and markets – 1990s onwards	192
4.12 Conclusion	204



## Chapter four – informed consent and Australian camera epistemology

### 4.1 Rationale

This chapter, as an epistemological account, will examine how Australian documentary film and moving image journalism have been inextricably related throughout the history of moving film. The study is necessary in the wider context of the thesis because of the superiority complex and denial in documentary culture of the obvious genetic links with camera journalism. I hope to show in this history how documentarists are subject to the same ethical considerations as those of video journalists. I argue that this is the case, firstly because of the shared history; secondly because of the common ethical, legal and industrial context; and thirdly, that the products from the two are usually indistinguishable to the audience.

This (chapter four) study comprises historical discourse analysis coupled with qualitative interviews with critical players in contemporary Australian documentary and moving image journalism. Since 1995, the camera product of these critical players has converged to the extent that it is simultaneously supplying print journalism, photography, radio, television and documentary. Essentially, this is what media academics are now describing as convergence.

It's a ubiquitous buzzword, used to describe everything from corporate strategies to technological developments to job descriptions.<sup>184</sup>

This chapter suggests that the miniature digital video camera, operated by one journalist, may have seen its first instance as 'convergence' in Australia around 1995. The process, as described later in this chapter, involves the contracted and freelance camera operator, single-

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<sup>184</sup> Gordon, R. 2003, *Digital Journalism: Emerging Media and the Changing Horizons of Journalism*, republished with permission from Rowman & Littlefield Publishers, Inc., editor Kevin Kawamoto and author Rich Gordon for online presentation in *Convergence Defined*, Online Journalism Review.  
<http://www.ojr.org/ojr/business/1068686368.php> [Accessed November 24, 2003]

handedly acquiring material and then on-selling pictures, sound, stills and print to as many forms of news media as possible.

It is not the purpose however, to argue here from a position of technological determinism: that media technologies alone significantly affect the nature of actuality destined for film or journalism. Rather, the Chapter has sought a context in the cultures and markets of the film and television industries into which a highly marketed technology like DV is injected. The distinction is important, as technological determinism alone leaves us impotent, as unthinking consumers, with no dissent in the face of an advertising induced rush to consume new products. The cultural determinist view, by contrast, is empowering and the aim of this chapter has been to take that line.

By drawing attention to the ways in which society constantly conditions technological developments, this view gives us power to evaluate media technologies and to understand that we are not in the grip of forces totally beyond our control.<sup>185</sup>

Further, in tackling this Chapter Four with a search for ethics in the technological history of the non-fiction camera in Australia, it has not been my intention to make moral saints out of some camera journalists and unethical demons out of others. Rather, my aim was to trace historically, an ethic of responsibility, found to be unwritten and yet evident in many products of the Australian non-fiction camera. This ethic of responsibility has been occurring naturally with some practitioners of both documentary and camera journalism in spite of them never referring to a journalist ethics code, or anything like one.

It has not been the purpose therefore, to put the journalist's code on a pedestal or impose codes to the extent that we create ideal cardboard figures in camera journalism, lacking individuality

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<sup>185</sup> Routt, W. D. 1991, *The Truth of the Documentary. Introduction* in McHoul, A. (ed) *Media/Discourse*, The Australian Journal of Media & Culture, vol. 5 no 1, p. 1.

and interest. Moralizing over ethics and imposing rigid standards, if taken to an extreme, may lead to boring, uninteresting journalism texts that lack public interest and entertainment values, now so necessary to hold the audience. This does not provide for good journalism or good documentary. Moralizing over ethics stifles freedom for ethical decision making in situations where deceit may indeed be necessary when it is defensible in public interest.

Essentially, this chapter seeks the common discourse between film and journalism and suggests a coalition so that non-fiction camera professionals can identify ethical practice and obligations. This coalition finds the common ground through an ethic of responsibility, acknowledged by the mutually shared history of technology and practice, and duty of care to the subject before the lens.

The chapter analysis therefore has been explicitly designed to examine documentary film and moving image journalism, in a search for shared technologies and any professional contexts developing from that. It also looks for similarities in the social and cultural context in terms of shared work conditions, desires, beliefs, motivations, roles, rules, rituals and language of documentary film and moving image journalism. Finally, the chapter looks at the shared characteristics of the epistemology of journalism and documentary.

The hypothesis proposed here is that over the last century, documentary and journalism have been, and continue to be, mutually dependent, with many professionals moving freely between the two. With each of these migrations, the values, skills and knowledge acquired in one industry, are then infused and exchanged with the other. Despite this movement creating what appears as a constant blurring and intermingling of professional, representational and ethical boundaries, there remains a perception in both industries of the cultural and industrial divide between documentary and journalism.

Throughout this participatory action research process I have been casually suggesting these notions to filmmakers. This provided a continuous and informal survey of industry attitudes. Honest responses in this respect are hard to extract, those being surveyed often bound by commercial confidentiality and cultural positions they feel they need to defend. Active respondents however, most often said that journalism and documentary were not interlinked and therefore not obliged to the same ethical obligations. Documentary, it seemed, was always attributed to the higher artistic ground in some vague ill-defined way. Everyone seemed to respect documentary as a form, whereas television journalism as a form was often seen with disdain, relegated to the realm of tabloidism. Difference, they said, arrived with the tradition, the higher budgets, the longer durations, the artistic focus and the narrative aspects of documentary. Respondents considered this significant enough to separate film from journalism. With shrinking resources in filmmaking and even the most famous documentary makers finding occasional work in television current affairs, perhaps it is time to reconsider and accept that documentary makers are morally subject to the same ethical considerations as those of the camera journalist.

This chapter then, is written with the aim to resolve this impasse so that we can start to see similar ethical issues facing both modern documentary and journalism. The counter-productive divide blurs the critical issues that are in moral crisis. The divide centers on an irrelevant dispute as to who occupies the high cultural ground: as to who is mere journalist, fine artist, exquisite filmmaker or commercially oriented documentary producer. Instead, in production these roles are one professional activity, obliging those at the point of filming in particular, to provide the same considerations on informed consent to the filmed subject.

One of the case studies in the next chapter includes an account by an internationally renowned documentary director who denies his work is journalistic. Rather, he says, he is an artist. But in respect to his latest film (*Cunnamulla*), Dennis O'Rourke claims that his controversial filming of teenage girls discussing underage sex was defensible because it was made in the public interest. This is a claim of journalism and is not generally associated with art. Chapter Four then, prepares the context for the next, which is essentially the case study focus of the thesis.

As a short history of Australian moving-image journalism, and its ethics, this chapter excludes the emerging Reality genres. It is worth noting though, that professionals from documentary film and television journalism are also finding work in the high rating and lucrative Reality Television industry. Thus the cross industry movement, as mentioned above in respect to journalism and documentary film, is also occurring in the competitive and highly commercial environment of Reality Television. The Reality genre is also highly relevant because it is aggressively affecting the style and production values of traditional television journalism and documentary.

Reality Television and Real TV (I use both indiscriminately) will continue to impact on journalism and documentary to the extent that a unified ethical approach is an imperative. This would apply to all modes of acquisition of film actuality, and for the reasons set down above, should be a priority to educators and industry executives alike. In this context, a curriculum drawing on epistemology might include how camera journalists have been constructing shared film realities over time, how these realities are used by media owners and government, and how the social actors (film subjects) are exploited (or otherwise) and represented in the finished stories.

## **4.2 An overview**

The Australian film industry has nearly always been dominated by fiction-based cinema from the US and Britain. With a small population, dispersed and isolated, a low budget Australian entertainment genre was needed and cinema newsreels provided that. Today, news, current affairs and documentary continue to provide for audience rating information and entertainment programs, around and into which, advertising and government propaganda is packed.

The early non-fiction newsreel was used effectively for the same reasons and was to become the mainstay of local production in the period before television. In terms of ethical perspectives, early cinema newsreels were basic precursors to today, carrying the messages of

propaganda, commercialism and ‘public interest’. This production has largely overridden or overlooked any informed consent considerations for the camera subject.

### **4.3 The early years of non-fiction 1896 – 1920**

Like elsewhere, Australia’s production of film based actuality evolved conjointly with the elaboration of moving image technology. However, in Australia from 1896, non-fiction film enjoyed an unusual prominence with over 80% of the total film shot before 1970 being journalistic in nature and actuality based - of promotional pieces, newsreels and documentary.<sup>186</sup>

Documentary, says Laughren, has contributed a great deal to the development of overall film language used in advertising to feature film. The earliest film language arose from the time when the first sequencing of shots represented an event unfolding.<sup>187</sup> It is also worth noting that even from the earliest documenting, the filmed events were not unmediated. The image-maker is often seen in frame, manipulating the event for the camera, telling social actors to act in scenes where they self-consciously cheer at horse races or royal processions.

#### **4.3.1 Australia’s first screen production unit**

The Salvation Army’s Limelight Department (1892-1909) began by using multi-media precursors to moving film. The Department was an organization best known for its evangelism and work among the poor and needy. It was also Australia’s most important film producer in the early years of the twentieth century, producing propaganda, evangelism and a record of poverty.

The Salvationists established the Limelight Department in 1892, with inspiration for the name coming from the light source used for slide

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<sup>186</sup> Laughren, P. 2003, *A Short History of Australian Documentary*, session at the Australian International Documentary Conference, 2003, Byron Bay.

<sup>187</sup> Ibid.

projection and theatre spotlights at the time. Blocks of lime were heated to white incandescence by a gas jet, usually generated by heating chemicals in a retort beside the projector.<sup>188</sup>

The Salvation Army's website<sup>189</sup> claims that the Limelight Department was the world's first film studio. The first screenings were not, in the strict sense, projections of moving film but the work of 'The Magic Lantern'.

Salvationist Joe Perry purchased a magic lantern, an early type of slide projector, to raise funds for the Army's Prison Gate home in Ballarat, a provincial city in the colony of Victoria.

Perry and the lantern were brought to Melbourne late in 1891 to promote the visit of the Salvation Army's founder General William Booth and his *Darkest England* poverty relief scheme.<sup>190</sup>

Perry toured across several of the Australian colonies, using the lantern to promote the *Darkest England Scheme*, which had a journalistic flavor to its mode of representation.

Large audiences were shown projections of skillfully produced glass slides, vividly depicting the conditions of England's needy and the work the Salvation Army was doing to alleviate them. The tours were highly successful and provided the impetus for the creation of a special production unit, The Limelight Department, in 1892.<sup>191</sup>

The Lantern shows were quickly developed from their initial focus on *Darkest England* when, for the first five years Joe Perry toured Australia and New Zealand with shows uniting theatrical and capricious tales with biblical stories. These were linked with images and

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<sup>188</sup> The Australian Broadcasting Corporation, 2001, 'The Limelight Site'.  
<http://www.abc.net.au/limelight/docs/lime/default.htm> [Accessed 3 March 2003]

<sup>189</sup> The Salvation Army, 'The Limelight Department'.  
[www.salvationarmy.org.au/museum/milestones/intro\\_limelight.htm](http://www.salvationarmy.org.au/museum/milestones/intro_limelight.htm) [Accessed 20 November 2002]

<sup>190</sup> Ibid.

<sup>191</sup> The Australian Broadcasting Corporation, 2001, 'The Limelight Site'.  
<http://www.abc.net.au/limelight/docs/lime/default.htm> [Accessed 3 March, 2003]

narratives of the social, deliverance and redemption work the Army was doing in Australia and overseas.

Using a "bi-unial", or twin lensed lantern, Perry was able to overlap slides, fading and dissolving between them to create an impression of movement on the screen. The slide sequences, many of which Perry made himself, were accompanied by music and sound effects. In "Jane Conquest", simulated flashes of lightning and the rumble of thunder heightened the depiction of a shipwreck in wild seas. Numerous newspaper reports of the time tell us that audiences sat enthralled as Jane strove to save the crew and her husband from the burning ship. Meanwhile her baby, whom Jane had to leave at home, was protected by angels hovering above.<sup>192</sup>

Perry used narrative coupled with entertainment and dramatic values to heighten the audience interest so that content would be more appealing. This story-telling process remains the stock and trade of both journalism and documentary.

#### **4.3.2 Edison's technology**

The first displays of filmed material can be linked with the Edison kinetoscope touring the Australian colonies in 1895. In the following year a talking version of Edison's technology, the Kinetophone, was mingling images with audio of the phonograph.

When the first Lumiere Cinematographes appeared in Australia in 1896, the Limelight Department moved promptly to incorporate the new technology into its propaganda like production process.

Following the success of Perry's early experiments in cinematography, Herbert Booth purchased a fully professional camera, a Lumiere Cinematographe. It arrived in February 1898, and was housed in a new glass-walled studio built at the rear of the Salvation Army's Melbourne Headquarters.

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<sup>192</sup> Ibid



. . . the Lumiere Cinematographe was both camera and projector. Image projection was achieved by a light source beamed through the open back of the Cinematographe, through the lens and onto the screen.<sup>193</sup>

Although no record of its exhibition exists, reportedly, a colonial entrepreneur used the Cinematographe to shoot actuality of lunchtime traffic in Brisbane. The main process throughout the camera's brief history had begun - of recording actuality for the record. This frenzy of activity increased the pool of technical skills in Australia and provided material that potentially could serve other filmic texts, fiction or non-fiction, for commercial and political reasons.

In 1896 the annual Melbourne Cup was filmed, which included shots at Flemington railway station - later screened in Sydney. The technical and dramatic aspects of the film were immediately admired: the train plunging out from the screen at the audience, rising smoke and steam with a soft ambience of light on people as they disembarked.<sup>194</sup> This material is probably the first surviving sample of moving film actuality in the nation's archives. Laughren notes that it is obvious the scene took place in Australia, as the gentlemen barged out first, leaving the ladies to disembark at their leisure. Brief shots of Melbourne's Wellington Parade of 1898 also survive.

The Limelight Department was quick to adopt the kino-cameras in the Army's search for souls, producing propaganda material and filmed records of services, notably a Grand Memorial service in 1898.

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<sup>193</sup> The Australian Broadcasting Corporation, 2001, 'The Limelight Site'.  
[http://www.abc.net.au/limelight/docs/capture/4\\_1\\_2\\_4.htm](http://www.abc.net.au/limelight/docs/capture/4_1_2_4.htm) [3 March 2003]

<sup>194</sup> Laughren, P. 2003, *A Short History of Australian Documentary*, session at the Australian International Documentary Conference 2003.

Early ethnographic film representations were obtained in 1898 by an expedition to the Torres Strait Islands off Northern Queensland. Although its leader was a Cambridge anthropologist, Alfred Cort Haddon, Colonial governments encouraged filming from the early days, sensing its value for Australian propaganda and publicity. Haddon's films are likely to be the first (ever) film produced totally on a field expedition. One hundred years later they were presented as visible cultural evidence in the Eddie Mabo court case when indigenous people used the film to demonstrate the legitimacy of their native title claim.

In March 1898, Haddon purchased a 35 mm Newman and Guardia movie outfit in London, including 30 rolls of raw film 75 feet long, intending to reproduce Islander dances, ceremonies and customs.<sup>195</sup>

Unfortunately, Haddon's Newman and Guardia movie camera was damaged in transit so that films jammed in the tropical climate, leaving only a few successful films. According to his diary, as Long and Laughren write, the films were made entirely by Haddon, a sole camera operator:

Haddon's journal covering the week of 1-8 September 1898, written while the expedition was packing for its departure from Murray Island, indicates that filming had only been a partial success:

.....some rather important things turned up at the last [...]  
For example some Australian natives came in a beche de mer boat and I wanted to get a cinematograph of their dancing - and it was also only just at the last that we could get part of the Malu ceremony danced with the masks that had been made for me - but the dance was worth waiting for. I tried to cinematograph it but as has often happened the machine jams and the film is spoiled - I am afraid that this part of my outfit will prove a failure & the colour photograph is I fear at present of little practical value. I have had many disappointments on this expedition, perhaps I was too sanguine.

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<sup>195</sup> Long, C & Laughren, P. 1993, *Australia's first films: facts and fables*. From part six: *Surprising survivals from Colonial Queensland*. Haddon's Cambridge Expedition to Torres Strait September, 1898. Cinema Papers No.96, p. 33.

Haddon's fears about his films were ill founded. On return to London, he had the few rolls shot on Murray Island processed by Newman and Guardia. Reporting on these on 28 June 1899, J. Guardia told him:

With respect to the Kinematograph, we are waiting for you to return the machine for repair, when we will report as to what has gone wrong with it. In the meantime, we beg to enclose a print from a strip of one of your films. We would submit that there is nothing much to complain of with a machine that produces work of this quality practically on the first trial and under admittedly unfavourable circumstances. We tested all the films, and have developed those that promise good results.<sup>196</sup>

Late in 1898, the Queensland government prepared cinematic material to display the state's industries and attractions at the 1899 Earls Court Exhibition in London. The Minister of Agriculture hastily dispatched its resident artist/photographer, Fred Wills, to Sydney for purchase of a Lumiere cinematographe.

The rich inheritance from Queensland includes the departure of colonial troops for the Boer War, scenes of imported and severely exploited "Kanakas" labour from the Pacific Islands working on the Queensland cane fields, wheat harvesting, a tram ride through Brisbane streets with street and river scenes and Lord Kitchener's visit to Sydney 1910.

The Limelight Department around this time (1900) was producing the nation's first feature film. Not strictly a moving film, *Soldiers of the Cross*, was an evangelist multi-media presentation using actors and colored artistic manipulation.

. . . Soldiers Of The Cross eventually included 3,000 feet of film and 200-coloured glass slides. Some sections involved as many as 50 actors in scenes depicting Christian martyrdom that included victims being forced into a lime pit, prodded by spears in scenes, burnt at the stake, thrown to the lions, or drowned in rivers. It was designed as a recruiting show to attract officer trainees to the new training garrison in Victoria Parade, East Melbourne.

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<sup>196</sup> Long, C. & Laughren, P. 1993, *Australia's first films: facts and fables*. From part six: *Surprising survivals from Colonial Queensland*. Haddon's Cambridge Expedition to Torres Strait, September 1898. Cinema Papers No.96, p. 33.

. . . The impact of *Soldiers Of The Cross* made a powerful impression on audiences. While the more sensitive stifled sobs, others were drawn irresistibly into the action.

The glass slides were produced by photographing the actors (or life models as they were then called) on a set or in front of a backdrop. The Army's Girls Home at Murrumbreena was the location for a number of these shoots.<sup>197</sup>

Soon after frightening audiences with the realistic multi-media depiction of the martyrdom of early Christians in *Soldiers of the Cross*, the Limelight Department "began producing the official films of Australia's Federation Inauguration Ceremonies in Sydney and the opening of the first Federal Parliament in Melbourne . . . " <sup>198</sup> Commercial contracts were negotiated with the Governments of both the colonies of New South Wales and Victoria before filming began.

The pre-eminence of the Limelight Department in fiction film was affirmed by its non-fiction contracts, in its filming of the Australian Commonwealth inauguration in 1901. Commissioned to film the visit to Victoria and New Zealand of the Duke & Duchess of York (later King George V & Queen Mary) and the opening of Federal Parliament, the Limelight Department shot the Royal's arrival at St Kilda pier on May 6, and the Duke laying the Boer War Memorial Foundation Stone in Ballarat.

The Limelight Department had by this stage purchased Warwick Bioscope cameras that allowed more flexible filming, such as a long panning shot of the Royals walking along St Kilda pier.

The Duke & Duchess officially opened Australia's first Commonwealth Parliament at the Royal Exhibition Building in Melbourne on May 9, 1901.

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<sup>197</sup> The Australian Broadcasting Corporation, 2001, 'The Limelight Site'.  
[http://www.abc.net.au/limelight/docs/films/5\\_1\\_3\\_01.htm](http://www.abc.net.au/limelight/docs/films/5_1_3_01.htm) [3 March 2003]

<sup>198</sup> Ibid

Unfortunately, no interiors of the event were filmed by the Department due to the poor lighting available.

The raising of the flag over the Building is the only surviving footage of the event.<sup>199</sup>

Surviving material also includes the documentation of the formal Federation procession through Sydney streets, the proclamation of the Commonwealth and the swearing in of the first Governor General, Lloyd Hopetoun, and the first federal Cabinet.

Commissioned by the New South Wales government, 'The Inauguration of the Commonwealth' was the first film record of the birth of a nation. It ran approximately 30 minutes and was the first Australian film featuring simultaneous multi-camera coverage.

Joe Perry had cameras stationed at various vantage points around Sydney city with specially built timber platforms erected to guarantee an unobstructed view for the cameras.

Although arrangements were made to film from five vantage points, film from only three was actually offered for sale. As the Limelight Department was using Lumiere Cinematographe cameras that had no pan or tilt facility, the films were limited to static wide shots. Perry directed filming and moved between camera locations on a fire engine drawn by horses.

The camera operator at Centennial Park was manned by Staff Captain Robert Sandall who captured the moment of the signing of the official Federation documents inside the official Pavillion.

The films were processed at the Salvation Army headquarters in Melbourne and the first print was screened back in Sydney at Her Majesty's Theatre on January 19, 1901. The Salvation Army sold prints of the Federation films across Australia, Britain and Canada.

Following this commission, the Salvation Army registered Australia's first production company, The Australian Kinematographic Company, in 1901. Most of these films survive and are held by Screen Sound Australia.<sup>200</sup>

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<sup>199</sup> Ibid

<sup>200</sup> The Australian Broadcasting Corporation, 2001, 'The Limelight Site'.  
[http://www.abc.net.au/limelight/docs/films/5\\_1\\_3\\_08.htm](http://www.abc.net.au/limelight/docs/films/5_1_3_08.htm) [Accessed 3 March 2003]

Unfortunately, Australian troops fighting in the Boer War in South Africa were not filmed in the field by Australian cinematographers, although some appear in British filming. A review of Australian and other imperial units from the Boer War was filmed in Sydney during the Federation inauguration ceremonies. Although essentially a chronological sequence of actualities, the Salvation Army unit's filming of the inauguration has a just claim on being Australia's first documentary film.

The momentum of the whole film industry in these early times, its financial and technical spin-offs, generated energy for the actuality based film industry. This was coupled with the privilege of a burgeoning feature film industry, which accentuated the grip of early documentary formats in Australia. The dependence of documentary on leftover funds trickling from feature films continues to this day.

Despite a sluggish start, the Limelight Department's *Soldiers of the Cross* (1900) was loosely seen as Australia's first feature film. It was made with a purpose to preach, educate, propagandize and present the position of particular evangelical religious movements.

Many claims have been made about *Soldiers of the Cross* - that it was the first feature film in the world, the first full-length film, the first religious film, the first propaganda film, and even the first 'spectacle' - all of which depend entirely on definition.<sup>201</sup>

In the wake of *Soldiers of the Cross*, no feature film appeared until the *Story of the Kelly Gang* in 1906, believed to be the first true feature-length film made in the world.<sup>202</sup>

In the hour or more that it lasted on the screen, *The Story of the Kelly Gang* presented the highlights from the bush-ranging career of the Kelly brothers. Using no inter-titles, it was entirely dependent on an on-stage

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<sup>201</sup> Pike, A. & Cooper, R. 1998, *Australian Film 1900 - 1977. A Guide to Feature Film Production*. Oxford University Press Australia, p. 4.

<sup>202</sup> Australian Bureau of Statistics, 'Year Book Australia Special Article - The Australian Cinema - An Overview'. <http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/c83e935009d14cca2569de0025c18a!OpenDocument> [4 march 2003]

lecturer, or often a group of actors, to provide continuity and to identify the characters. Later films on the Kellys took a defensive stand against the threat of censorship by adopting a stridently moralistic tone, offering the story as a tribute to the police and as an example of the dangers of anti-social behaviour .....<sup>203</sup>

The Salvation Army's substantial contribution gradually faded and the Limelight Department wound up in 1910. The following year marked the beginnings of a surging Australian feature industry that remained buoyant until the late 1920s, when sound technology and the encroaching US distribution-monopolies killed it for more than 40 years. Despite this, during the 'silent era' between 1900 and 1930, around 160 commercial feature films were produced in Australia, and a further 115 between 1930 and 1960.

The relative brevity of many of these early features encouraged documentary material to be produced as 'fill' to the programming. Sometimes, feature and documentary were conjoined. An example was *Eureka Stockade*, the third Australian feature film released in 1907. It was advertised as "reproduced with faithful fidelity to detail and throbbing with the pulse and memories of the Roaring Fifties."<sup>204</sup> This was programmed with "Fifty-Five Years After," a contemporary portrait of Ballarat where the Eureka insurrection occurred.

Locally made documentaries largely made up support programs for the US imports. For example, theatrical showings of Charlie Chaplin's early classic, *Tillie's Punctured Romance*,<sup>205</sup> was supported by Australian documentaries identified as *scenery* and *travelogue*.

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<sup>203</sup> Pike, A. & Cooper, R. 1998, *Australian Film 1900 – 1977, A Guide to Feature Film Production*. Oxford University Press Australia, p. 6.

<sup>204</sup> Photograph of the original poster in: Pike, A. & Cooper, R. 1998, *Australian Film 1900 - 1977. A Guide to Feature Film Production*. Oxford University Press Australia, p.8.

<sup>205</sup> *Tillie's Punctured Romance*, 1914, Directed by Mack Sennett.

#### 4.4 Actuality films

As mentioned at the start of this chapter, the archaeology of Australian film is very much stratified by actuality films - the majority of all film in archive being of factual nature. According to the National Screen and Sound Archive, actuality is difficult to define, but is best perceived “as motion film which records an actual event”. The motion film surviving in Australia from the mid-1880’s until the early 20<sup>th</sup> Century is *actuality* in these terms. This raw actuality was elaborated to fulfill a range of public and private needs, namely: promoting public policy; boosting tourism; enticing immigrants; generating industry and commerce; luring religious converts; recording historical, cultural and sporting events; entertaining; innovating; and preserving ethnographical evidence.

Actuality films recording daily life in Australian cities were made as early as 1896, and they provide a staple income for early Australian filmmakers.<sup>206</sup>

The significance of silent actuality films cannot be over-estimated for the documentation of Australia’s national history. Fortunately, other documentation forms such as press reports, and archival papers still exist and are the only means by which identification and contextualization for these films can be made.

Broadly, these early Australian documentary productions fell into three categories, each now briefly outlined. Although with some variation, the classifications are based on those used by the National Screen and Sound Archive, each with a motivation to instruct, propagandize and bring commercial advantage to the film as a product in its own right or as packaging and promotion around another product. These films were designed with agendas in support of imperial or colonial enterprise. In spite of their obvious commercial orientation, the public

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<sup>206</sup> Pike, A. & Cooper, R. 1998, *Australian Film 1900 - 1977. A Guide to Feature Film Production*. Oxford University Press Australia, p. 2.



perception was developing to where it stands today, that documentary is a reliable representation of reality.

#### **4.4.1 Documentary and journalism**

It is difficult to set a time when this actuality film was transformed into a genre that could be defined as documentary. In the Australian experience, the definition arrives from the logical processes involved in production. Examples of the genre had rudimentary filmic editing bringing a journalistic amplification or spin to a story through interpretation or narrative, which was assisted by titling and inter-titling.

Thus documentary filmmaking and screened based journalism emerged in Australia during the 1900s and was an established genre by 1910 to the extent that a tradition continues today. Many of the filmmakers from the silent era had a particular aim, purpose or point of view to which they needed to express or explain. Documentary journalism took a firm hold in Australia and it seems that a simple tradition, to expose an issue from a journalistic position, may well have grown with the form. Ever present was the ethic of responsibility to the filmed subject, however, formulating this in philosophical debate and discourse has only taken form in the last twenty years.<sup>207</sup>

#### **4.4.2 Industrial/commercial**

The early exploitation of film in the promotion of Government and public policy had emerged under Colonial Government. This work, primarily by the States, continued after Federation, although the surviving material suggests that private companies, and not agencies of

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<sup>207</sup> Turner, G 1996, *Post-Journalism – News and Current Affairs Programming from the late '80s to the Present*, in 'The Documenatary: Strangely Compelling', Media International Australia, No 82, p. 78.

Government, carried out the production. An early example was *Living Hawthorn*, made in 1906. In almost 15 minutes of filming by William Alfred Gibson and Millard Johnson, *Living Hawthorn* employed a mix of setups and observational style. These include subjective looks into the camera and elements of the industrial and commercial life of Hawthorn, a prominent Melbourne suburb. The film includes a tannery, naval cadets, a blacksmith's shop, an estate agent, electrical firms, caterers, coachbuilders, a horse-drawn tram and the mayor arriving at the Town Hall.

Some footage made in 1910 survives from a series of documentaries exploring daily life in Melbourne. The funding of these early 'industrials' is unclear, although given their scope and enterprise it is likely that they were underwritten to some degree by the Victorian state government.

The majority of the 'industrials' were made in the 1920s, making up the bulk of the documentary holdings of the National Film and Sound Archive. Content is directed to a rich range of Australian locales, focusing on agriculture and, increasingly, secondary industry. Specific industries filmed in some detail are: felt hat making, soap and tea production, clothing, footwear, household utensils, and other consumer staples. These 'industrials' are linked intimately with public policy in a public relations sense; specifically the stimulus of British immigration in the so-called "development decade" of the 1920s, but also reducing Australian reliance on imported consumption. Some were targeted at British cinemas and migrant ships from the UK. Others, such as the popular *Know Your Australia* series, were devised as shorts to support feature programs.

'Industrials' had commercial as well as promotional correlatives - film advertising also showed glimpses of processes used in the making of consumer goods. The 1920s also introduced political advertising into the Australian film journalism equation, much of it innovative in concept and professionally executed.

#### 4.4.3 Tourism and promotions

Raw footage of Australian street scenes and rural vistas were readily crafted into documentary formats to promote tourism, which were driven by regional tourism authorities and local government. The public relations drive was advanced by mounting levels of private ownership combined with higher levels of affluence and consumption in some sections of Australian society. The early 1920s also saw the advent of the first formal promotion and subdued propaganda films by government.

Increasingly, structures were built on federal lines. At one level, local authorities commissioned documentaries from private production companies to publicize regional attractions and facilities. State institutions such as Victorian railways also drew largely on private resources to produce popular tourism documentaries on the theme of *See Australia First*. Although designed essentially in terms of tourist scenery and travelogue, these documentaries contained a wealth of detail ensuring their permanent value as historical texts. At the apex of the federal structure, the active engagement of the Commonwealth in promotional documentary created a continuing production impulse of enduring influence.

The creation of the Commonwealth Cinema and Photographic Branch<sup>208</sup> partly reflected some frustration over the inadequacy of cinematic coverage of Australian participation in World War 1 (see below).

Although the Australian economy was patchy during the 1920s, it was buoyant enough to warrant publicity as the *Development Decade*. Series such as *Know your own Country* were designed ostensibly to promote consciousness of national growth and progress in an objective

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<sup>208</sup> The Commonwealth Cinema and Photographic Branch was established in 1921 from which the Australian National Film Board was appointed in 1945, becoming Film Australia in 1972.

way. The series was also subtly reinforcing policies of free enterprise and federal co-ordination.

The Commonwealth unit compiled conventional travelogue on scenic enticements of national significance, such as North Queensland and the Barron Falls. The unit also recorded news events of Commonwealth significance, such as the arrival of vice-regal dignitaries, although it did not compete directly with an expansive commercial newsreel industry (see below).

#### **4.5 The developing ethic of exploration and adventure 1920 – 1930**

Australia's early contribution to the foundations of ethnographic film on the Torres Strait Islands established an enduring strand, infusing both Australian documentary and elements of its feature film industry. Through the 1920s, scientific and anthropological expeditions to central and northern Australia were filmed copiously. In terms of locale, organization and structure, if not in rationale, ethnographic filmmaking overlapped with broader genres of exploration and adventure. By now the camera subject was being positioned before the lens, in both an ethnographic and journalistic sense. This language of film representation was developing as a text in its own right. Production companies soon learnt that with editing, the subject's image and voice could simultaneously convey politicized, erotic, prurient, exploitative and colonialist meanings.

A crucial figure in the 1920s was Frank Hurley whose career as a photographer and filmmaker spanned more than 40 years. Hurley was a pioneer cinematographer who worked closely with the explorer, Francis Birtles, the subject of two early exploration documentaries, *Across Australia with Francis Birtles* (1912) and *Across Australia in the Track of Burke and Wills* (1915). In 1915 Hurley was the cinematographer for another Birtles venture, *Into Australia's Unknown*. These integrated tourism, ethnography, and adventure expeditions are examples of a

genre that continues today as documentary in an extended form or as current affairs in a fifteen to twenty minute form.

My research has found no formal records of how agreements were made, if any, with camera subjects in respect to their consenting to be filmed. The camera operator/s of the day would have assumed a right to film – especially of indigenous subjects who were considered less than citizens. This ideologically bestowed right’ came through the power of commercial interest, social Darwinism, class and influence – often with government or military approval – so that the camera was officially ‘entitled’ to ‘objectively’ record events and subjects.

Beginning as a recorder of the milieu of a dwindling band of Australian explorers, then going on to be a successful war photographer in World War 1, Hurley’s journalistic contribution to Australia’s visual archive of its participation in World War 1 was constrained, severely, by (British) imperial command – a strategy that remains embedded in military campaigns.

Australian photographers and cinematographers were not given formal entry to Gallipoli, the whole debacle, including the execution of deserters as an example to others, being closely controlled by the British. Thus, only British cameramen captured the meager quantity of surviving footage of Australian troops in war. Later though, for the Australian War Records Section, Hurley and other official war cameramen managed to produce such titles as *With the Australian Light Horse in Sinai and Palestine*.

Similar British-High-Command constraints on early Australian war cameramen applied early on the Western Front in France, although some access was given late in the war to Hubert Wilkins, an adventurous polar explorer and an innovative cinematographer. Wilkins devised an ingenious process of fixing a camera to a motorcycle as a means of taking field-actuality in the Balkans war of 1911.

At 24, Wilkins was hired by the Gaumont Film Company to film the Turkish side of the Turko-Bulgarian War of 1912. Regrettably, he could not convince the Turkish army of the merits of the motorcycle based actuality and so he was denied absolute access. Had this occurred an Australian war film might have rivaled the legendary journalistic record of the Mexican revolutionary, Pancho Villa, filmed in action at about this time. Later in 1913, Wilkins became second in command of Vilhjalmur Stefansson's expedition to the Canadian Arctic.

Hubert Wilkins filmed Australian soldiers in France late in the war for the Australian war history team. Although an aviator, his main duty was to photograph the frightful fighting in the field. He was later presented with the Military Cross for his pains in making an ethical decision and putting down the camera in order to rescue wounded soldiers in the Third Battle of Ypres, where at Passchendaele, allied forces suffered a quarter of a million casualties.

Wilkins later received a Bar for his Military Cross for his provisionally leading a company of American soldiers whose officers had been killed. He went on to Russia for more film work where he journalistically reported the famine inside the country, which was still under the squeeze of the great revolution of 1917.

Meanwhile, with the Australian Light Horse in Sinai and Palestine in 1917-18, Frank Hurley was given greater filming opportunities and produced a fascinating record. After the war, he developed as an ethnographic filmmaker with *Pearls and Savages* (1921)<sup>209</sup> a classic study of the indigenous peoples of Papua New Guinea.

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<sup>209</sup> Hurley, F. 1924, *Pearls and Savages*, Putnam's Sons, New York.

*Pearls and Savages* was first released as a film in 1921. It records Hurley's expeditions in New Guinea combining ethnographic fieldwork, film and photographic recording with aerial surveys and specimen collection for the Australian Museum.

Even more memorable was an outstanding contribution to the filming of polar exploration when Hurley made three visits to Antarctica with the great explorers Douglas Mawson and Ernest Shackleton. The sequence of documentaries compiled from his footage, place Australia fairly in the vanguard of journalistic accounts of early exploration and adventure filming. Two imposing examples are *Home of the Blizzard* (1913) and *In the Grip of the Polar Ice* (1917).

Film by Hurley still casts a long shadow, his qualities enhanced by contemporary technology included in a successful documentary showing on the vast IMAX screens in Australia in recent years has been *Shackleton's Heroes*, a dazzling restoration of actual film more than 80 years old.

#### **4.6 Film heritage**

By any criterion, the achievement of the Australian film industry had been prominent internationally, in the extended foundation film period, between the early stirrings in the mid-1890s and the sound revolution of the late 1920s. Reliable archival estimates by the National Screen and Sound Archive suggest that at least 258 feature films were produced over these 35 years. While the actuality fragments and articulated silent documentaries held by the Archive contribute indelibly to the national heritage, they represent only a fraction of a substantial corpus of production that can be identified, in part, from newspapers, film journals and archival references. Although the holdings of silent documentaries and journalistic films are attenuated, they are sufficiently representative to encourage general assessment of the product.

There are areas of outstanding achievement, notably in ethnography and adventure film journalism where, of course, Hurley's films stand out. There is no reason to doubt the energy and professionalism inherent in what survives. The innovation is indicative of the evolving broad competence of what became a thriving industry.

Touches of ingenuity and imagination are outnumbered by the tendency for production to either trivialize film subjects or dominate them by conceptual routine. This colonialist power over them, silenced the subjects, along with their stories and political views. It was particularly the case with the filming of Indigenous subjects where, like the stills photography tradition, film set-ups with patronizing 'wild-west' interpretation of Indigenous culture were usual. Although characterized by sound professional values, the bulk of documentary filming was largely standardized, habitual and predictable with an ethic or representation driven by the mores of colonialism.

This should not be taken as unfair criticism of an industry that did what was asked of it. Given the constraints of imperial control, distance, market and audience the Australian cinema performed exceedingly well during the silent-era. It must be conceded, though, that feature film production showed rather more flair and innovation. Although local features were critically and commercially successful, they still played second fiddle to the encroaching American film product. In turn, the documentary genres were subordinated in programming to both American and Australian features.

It can be argued that in technical terms, the Australian documentary filmmakers did much to the form internationally. Where there were pockets of excellence and imagination the merits would usually be recognized and imitated in other markets. Despite this, there is no intrinsic reason other than US public relations domination and timeliness as to why a pioneering US documentary, like Edward S. Curtis's *In the Land of the Head Hunters* (1914), should appear in the textbooks rather than Hurley's *Home of the Blizzard* (1913). Alternatively, why should Herbert G. Ponting's Antarctic films made in 1910-12 be lauded as trail blazers when Hurley's more extended, and more memorable, documentary records were denied similar recognition.

An irrefutable argument to explain this is that Ponting got there first, and was a British filmmaker rather than a colonial. There is no inherent logic why the first and northern



hemisphere-born should be the best, but invariably the spoils on the history of innovation are written that way. It is also accepted history that the paradigm leaps in documentary film development were made in a handful of countries: the US, Russia and France.

#### **4.7 The coming of sound to the factual film heritage**

The American film academic Bill Nichols suggests that nowhere in the world does the coming of sound to documentary correspond exactly to the coming of sound to the feature fiction film (1926-1928).

Like cinemascope, color, and most optical effects, sound films were a possibility long before they were a reality. If the exact moment when sound bursts upon the feature fiction film is a matter of technology, financing, aesthetics, and audience expectations, it is no less a matter of similar issues, resolved in a different way, for documentary film. (In many cases silent documentary filmmaking remained entirely viable well into the 1960s and is exemplified by such work as John Marshall's films of the Bushmen shot in the Kalahari desert and in the 8mm and Super 8mm home movies that remained prevalent until the rise of the home video recorder.)<sup>210</sup>

The 1930s was the decade where the invention of the sound component of film made the greatest impact, as documentary became commentary-bound. This developed out of the authority of the all-knowing 'father voice', the popularity of the lecture circuit in Europe and the UK, and the voice of radio. Documentary films were based largely on pedagogical intent to teach or instruct the viewer. The coming of sound also saw a notable decline in the use of still photographs in anthropology and in monographs. This occurred throughout the world. With recorded sound, there was a relocation of the interest in filming objects as photographic studies to filming them with structural and psychoanalytical purpose. With sound, a camera was recording the thread and fabric of culture. With this development grew the need to

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<sup>210</sup> Nichols, B.1995, *Transformations in Film as Reality. Documentary and the Coming of Sound* on the Yamagata International Documentary Film Festival website. [Accessed 30 July, 1995 - no longer available]

acknowledge the ethic of responsibility for the filmed subjects. Commentators like the French filmmaker, Jean Rouch, would have liked documentary to evolve rather less exploitatively:

And tomorrow? . . . The dreams of Vertov and Flaherty will be combined into a mechanical “cine-eye-ear” which is such a “participant” camera that it will pass automatically into the hands of those who were, up to now, always in front of it. Then the anthropologist will no longer monopolise the observation of things.<sup>211</sup>

As film language evolved, the fictional way of story telling was naturally applied to documentary. Entertainment values and the narrative of the fictional form were necessities that journalist-based film inherited, and these were always over and above the considerations of informed consent and empowerment for the filmed subjects:

. . . the advent of sound in documentary posed an array of alternatives. These ranged from poetic narratives to evocative portraits and from studio-produced commentary to the actual speech of people in their everyday life. The choices made among these alternatives are part of a larger story of the nature and function of documentary film in the period from the late 1920s to the late 1930s when a dominant mode of expository documentary took hold and became the equivalent of the classic Hollywood mode of production.<sup>212</sup>

Australia’s fine production record through the silent years did not save it from the upheavals of the 1930s, caused initially by technological developments in sound and the emerging market dominance of American distributors. This was to be accentuated by the Great Depression.

In Australia, production consolidated in the hands of big business, leading to a reliance on intensively capitalized studios. The ethic of profit came with the commercial agendas of specialized facilities. This had a smothering effect on smaller more versatile units and non-professional production. Sound arrived at a bad time for the Australian industry. The Great

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<sup>211</sup> Rouch, J. quoted in Ginsburg, F. *Mediating Culture. Indigenous Media, Ethnographic Film, and the Production of Identity*, in Devereaux, L. & Hillman, R. (eds.) 1999, *Fields of Vision - Essays in film studies, visual anthropology and photography*. University of California Press, p. 256.

<sup>212</sup> Nichols, B. 1995, *Transformations in Film as Reality. Documentary and the Coming of Sound* on the Yamagata International Documentary Film Festival website. [30 July, 1995] p. 1.

Depression was already affecting the whole society and this further aggravated the situation for local filmmakers through the depressed conditions in the exhibition trade.

In these circumstances, the nation could sustain only one substantial film organization based on Hollywood lines, employing regular acting and production staff, evolving a 'star' system and a large-scale publicity machine. This was *Cinesound Review*, which along with Errol Flynn, was seduced by Hollywood. Attempts to emulate *Cinesound's* success soon foundered. There is scant literature on the factors affecting the temporary demise that occurred at this time for non-fiction film. In Australia the industry may have fallen victim to the effects of the depression coupled with increased government and corporate control in ways resembling the conditions in the northern hemisphere.

. . . suppression is nowhere more evident than in the fate of the workers' newsreels produced in a number of countries from approximately 1928–1939. These American, European, and Japanese counterparts to the newsreel work of Dziga Vertov, produced by the U.S.'s Workers' Film and Photo League, The Association for Popular Culture in the Netherlands, the Popular Association for Film Art in Germany, and the Proletarian Film League (Prokino) in Japan, are typically neglected in histories of the documentary.<sup>213</sup>

This corporate control would evolve and become more sophisticated and virulent over time to the extent that public relations is systemic today as a means of world public control. A climate of this nature does not permit debate and acknowledgment of an ethic of responsibility to the filmed subject as standard to the profession.

The vitality of documentary production in Australia during the silent period gave way to a muted, even enervated, climate of subdued activity. Hurley remained predominant, with *Cinesound* stalking his documentary unit in its Sydney studios, successfully exploiting an

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Bill Nichols is Professor of Cinema Studies at San Francisco State University. He has edited two widely used anthologies, *Movies and Methods I and II*, and is author of *Ideology and the Image*, *Representing Reality*, and *Blurred Boundaries*.

idiosyncratic Australian filmmaker. His work executed with an ethic of military precision comprised mainly grandiose, superbly crafted nature documentaries and effective industrial film shorts for government and private sponsors - both of which evoked enthusiasm in a wider Australian audience hungry for information and entertainment.

Documentary production in Australia in the 1930s saw little of the excitement then transforming non fiction film in England, where John Grierson had founded a new documentary school with film-makers like Harry Watt, Alberto Cavalcanti, Basil Wright and Humphrey Jennings.<sup>214</sup>

The documentary movement, defined by the now well-known philosophy of John Grierson, began the non-fiction film tendency (in the English language at least) to focus on manual workers and the less fortunate in society. Filming in this way has since developed and grown into the levels of patronizing camera voyeurism apparent across the screen actuality of today. The difference in power, the filmmaker over the subject being filmed and represented, is justified in these modes by notions of public interest. It becomes an appropriation of Vertov's philosophy for the democratic and capitalist west; assuming that by exposing in film the hardships of the less fortunate, that government and big business will be forced by the people (the audiences) to bring about change for those less fortunate.

Alistair Innes,<sup>215</sup> one of the junior workers in the Grierson unit at Soho (London) at the time, noted a senior member of the unit, Alberto Cavalcanti, cynically and prophetically referring to Grierson's methods, as simply: "a feeding frenzy on the failed".

Pike and Cooper observe dryly that the Australian filmmaker Frank Hurley's single-minded focus on accustomed genres and issues made him oblivious of John Grierson's philosophies.

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<sup>213</sup> Ibid.

<sup>214</sup> Cooper, R. and Pike, A. 1998, *Oxford Australian Film 1900 - 1977*. Oxford University Press Australia, p. 151.

<sup>215</sup> Innes, A. 2002, Interview on the Grierson documentary school, [April 5, 2002] Sydney.

This lack of interest in Australian society's victims at a time of chronic economic malaise and economic chaos was reflected in the activities of the Melbourne-based Commonwealth Film Unit (CFU). Admittedly the CFU was constrained by a conservative government wedded to economic orthodoxies and a government's philosophy of 'blind-eye' optimism for Australian product – leaving most film journalism safely within the genre of public-relations focused industrial film.

. . . much of the unit's work was narrowly functional and allowed little scope for film-makers with new ideas about the medium. Exceptions, did, however, occasionally appear, and in 1934, Lacey Percival made for the government one of the finest of all Australian documentaries, *Among the Hardwoods*, a brief survey of the timber industry in Western Australia, making use of the natural sounds of the bush in place of conventional commentary and music, and capturing a series of striking images of light and shade in the forests.<sup>216</sup>

If Australian documentary production was flat and mostly uninspiring, lacking the excitement that Grierson and his movement had brought to the UK, its established traditions and professionalism contributed notably to soaring popularity of newsreels from the early 1930s. Two regular sound accompanied news magazines emerged: Cinesound Review, produced by the major Australian studio and built on the silent Australiasian Gazette; and Movietone News, its rival, sponsored by American Movietone.

In an era when radio news was minimal in length, content and professional values, the newsreels, shown in local cinemas as supports for feature films or in special newsreel theatrettes, provided the only real alternative to the newspaper press. Radio had low production values in comparison to film - it practiced the 'rip and read' process where content was voiced directly from newspapers.

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<sup>216</sup> Cooper, R. & Pike, A. 1998, *Oxford Australian Film 1900 - 1977*. Oxford University Press, Australia, p. 151.

The rivalry between the two newsreel companies for scoops, better angles, and newsworthy footage was just as fierce as among contending newspapers on daily deadlines, perhaps even more intensely so. The legendary tussles and the evolving content and texture of the newsreels are splendidly evoked in *Newsfront*, one of the finer feature films made in the renaissance of Australian filmmaking in the early 1970s.

Inevitably, the conditions of competition bring unethical behavior when workers are pursuing the ‘scoop’. Despite this, there is no record of whether there was debate over a need for a standardized best practice and a code of ethics for the newsreel cameramen.

The journalism profession at the time was centered in the print media. A key reason to establish print media codes of ethics was to “ensure public confidence in the Press”.<sup>217</sup> Codes of ethics began to find relevance in Australia during the Great Depression when there was poverty, crime and a perceived, if not real, disintegration of morals in society and its institutions. As society’s role models, agenda setting state institutions were widely criticized for this moral and economic decay.

The first journalist code of ethics was developed in 1923 when the American Society of Newspaper Editors formulated canons of journalist conduct. This was followed by efforts in the late 1930s to draw up codes of conduct in the United Kingdom and South Africa. While discussion about a code of ethics began in Australia in 1926, it wasn’t until 1944 that the Federal Conference of the Australian Journalist Association approved a uniform code. Devised by three New-South-Wales journalists the code applied predominantly to the print media, with scant consideration given to newsgathering by the highly competitive newsreel cameramen.

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<sup>217</sup> Sparrow. G. (ed), 1960, *Crusade for Journalism*, AJA, Melbourne, p.131.

#### 4.8 War journalism 1940 – 1950

During World War Two the feature-film industry was largely dismantled to meet the overriding demands of the community for war propaganda, background information and news. These were the years of glory for the newsreel cameramen; their journalistic functions intermeshed with the culture and technique of documentary from the government film unit, revitalized in a wartime Department of Information.

Newsreels and documentaries were produced under contract to government in its intensely propagandized state of war. Production personnel, particularly cinematographers, were transferred to military and information services after they were drafted. The bulk of scarce film stock was turned over for government purposes - where often, there was only enough to supply the two newsreel services. The few feature films made during the war were dominated by martial themes. Although the government controlled output and policy it relied heavily on the private sector for production and distribution:

The Commonwealth Department of Information was responsible for the official propaganda and news program, and a National Films Council was set up to advise it, with leading distributor and exhibitor representatives . . . .The government also recruited cameramen to serve as official war correspondents on overseas fronts and within Australia, but their work was edited and transformed into a theatrically acceptable form by private companies.<sup>218</sup>

The propaganda aspects in this time of production were largely confined to the rationale and objectives of each film. Overtly ideological government stances were largely avoided, and what government wanted was so vaguely conceptualized that producers were largely free to impose their own creative momentum. Feature film narrative and styles were often employed in documentary frameworks to highlight the message and draw audiences. Established feature

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<sup>218</sup> Cooper, R. and Pike, A. 1998, *Oxford Australian Film 1900 - 1977*. Oxford University Press, Australia, p. 188.

filmmakers from the pre-war years, like Charles Chauvel and Ken Hall, the producer in charge of Cinesound, turned their skills to wartime information and morale building.

More than 50 years later the coverage by Australian newsreel cameramen in the front lines as war correspondents remains one of the most enduring and distinguished facets of Australian film production. Despite rigorous social and economic control, the national audience still had a choice between the two national newsreel producers. Although the content parameters were provided to each by the Department of Information, which organized the coverage of war, the compilation of the film newsreels was often sharply different.

As an Australian company, Cinesound offered more Australian war content, presented more emotively and with an emphatic sense of national emergency at the peak of the New Guinea campaigns in 1942-43. Movietone was more reflexive of US priorities and experience, although not indifferent to the Australian content. Consequently, the passionate Australian nationalism and sense of dire peril in fusing the Cinesound reels were less evident in Movietone.

The ubiquitous Frank Hurley directed the first official team of Australian war cameramen in the Middle East, including a gifted young cinematographer, Damien Parer - both had the status of official war correspondents. Their newsreels were shown locally and internationally to inform and stimulate support from the public on the war effort.

It was the Papua New Guinea campaigns that provided an opportunity for Parer's extraordinary powers as a cine-journalist to emerge. *Kokoda Front Line*, a Cinesound documentary filmed by Parer in 1942, won Australia's first Academy Award. *Kokoda Front Line* shared the award with three US wartime documentaries: *Battle of Midway*, *Prelude to War* and *Moscow Strikes Back*.



The impact of *Kokoda Front Line* surprised everyone. When it opened in the State Newsreel Theatrette next to the State Theatre in Market Street, Sydney, on 22 September 1942, queues quickly formed around into George Street. It was reviewed on the feature film page of the *Sydney Morning Herald* and the *Daily Telegraph* and Damien himself became a star.<sup>219</sup>

Parer had originally trained as a stills photographer and had worked with leading Australian photographer Max Dupain, before he transferred to moving film. In 1933 at the Pagewood studios, Parer worked with the Australian feature film director, Charles Chauvel. In 1940 he joined the Australian Department of Information and was sent to the Middle East. This gave him journalism war experience, which he took to New Guinea, as the war intensified there.

Correspondents of his caliber took many risks in filming very close to the fighting so that their work became an important journalistic record of the war. Working close to the psychological aspects of war meant that camera journalists like Parer and Wilkins (above) were affected by what they were filming. Accordingly, they developed an ethic of professional responsibility. This is particularly evident in the sensitivity of recently discovered material found in the National Archives in Washington, thought to be Parer's last completed film. Though sensitively shot with great respect for the dead, the two-minute piece is very grim, in documenting a massacre brutally wrought by Japanese forces on the pro-American Chamorros people of Guam.

The surfacing of this and other archive material after the 1994 publication of *War Cameraman: the Story of Damien Parer*, culminated in Neil McDonald writing *Damien Parer's War*. This 2004 book revealed how Parer, and others, were far more than mere war correspondents, they were acting as observers and liaison officers reporting directly to the commanding general, extending their role to the level of military intelligence. This "was a situation without

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<sup>219</sup> McDonald, N. 1994, *War Cameraman: the Story of Damien Parer*, Lothian, Melbourne, p. 167.

precedent in the Australian Army, or perhaps any army in the world”<sup>220</sup>. According to McDonald, Damien Parer saw himself primarily as a journalist and so appeared to have no concern about any conflict of interest.

When they reached Myola, Damien filmed the underloaders pushing the cargo out. Judging from the footage, Damien must have leant out of another doorway to secure some shots ‘from outside the plane’ of the supply bags falling away from the aircraft. As he filmed the airfield from the air he noticed that the planes below seemed to be parked too close together.

On his return Parer may have gone directly to [Lt General] Rowell, or could have passed the information through [war-co] Chester Wilmot. Certainly, after checking for himself, Rowell contacted General Whitehead, the American air commander, and ‘suggested’ the planes be dispersed. Whitehead promised to get onto it the next day.<sup>221</sup>

On that next day, the Japanese bombers plastered the US transporters, which remained close together, wing-tip to wing-tip. The planes, supplies, support structures and aviation fuel exploded fiercely while the dry grass under them spread the fire to other equipment. Phillip Knightly discusses further, Parer’s dual role as journalist-filmmaker and military intelligence officer.

At first Parer’s bosses were delighted. But when he defied the censors at GHQ to pay tribute to his friend, New Guinea Commander Lieutenant General Sydney Rowell, in the opening of *Kokoda Front Line* and on national radio just when the Australian Commander in Chief Sir Thomas Blamey was about to sack him, it seems word was passed from the Blamey men at Army Public Relations to the Department of Information that something had to be done about Parer. Why else was Parer sent to cover high adventure in Timor just when the ugly battles in New Guinea were reaching their bloody climax at the beachhead? And what happened to Parer’s footage of Japanese soldiers being machine gunned in the water after the Battle of the Bismark sea? They are described in his shot-lists but have mysteriously disappeared from the film now held by the Australian War Memorial. It appears higher authority thought Parer’s realism might sap public support for the war. This, I believe, was what was really behind the constant antagonism that Parer’s deskbound bosses showed a man who towered above them.<sup>222</sup>

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<sup>220</sup> McDonald, N. 2004, *Damien Parer’s War*, Lothian, Melbourne, p. 207.

<sup>221</sup> Ibid p. 205.

<sup>222</sup> Knightly, P. 2004, ‘A Final Word’, in McDonald, N. 1994, *Damien Parer’s War*, Lothian, Melbourne, p. 356.

The production company for *Kokoda Front Line* was Cinesound Productions with Ken Hall as head and producer of all the key Parer newsreels. The sole operating cinematographer-journalist was Damien Parer, while the film was edited by Terry Banks and narrated by Peter Bathurst and Damien Parer.

Made in 1942, *Kokoda Front Line* is essentially a journalistic newsreel showing the poorly equipped Australian forces struggling against the better-equipped Japanese along the Kokoda trail in the New Guinea Highlands. While introducing the issues as reporter, Parer emphasizes the serious threat of the Japanese imperial forces. This was an unusual angle for the newsreel genre. It was possibly a world first in regard to blending the roles of cinematographer and journalist. It may also be the world's first journalist piece-to-camera where the authority of actually being there, provided Parer the opportunity to put a spin on the piece. This became his ethic of journalistic responsibility; affected by what he saw, he designed the film to extol the bravery and dedication of the poorly prepared Australian armed forces, bogged down in traumatic and impossible jungle conditions.

..... *Kokoda Front Line* was not only propaganda. Hall used the material Damien gave him to highlight the importance of the New Guinea terrain, the need for [Australian troops'] camouflage and the way the Japanese had used their green uniforms, body paint and face veils to make themselves invisible in the jungle.<sup>223</sup>

Hall wrote the piece to camera for Parer as journalist/reporter.

Bank's editing did not impose a spurious narrative on the material. Instead, *Kokoda Front Line* illuminated the soldiers' experiences through a series of highly concentrated impressions. The commentary failed to mention that the Australians had been retreating – Hall decided to leave that to the newspapers. Even so, when Banks screened the rough cut for Ken Hall, they all realised the film did not have a finish. Then Stanley Murdoch suggested superimposing the shot of Parer saying, 'I've seen the war and I know what your husbands, brothers and sweethearts are going through. The sooner we

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<sup>223</sup> McDonald, N. 1994, *War Cameraman: the Story of Damien Parer*, Lothian, Melbourne, p. 166.

realise the Jap is a well equipped and dangerous enemy we can forget about the trivial things and get on with the job of licking him.<sup>224</sup>

The use of a more portable camera by the newsreel format was well established by the time World War II erupted. Priority was given to the authoritative Australian Department of Information in its process of obtaining reliable and actual war footage. This was so that it could produce regular stories that would shift public opinion on the war. The relationships between sequenced film-truth and narrative, and between visible evidence and the translated and edited representation was now evolving at a considerable pace.

In shooting *Kokoda Frontline*, Parer disobeyed the Department of Information and walked from Port Moresby to Kokoda - a Papuan man carried his bulky camera equipment. He was then able to film the wounded and their hardship. An Academy Award was presented to Hall at the end of the war. Parer had been killed by then, but Hall's speech acknowledged his skill, resolve and fearlessness.

*Kokoda Frontline* was filmed as the Australian army was retreating. Slogging through the mud, mist and malaria of the Kokoda trail with the front-line troops Parer produced war images of immense power and emotion. These had a mesmeric impact on Australian, and subsequently, world audiences. Parer achieved an iconic status in the Australian consciousness of war that has never been rivaled, except perhaps by protégés like the next generation of Australian cinematographers, David Brill and Neil Davis, who specialized in the wars of Indo-China. Parer's images have since been reproduced endlessly in moving and still formats, often without acknowledgment.

*Kokoda Front Line*, won Parer a lucrative post with Paramount Films as a war correspondent covering the war in the Pacific with American marines. He was killed in 1944 while filming

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<sup>224</sup> Ibid.

with front-line troops on Peleliu Island. He was using a technique very much used today outside courts, parliaments and the like by television crews - walking backwards while filming the subjects' facial expressions. His ethic of camera responsibility acquired that extra level of truth, beyond filming the subjects as a group in a wide shot. Writing to Ken Hall a few days earlier, he said: "I want to get the look in a soldier's eyes as he goes forward towards the enemy, very probably towards his death . . ." <sup>225</sup> These same US troops, on constant lookout for souvenirs, looted his equipment, exposing to the bright Pacific sunlight, his latest reels of film.

Parer's bravery and sixth sense, that many camera operators develop, enabled him to obtain unique footage and survive under fire. Bill Carty, another Australian cine-war correspondent was also nominated for an Academy Award for his documentary, *Jungle Patrol*. This and filming the Japanese surrender on the US Missouri in 1945, concluded Carty's war service with Paramount.

Wartime newsreels, combining the methods of journalism and traditional documentary approaches, serviced a large audience hungry for news. The Cinesound news services reached some seventy percent of cinemas in Australia and New Zealand. Cinesound and Movietone combined their resources to also produce propaganda films in several languages for distribution through Asia.

The close synergy forged between journalists and newsreel cameramen during the war persisted in the war's aftermath during the anti-communist 1950s environment of Australian film production. The long-awaited buoyancy to the feature film industry did not materialize, with Cinesound soon closing its studios and abandoning feature films. A production arrangement with Ealing Studios also folded after a few years, producing one superb film, *The*

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<sup>225</sup> Hall, K. G., 1977, *Australian Film: the Inside Story*. Summit Books, Sydney, p. 138.

*Overlanders*, the saga of a cattle drive across war time Australia. Although a feature, *The Overlanders* was pervaded with an intense documentary feel and ethos through its director, Harry Watt, a distinguished veteran of the British National Film Board and wartime documentary making in the UK.

Another avenue opened for the flowering of a Griersonian documentary tradition in Australia with the transformation of the wartime DOI film unit into a National Film Board, headed by Stanley Hawkes, an apostle of Grierson. Hawkes presence in Australia and the creation of the Board gave little impetus to good documentary, although he can be remembered for contributing to the growth of film culture. A strong film society movement emerged, setting the basis from the early 1950s for a lively and enduring environment for film festival structures and cultures thriving in the Australian major cities.

From 1949 a sequence of conservative federal governments dominated Australian administration, having little sympathy with the presumed social democratic, if not community, ethos of documentary filmmaking. This stultified the Film Board and what Hawkes could do, although he was successful in developing competencies within the board and producing some good films within the limits imposed. Leftist film culture stimulated small documentary film units associated with trade unions, for example, the Waterside Workers film unit. Most notably, Joris Ivens in 1946 produced an underground political documentary, *Indonesia Calling*, from within Australia, supporting the creation of the Indonesian Republic and the ending of Dutch colonialism.

Later, the Federation's film unit, led by Jock Levy, Keith Gow and Norma Disher, spoke out against the Menzies government and explored social problems that the government would rather have forgotten; but their films, such as *The Hungry Miles* (1954) and *Pensions for Veterans*, were not

widely shown, for the most effective outlets for 16mm film were controlled by the government and were cautious of left-wing content.<sup>226</sup>

The damage to the momentum and resources provided by *Cinesound* for film production during the Great Depression and then WW2, left an industry in the 1950s which lacked energy and concentration. In the (Prime Minister) Menzies era, partly in response to the Great Depression and then WW2, there developed a public and governmental preoccupation with conservatism, material wellbeing and national security. This was coupled with a pre-occupation with political security, which was being trumped up as national security due to the alleged threat of invasion from communist insurgents. In this climate, the absence of an inquiring and experimenting Australian film culture was of little concern:

. . . the past achievements of the industry were forgotten. For three decades after the start of the war, the public grew accustomed to thinking about film only in terms of American or British product.<sup>227</sup>

This was compounded by the continuing Australian parochialism and subservience to the British who always used Australian troops in post-colonial skirmishes while testing nuclear weapons in the Australian marine and desert environment.

#### **4.9 The combat camera after 1960**

The Australia of the 1960s was a climate in which a dynamic 16mm film based camera culture began to sit firmly within the new and developing television current affairs industry. The developing culture of the war-camera journalist in particular, can be traced in the biography of Tasmanian born, David Brill. A consummate news cameraman, his forty years of work sees him still at it, in retirement.

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<sup>226</sup> Cooper, R. & Pike, A. 1998, *Oxford Australian Film 1900 - 1977*. Oxford University Press Australia, p. 201.

<sup>227</sup> Ibid

The ABC current affairs 16mm film culture developed through the 1960s and 1970s, leading to some of Brill's colleagues becoming eminent Hollywood cinematographers, while others went to Australian documentary. John Little's recent biography on Brill, *The Man Who Saw Too Much*, is a rich source of discourse in support of the assertion that television journalism and documentary film are of the same genetic makeup. Of those formative years, Little writes:

There has probably never been a better time in the history of television to learn how to be a news cameraman than the mid-1960s. A news story today may be as short as ten seconds, and consist of only two or three shots. The stories David [Brill] worked on would often run one and a half or two minutes. They were properly constructed short films, with an establishing shot, wide, medium and close up shots; cutaways; pans; and tilts. They were usually unencumbered by the presence of a reporter, unlike today's news pieces. They were shot on 16 mm reversal stock, which meant that exposures had to be accurate to within half an f-stop. After editing they would go to air with an announcer reading the voice-over live, and music and effects mixed by an engineer from a turntable.<sup>228</sup>

The young David Brill had his career break in the spring and summer of the Hobart bushfires of 1967, where he worked as a lone operator, acquiring both pictures and journalistic background to the story.

Having dropped off his first load of film, David was sent out again, this time to Sorrel, 30 kilometers northeast of Hobart. He was filming a man on the roof of a beautiful colonial house frantically trying to prise off the corrugated iron with his bare hands to get at the burning timber underneath, when a horse came galloping past on fire. He snatched the shot and turned his attention back to the house. The owner's wife said to him quietly. 'You're not going to film us are you?'<sup>229</sup>

As John Little discusses, camera journalists eventually have to face this ethical dilemma: do you just record the tragedy as impartial observer or do you get involved? Brill's 'burning horse' episode relates as much to the nature of ethical thinking as it does to the importance of camera ethics being part of journalism education. Students should see many ethical scenarios in simulation rather than having to face a traumatic dilemma, initiated, on the job.

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<sup>228</sup> Little, J. 2003, *The Man Who Saw Too Much – David Brill, Combat Cameraman*. Hodder, p. 30.



For the young man [Brill] on his first big assignment it was an agonising decision. ‘I’d already taken a lot of shots and part of me felt guilty he recalls. ‘Somebody’s losing everything and you’re filming their tragedy.’

He wavered for a few moments. Putting the camera down, he ran inside and began hauling the furniture out of the house. Then, worrying that he was forsaking his professionalism, he picked up the camera and began shooting again.

As the nightmare day wore on, before filming, David [Brill] would ask people if they minded. Occasionally he was abused; sometimes he put the camera aside and helped for a while; but mostly people seemed to understand that he was there to do a job and let him get on with it.

Before Black Tuesday he had never given considered thought to the intrusive nature of his job, although he had been troubled by having to film car accidents. ‘I found it so hard to that. I just didn’t want to get in close because I thought it was preying on somebody,’ he says.

The fires focused his thoughts. His behavior then was the model he has stuck with all his life—always ask first. ‘You have to get in and get the close-up, but there’s a way of doing it—with decency and respect.’<sup>230</sup>

#### 4.10 Current affairs and Four Corners

Film commentators like Moran<sup>231</sup> argue that the historical developments in the USA and Europe as affecting film (see Chapter Three) were to eventually arrive in Australia and they were particularly encapsulated in a microcosm of current affairs – the ABC television program, *Four Corners*.

*Four Corners* has gone to air continuously on the ABC since 1961 and has established itself not only as an institution of Australian television but more widely of Australian political life. The program frequently initiates public debate on important issues precipitates government or judicial inquiries and processes of political reform.<sup>232</sup>

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<sup>229</sup> Ibid, p. 36.

<sup>230</sup> Ibid, p. 37.

<sup>231</sup> Moran, A. 1989, *Constructing the Nation: Institutional Documentary Since 1945*, in Moran, A. & O'Regan, T. (eds.) *The Australian Screen*. Melbourne, Australia: Penguin.

<sup>232</sup> Gibson, M. 2001, *Four Corners, Australian Current Affairs Program*. ABC website. <http://www.museum.tv/archives/etv/F/htmlF/fourcorners/fourcorners.htm> [Last accessed 4/01/2003]

As a committed camera journalist, eventually working with Four Corners, David Brill bought his own Éclair camera. It was linked to a synchronized one-quarter inch (tape) sound recorder. This freed him from having to rely on the bureaucratic ABC news-camera pool with cumbersome technologies of former decades.

Television current affairs of the 1960's was as an expanding and evolving form, giving camera journalists like Brill, opportunities that are non-existent today in career and in creative filmmaking terms. According to Little<sup>233</sup> the Australian format of the 1960s developed an identifiable aesthetic, which remains in long-standing Australian current affairs programs broadcast today.

It is not generally remembered that the format originated in Tasmania. In June 1966 a half-hour current affairs program called 'Line-Up' went to air for the first time at 7.30 pm after the news, . . .<sup>234</sup>

Employing Brill, *Line-Up* was an experiment suited to Tasmania - conservative ABC executives at the time saying - if it failed the experiment wouldn't be noticed in such a tiny demographic. Brill's career continues as testimony to the contention that the boundaries of the two professions blur, merge and at times appear one of the same.

Until now news cameramen had approached their work as if they were making a feature documentary. There were certain rules that had to be followed. You were expected to have an establishing shot, followed by various wide, medium and close-up shots; there had to be continuity of action and cutaways to help the editor cut the sequences; and hand-held shots were kept to a minimum. There was even an edict from the film department that wherever possible the Bell and Howell [camera] was to be used on the tripod. If a shot was a bit wobbly or there was a cutaway missing or the continuity was not perfect, there would be howls of protest from the editors.<sup>235</sup>

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<sup>233</sup> *Ibid*, p. 42.

<sup>234</sup> Little, J. 2003, *The Man Who Saw Too Much – David Brill, Combat Cameraman*. Hodder, p. 42.

<sup>235</sup> *Ibid*, p. 44.

The *Four Corners* crew of the time usually consisted of a sound-recordist, with a quarter-inch reel-to-reel audio tape recorder, and a cameraman shooting with black-and-white 16mm film. The sound was later synchronized to the developed film in the studio. A journalist accompanied the crew, conducting interviews while serving as film director.

In spite of superb hand-held and investigative-camera based journalism, *Four Corners* endured self-censorship, like most ABC programs, until the late 60s. This culture was ingrained in government process and in the military-like conservatism of the mainstream film industry generally.

. . . the camera department in Sydney comprised a mixture of plodders and performers. It supplied cameramen—there were no camerawomen—for all ABC programs. From news, current affairs and sport, to children's television, drama and documentaries. The atmosphere in the department was akin to a factory lunch room. Cameramen sat around playing cards and smoking while they waited to be assigned. The lockers were decorated with cheesecake pictures cut out from magazines.

This decidedly uncreative scene was presided over by a former plantation manager from Papua New Guinea, Gordon Lansdowne, nicknamed 'Porky'. If you were prepared to meet him on his own terms and accept his management style, you got on all right, but if you were not blokey, or showed your education, life could be difficult. Lansdowne's little fiefdom was a reflection of the greater bureaucracy.<sup>236</sup>

It wasn't until the Gorton government began investing money in the arts (and film) in the late 1960s that there was any change from this financial and cultural depression. To add to this, the early 1960s saw Australia bombarded with US and British film and television. This came at a time when the local industry was struggling to serve both entertainment and information. The self-effacing infancy of television-news, current affairs and documentary, as emerging forms, also magnified the detrimental affect on the industry's low morale. In this climate, there were few incentives or contexts in which to nourish debate or develop a professionally oriented set of ethical standards for filming real people's lives.

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<sup>236</sup> Little, J. 2003, *The Man Who Saw Too Much – David Brill, Combat Cameraman*. Hodder. P. 55.

While the sound and camera workers at the ABC were surrounded by a public service ethos, the journalist as director of the *Four Corners* documentary, was obliged to identify and abide by the original Australian Journalist Association code - if they were AJA members. At the time, the code was greeted with hostility by some of the “old school” journalists, executives and proprietors - who claimed they already set the highest ethical standards. The decision by newspaper proprietors and senior management not to subscribe to the code in the 1940s remains one of the code’s weaknesses to this day and this transferred culturally to radio and television. As the code only applied to members of the AJA, proprietors and senior management were exempt, making it difficult to enforce the code at the top where it matters. This does not set a good example for their employee journalists.

Employers rarely instruct journalists, or camera operators for that matter, to specifically do something unethical, they simply expect material that rates. With no journalism benchmark, no professional definition, camera journalists have been, and remain, centered around filmmaking - they are not members of the journalists’ union. If they behave unethically, there is very little outside the law to which they might answer. However, if a journalist member commits an ethical breach, and is brought to notice, they may be summoned to appear before a committee to give evidence and call witnesses. Penalties include fines of up to \$1000, a warning or reprimand, suspension of membership for up to a year or expulsion. Most importantly, these ethical breaches are brought to notice, are likely to be debated in the media and are then on the public record – not so in documentary.

Under an amendment introduced by the MEAA in 1989, decisions are required to be published unless there is legal advice to the contrary. This is significant because it’s important that justice is seen-to-be-done in order to establish the code’s credibility. Generally, journalists fear not so much a fine or expulsion but the stigma of being known as an unethical journalist.

Filmmaker, lawyer and journalist Mark Davis,<sup>237</sup> through an across profession osmosis, found work in television current affairs. Within a decade he won awards in the context of journalism. Now based in Sydney with SBS television, *Dateline*, as a senior journalist, he employs David Brill when skilled cinematography is needed for the program. As previously mentioned, (see footnotes) Davis was a pioneering sole operating video journalist with ABC *Foreign Correspondent*, *Four Corners* and SBS *Dateline*. He says that *Four Corners*, in its first ten years, started with a rigid *Cinesound* approach. This later developed into something more open with a responsive camera style producing a *cinéma vérité* quality.

The editions of ABC *Four Corners* in the late 1960s saw the camera crews (and journalists) beginning a protagonist and confrontational method of filming. This is likely to have been a reaction to the conservative society in Australia at the time and a response to *cinéma vérité* and direct cinema movements overseas. The camera method was intended to expose issues through revealing events and subjects' reactions to them. Inevitably, this drew accusations of subjective bias, particularly from the government, which funds the ABC.

Sound recordist Rob Sloss and cameraman David Brill, worked at *Four Corners* with this intuitive, team-based, journalistic *cinéma vérité* approach. The late filmmaker and camera journalist Mark Worth<sup>238</sup> recently wrote of Brill:

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<sup>237</sup> Davis, M. Interview, 04/01/03, Sydney.

Mark Davis has worked for *Four Corners*. He is currently working as camera journalist and as the presenter for SBS TV *Dateline*. Before becoming a journalist he was a documentary filmmaker. He spent a considerable amount of time researching a documentary he made on the Whitlam era in the early 1970s. Part of the Whitlam research involved viewing the entire *Four Corners* archive of the 1960s. As the current SBS TV *Dateline* presenter, he is one of Australia's foremost "one-man band" camera-journalists. Since joining *Dateline* in 1999, he has won five Walkley's (Awards for excellence in journalism), including the prestigious Gold award for "Blood Money" - a sole camera 'brand-name' report on the funding of pro-Indonesian militias in East Timor. Previously he worked with the ABC's *Foreign Correspondent* and *Four Corners*. In 1997 he won a World Medal at the New York Film and Television Festival for his work in Afghanistan. He has also won two other Walkley Awards for his stories on the famine in North Korea and the PNG tsunami.

<sup>238</sup> Mark Worth became a close friend of Mark Davis at Swinburne Film School, where in 1984 they learnt documentary filmmaking. Worth was an eternal consultant to this research. He was also a 'Punk' art and music

David says "quite often we would work with reporters who came straight from radio or newspapers who hadn't worked in TV journalism or filmmaking so they depended on us to tell a visual story for them. Rob and I worked very closely as a team."

After their first overseas trip to Indonesia, David and Rob accompanied by reporter, Mike Willesee went to Vietnam to cover the war. "When I first went there in 1969-70 I didn't know what to expect. . . . Once I got into Vietnam and went up in helicopters firing down into villages, it was hell. It's all very well to see soldiers shooting each other but when you see civilians running away it made an incredible impression on me. It took 2 or 3 visits to Vietnam to see what a stupid war it was. "

Their first Vietnam story with Willesee went to air as a documentary on *Four Corners*. When you see these early documentaries shot by David you are struck by the long takes he employs, the seamless hand held shots or the depth of field in his tripod work. Neil McDonald film historian and author of "Damien Parer - War Cameraman" once told me, " Neil Davis was a good cameraman he got the coverage, but David Brill is more like Damien Parer, he is an excellent cinematographer just like Damien." . . . Later he (David) earned an undeserved reputation as a bit of a cowboy, but it was never the adrenalin rush of combat that drove him. He wasn't interested in the bang bang, He wanted to show what it did to people."<sup>239</sup>

Worth's interview is further evidence that Brill has continued with his humanist intervention since the formative bushfires in Tasmania. David Brill's camera based ethic of responsibility didn't come with training in ethics, there were none in his day, rather his virtuousness may have arrived from his personal background - a reaction to his mother, to his schooling, his devotion to filming and a receptiveness to the humane response.

At his home in Crows Nest, Sydney, David shows me one of his Vietnam films featuring a little Vietnamese girl and tells me a poignant story that relays his extremely sensitive nature. "We wanted to film at a hospital and all of a sudden I saw this little girl being carried by her grandmother into this hospital. She had a leg missing, it had been blown off in a crossfire when she was three. She was now eight and going to be fitted for the first time in her life with an artificial leg. She kept staring at me with no expression. She was the most beautiful child I have ever seen . . . So I followed this sequence through in the hospital. They put the artificial leg on which was made of bits of wood and old metal. And once they put this leg on her, they got her to hold the railings. All of a sudden she had her own independence, a balance and she started to

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historian, a surfing filmmaker and a film expert on the ethnography and politics of the islands immediately north of Australia. He died in Jayapura, West Papua, on the fifteenth of January 2004, aged 45. He had pneumonia and other complications and had been ill over a considerable time. Worth's work for the past decade was closed in a documentary on West Papua, entitled 'Land of the Morning Star', screened on ABC television, 2nd February 2004. He was buried on his father-in-law's land at Abepura Beach, near Jayapura, in West Papua.

239 Worth, M. 2003. The Man Who Saw Too Much, written for *Metro Magazine*, ATOM, Melbourne, unpublished.

smile a little bit into the lens. Tears were pouring down my face but I kept that shot going for two or three minutes, because I thought this is the shot, not people firing guns, anybody can do that, but this is about what guns do to people".<sup>240</sup>

This method of journalism filming is of documentary film and inevitably; both share certain kinds of ethical considerations. Brill's experience gives him a sense for when consent is given, to allow him in this case, to continue filming.

Arguably, the first Australian *cinéma vérité* filming began within journalism at *Four Corners*. In this context, journalists as film directors were most likely to be members of the Australian Journalists Association. In spite of their close working relationship with journalists, the sound recordists and camera operators, like Sloss and Brill, were of a different culture and profession. As members of the AJA, only the journalists were aware of and obliged to abide by a code of ethics, which was written in 1944.

For *Four Corners* this 'new' and 'provocative' current affairs television scarcely involved much more than simply acquiring a hand-held style of camera actuality outside the controlled space of the studio.

Stylistically, *Four Corners* has been an innovator in documentary strategies for Australian television and film. The program frequently presents itself as frankly personalised and argumentative. The narrator has generally appeared on-screen, a significant break with the off-screen "voice-of-God" narration, which was the dominant convention in 1950s documentary. The involvement of the narrators/reporters with their subject, usually at on-site locations, gives the program an immediacy and realism, while also opening up subjective points of view.<sup>241</sup>

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<sup>240</sup> Ibid.

<sup>241</sup> Gibson, M. 2001, *Four Corners, Australian Current Affairs Program*.  
<http://www.museum.tv/archives/etv/F/htmlF/fourcorners/fourcorners.htm> [Accessed 4/01/2003]

For audiences, this form was accepted in its unscripted and spontaneous state and seen as more likely to be a truthful account. For those being filmed and exposed for the public interest, however, the affect may well have been the opposite.

A 1963 program on the Returned Servicemen's League (RSL), for example, stirred controversy for showing members of the organisation in casual dress drinking at a bar rather than exclusively in the context of formally structured studio debate. But controversy extended also to the kinds of political questions that were raised. The story on the RSL directly challenged the organisation on its claim to political neutrality. Another of the same period drew attention to the appalling living conditions and political disenfranchisement of Aboriginal people living on a reserve near Casino in rural New South Wales, an issue that had almost no public exposure at the time.<sup>242</sup>

Like the criticism of the ABC over bias in the 2003 Iraq war, by the communications minister Senator Richard Alston, *Four Corners* of the 1960s was consistently accused of holding a left-wing orientation. The program was accused of failing to abide by the ABC's charter, which required 'balance' in the coverage of news and current affairs. Meanwhile independent documentary film directors would be stymied if they tried to experiment journalistically or politically, or use the camera in ways like *Four Corners*.

The incessant production of Hollywood movies about battle, real or imagined, of World War Two, prepared young men for the next war in Vietnam. Young soldiers and journalists alike went to Vietnam to play out various screen-indoctrinated roles of nationalism and heroism. These violent films were the main cinema experiences of the male western youth of the 1950s and 1960s – their critical developmental years. This coupled with government propaganda about the communist threat in Asia was a dangerous mix for masculinity that could be confirmed in the battlegrounds of Indo China.

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<sup>242</sup> Ibid.



Movies like Errol Flynn's *Dive Bomber*, *Desperate Journey* and *Objective, Burma!* combined heroic escapism with realistic images of combat, drew on a deep reservoir of emotion and taught people to believe in the values of films. The battles in Vietnam, filmed daily and shown on American television every night, cinematized the horrific experience, "converted a shooting war into a real-life war movie" and brought us closer to "the movie in our mind's eye."<sup>243</sup>

Like Parer and Brill, the internationally renowned combat camera journalist, Neil Davis, spent these formative years in Tasmania. Davis specialized in filming the war in Vietnam during the 1970s. He started working for Visnews in 1964, covering South-East Asia and filmed action for over twenty years in Vietnam, Laos and Cambodia. His short and extraordinary career not only serves as inspiration for young camera journalists, it also provides a study of the camera journalist's representational politics. Of Brill and Davis, John Little wrote:

. . . they were very different in their approach to the craft. Davis got his thrills from the action. Once after almost losing his life in a firefight, he told ABC journalist Peter Couchman that it had been like an orgasm. He was in it for the thrills. David on the other hand, never liked combat. He endured it because he wanted to tell the story. Neil Davis was a competent cameraman, but he did not have the artistry of David Brill. Time after time Brill would come up with the exceptional shot that took the story to a new dimension.<sup>244</sup>

Davis worked best with South Vietnamese troops who saw more action with higher rates of casualties and deaths than the US or the Australians. On one occasion Davis filmed with the enemy, the Communist North Vietnamese Army (NVA), commonly known as the Viet Cong.

After the fall of Saigon, when the exhausted David Brill was aboard one of the last of the US helicopters with fleeing diplomats and journalists, the legendary Neil Davis stayed. He became the only non-communist to film the famous and symbolic moment when the NVA tank crashed through the gates of Independence Palace in Saigon.

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<sup>243</sup> Meyers, J. 2002, *Inherited Risk – Errol and Sean Flynn in Hollywood and Vietnam*, Simon and Schuster, NY, p. 31.

<sup>244</sup> Little, J. 2003, *The Man Who Saw Too Much – David Brill, Combat Cameraman*. Hodder. P. 93.

When Neil Davis . . . died in Thailand during an abortive coup (1985), he fell after being shot, but his camera continued to run. His death, according to the news media that used the footage, was recorded by him. Of course that is an impossibility. But what it points out is a fascination with visualising that, which can never be seen, preserving the process of dying as if life and death can conjoin through the power of the image.<sup>245</sup>

In a letter to his aunt, Neil Davis suggests an almost casual ‘boy’s own’ liking for adventure and risk – a mode of journalism aspired to by today’s freelancers (like Mark Worth) working in dangerous locations. In his legendary fashion, Davis was known for his absolute calm despite the inevitable adrenalin state during and after battle.<sup>246</sup> While not crowing in cliché, his writing conveys bravery and dedication to obtaining film actuality.

#### **Letter to Aunt Lillian, 1 March 1973**

Goodwood Park Hotel, Singapore

I wasn’t able to tell you by letter from Saigon that I spent some time in South Vietnam with the Viet Cong. And that was really strange! Especially when a South Vietnamese helicopter sighted us and attacked.

So I was in the very peculiar position of crouching in a bunker with five VC soldiers, whilst my friends above did their darndest to wipe us out. However it was intensely, interesting, to say the least.<sup>247</sup>

Many commentators have hoped for an account, one day, of the personal side of Neil Davis, an account that shows both his courage and the inevitable post-traumatic stress disorder. John Little’s book about David Brill has a thorough and perceptive discussion of post-traumatic syndrome, inevitable for people like Neil Davis. This is another ethical dimension, beyond the

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<sup>245</sup> Burnett, R. 1991, *Camera lucida: Roland Barthes, Jean-Paul Sartre and the Photographic Image*. In *Continuum: The Australian Journal of Media & Culture*, vol. 6 no 2. Photogenic Papers. Edited by John Richardson. <http://www.mcc.murdoch.edu.au/ReadingRoom/6.2/Burnett.html> [Last Accessed 21/10/02]

<sup>246</sup> Little, J. 2003, *The Man Who Saw Too Much – David Brill, Combat Cameraman*. Hodder, p. 93.

<sup>247</sup> Davis, N. 1973, *Letter to Aunt Lillian*, in Bowden, T. Chapter 17. With the Vietcong. *One Crowded Hour: Neil Davis Combat Cameraman 1934-1985*, Collins, Australia, p. 211

scope of this thesis, in need of urgent consideration by management in television networks – those responsible for the employees or contractors in the field.

While these events often result in physical as well as mental trauma, it is the latter which concerns us. As we have pointed out elsewhere (Sykes and Green 2003), psychologist Judith Herman describes the mental effects of traumatic events as overwhelming the ordinary systems of care that give people a sense of control, connection and meaning (Herman 1997, pp.33–34). Important assumptions, beliefs, reference points and structures are swept aside or made to appear invalid in some way. The event has overwhelmed them and they feel disempowered. As they re-establish connections with relatives, friends and others, they need to have their experience validated and control over their own lives re-established. They need time to create a new view of the world that includes the event and their reactions to it. These are normal reactions to mental trauma and most people adjust or recover, incorporating the experience into their lives, perhaps with the help of their families, friends, workmates or counsellors. Others, for whatever reason, are unable to do that. If these symptoms prove to be long lasting and debilitating, that person may be diagnosed as suffering from Post Traumatic Stress Disorder.<sup>248</sup>

While it is medically acknowledged that post-traumatic stress is likely to bring dysfunction to a journalist's professional and domestic life, even years after the event, it is not directly acknowledged that this can impact on the journalist's behavior and decision-making in future work – especially in the ethical realm.

It would be fair to say that very few journalists, perhaps none, set out to damage the people they rely upon as sources for the stories they produce in the course of their careers. However, despite these good intentions there is an emerging body of evidence suggesting that some journalists are unintentionally doing just that – and perhaps themselves as well.<sup>249</sup>

David Bradbury made a documentary about Neil Davis called *Frontline*. The film shows the carnage of conflict as seen nightly on television by millions, and filmed almost daily by Davis. The political message conveyed in his actuality, as continually televised, finally led to the

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<sup>248</sup> Sykes, J. et al, 2003, *Covering trauma: Suggestions for a more collaborative approach*, Australian Journalism Review - in press.

<sup>249</sup> Ibid

depletion of public support for the US and Australian involvement. Footage from Davis and others wore down the propagandized psyche of people in western countries to the extent that they eventually protested in the streets – and violently.

*Frontline* highlights the absurdities of the Vietnam War and the ethics of filming in such madness. The documentary became an international multi-award winner. The film's interviews enable Davis, the modest war-co, to discuss the ethical and methodological issues of filming, and these are inter-cut with his extensive footage.

As a camera man/correspondent, that is I took my own film and I wrote my own narration, my own script for the film. I thought I would spend two or three years and then go on to wider pastures to Europe or South America or Africa or somewhere. . . . I really didn't want to after two or three years I wanted to stay in Asia, and that's what I did.<sup>250</sup>

When *Frontline* was broadcast nationally on PBS across the US; Americans who fought in Vietnam, or had been protesting, saw the war freed from some of the propaganda they were previously fed. "Younger audiences could see why Vietnam was such a divisive part of American history."<sup>251</sup>

Footage from war correspondents like Davis was famous for contradicting the position and spin of the military and government. The political power of such material was realized in the late 1960s.

And in the White House, the image of the tough (but almost mindless) hero in the movie *Patton* also "appealed to Nixon's self-image, and he had a second showing as

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<sup>250</sup> Davis, N. in Bradbury, D. 1980, *Frontline*. Distributed by Ronin Films, Canberra.

<sup>251</sup> Bradbury, D. *Frontline*. Documentary film promotional material, distributed by Ronin Films ACT. Academy Award Nomination, Documentary, 1981. John Grierson Award; Blue Ribbon, American Film Festival, 1980. IFACS – Hemisfilm Award, 1981. Christopher Award, 1981. Golden Athena, Athens, International Film Festival, 1980. Chris Statuette, Columbus Film Festival, 1980. Sydney Film Festival, Best Documentary, 1980. First Place, Baltimore. International Film Festival, 1980. Chicago International Film Festival, 1980. Berlin International Film Festival, 1980. Atlanta Independent Film and Video Festival, 1980.

the Cambodian crisis deepened. [Secretary of State] William Rodgers was dismayed to hear the President repeatedly citing *Patton* in this context.”<sup>252</sup>

When US President Nixon announced that the war had finished, Neil Davis was still filming war somewhere in a rice field under concentrated machine-gun fire. He devotedly filmed US marines who were being killed daily and who were confused about having to remain there and fight an invisible enemy - many of whom were child-soldiers younger than they.

#### **4.10.1 The freewheeling 1970s**

The Whitlam government in the early 1970s supervised the release of the conscientious objectors of the Vietnam War, the Australian Troops came home and there was a huge increase in public and government support for the arts, education and the public sector. Television began to take over the cinema’s mass entertainment function. As film directors and others returned from abroad they brought with them the experience of international cinema to the isolated and relatively parochial Australian industry. The revival was almost entirely driven by government subsidy and investment. Australian documentary again began to emerge with a distinctive signature.

The Australian Film Development Corporation was created in 1970, and in 1975 re-established with wider powers as the Australian Film Commission. The Commission then became the focal point for the administration of government funds, including responsibility for Film Australia (the former Commonwealth Film Unit).<sup>253</sup>

Documentary production centered around Film Australia in Sydney, where, as Cooper and Pike suggest, it experienced a new wave of enthusiasm after the 1970s:

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<sup>252</sup> Meyers, J. 2002, *Inherited Risk – Errol and Sean Flynn in Hollywood and Vietnam*, Simon and Schuster, NY, p. 31; citing Gabler, N. 1998, *Life the Movie: How Entertainment Conquered Reality*, NY, pp. 7–8; Page, T. 1989, *Page after Page* NY, pp. 106–107; Shawcross, W. 1979, *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, NY, p. 135.

<sup>253</sup> Cooper, R. & Pike, A. 1998, *Oxford Australian Film 1900 - 1977*. Oxford University Press Australia, p. 234.

. . . young directors, including Peter Weir, Oliver Howes and Brian Hannant, were given opportunities to direct narrative films, beginning with the three part feature *Three To Go* (1971). The Film Unit, together with the Australian Institute of Aboriginal Studies, assisted the growth of ethnographic film, with the work of Ian Dunlop, and Roger Sandall, and later the Americans David and Judith MacDougall in central and northern Australia.<sup>254</sup>

Specialized documentary films were also made for surfing audiences. These were shown profitably by the filmmakers themselves on coastal circuits, especially along the northern beaches of Sydney in community halls. Occasionally, surfing films reached wider audiences: *Morning of the Earth* (1972) by Albert Falzon, with effects by Albie Thomas and music by G. Wayne Thomas, was endorsed as psychedelic. *Crystal Voyager* (1973) by David Elfick was screened widely abroad and was provided circuit distribution by Greater Union.

The commercial success of surfing movies was paralleled by other 16mm documentaries made by people outside of the mainstream industry recording travels around remote parts of Australia. These travelers' tales, in the old tradition of Francis Birtles and Frank Hurley, were screened often in the makeshift conditions in town halls and disused cinemas in the city and country, usually with the filmmaker in attendance, giving an accompanying lecture, selling tickets and operating the projector.<sup>255</sup>

Some of these films earned huge profits for their young makers, notably *Northern Safari* (1966), by Malcolm Douglas and David Oldmeadow, and super eight (8 mm) films by the Leyland brothers, including *Wheels Across a Wilderness* (1967) and *Open Boat to Adventure* (1970).

#### **4.11 New technologies, forms and markets – 1990s onwards**

As this short study illustrates, Australian documentary has been, and remains, a highly competitive industry for its workers with short-term and contracted employment. Over the last

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<sup>254</sup> Cooper, R. & Pike, A. 1998, *Oxford Australian Film 1900 - 1977*. Oxford University Press Australia, p. 236.

decade, camera journalism has also been going that way. Further, the irregular documentary film industry has largely been overshadowed by the big commercial genres like feature film and, in particular, the endless range of product from the US.

With scant opportunities in documentary, television journalism has provided a means for film workers. This varied and transient environment has remained unsuitable for the development of a camera journalist trade union, a professional body with a code of ethics encompassing agreement on the approach to filming people's lives.

The journalists' MEAA is a registered trade union and its rulebook incorporating the code is acknowledged by law. Any decisions by the union's judicial committees on a journalist's unethical behavior are legally binding on members.<sup>256</sup> As discussed earlier, it is only members of the MEAA who are bound by the code. The growing number of 'stringers', contractors and members of the public with video cameras who now provide footage for news media organizations are not aware of the issues inherent in ethical practice and informed consent.

As mentioned in previous chapters, since the mid 1990s many filmmakers and freelance video journalists around the world started using a new technology, a light, miniaturized camera that recorded to digital video (mini-DV or DV, later DV Cam, DVC and DVC Pro 50, Digital 8 etc). These relatively cheap, domestic and miniature technologies became ideal professional tools for sole operating camera journalists at a time when the industries of journalism and film were looking for avenues for downsizing. The cost cutting measures concentrated around production, with filmmakers and some current affairs programs giving up using analogue Betacam video, with its bulky equipment requiring a crew. It wasn't long before the new DV based freelance camera operators were working single-handedly, without a crew. This

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<sup>255</sup> Ibid.

reinforced the already contracted industry and provided economies for television networks, undreamt of in the years prior to the release of DV. The DV technology also arrived at a time when the news media themselves had become a means by which profit was made.

... the public debate is turned into a commodity which the public then consume rather than participate in'. This does not mean that the public debate does not go on. Rather, 'the problem is that the commodification of debates alters their logic, their form and function. They become spectacle, staged entertainment' (Gripsrud 1995, 97). What we have then is a simulation of debate, a performance which is judged as that rather than as a contribution to a public process in which the audience is engaged.<sup>257</sup>

In this climate, film trained sole-camera-journalists started taking on the responsibility of shooting broadcast quality video while also conducting the journalism. While this requires considerable skill, many stories produced in this way would not have been possible without the miniature DV technology. The sophistication of DV freed the camera operator from the technical issues like focus and sound levels, allowing them to concentrate on interviewing and interacting. Compared to Betacam SP (the Australian crew-based analogue-video industry standard of the previous decade), DV provided camera journalists with a camera recorder at one tenth of the price, size and weight.

The impact on current affairs, in particular, was significant in that the DV journalist could work faster, alone and in a freelance capacity. In conflict zones throughout the region immediately north of Australia, there were some who were posing as tourists with a flowery shirt and a camera. In one case, an award-winning journalist posed as a naive bible distributing lay preacher, hiding a DV camera under a stack of bibles as a cover for a story on the Tamil Tigers in Sri Lanka.

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<sup>256</sup> White, S. 1992, *Reporting in Australia*, MacMillan, Melbourne. P. 271.

<sup>257</sup> Turner, G. 1996, *Post-journalism: News and Current Affairs Programming from the Late '80s to the Present*, Media International Australia, No 82, P. 88. In quote: Gripsrud, J. 1995, 97, *The Dynasty years: Hollywood Television and Critical Media Studies*, Routledge, London.



Journalists were no longer obliged to work with network crews and equipment. Mark Davis and Mark Worth (see above), like many of these new camera journalists, arrived in journalism with film training, largely from a culture of documentary. Around the time, coincidentally the MEAA decided to review the code (1993) following another wave of criticism about media practice. Some of the key complaints made at the time involved inaccuracy, sensationalism, invasion of privacy and opinionated commentary by unqualified reporters where they seemed to be pushing bias, color and gloss instead of facts. Interestingly, most complaints continued to center on newspapers and magazines, despite the critical development at the time of the news-media becoming a profit making system in its own right.

A review committee of journalists, academics and members of the community found the MEAA code's 'structure created problems of interpretation' and so they set about spelling out obligations that were only implicit in the 1984 code. Responding to two of the most common complaints about journalists - that they are sloppy with the facts and reluctant to admit mistakes - the latest (1993) code placed an increased, and succinct, emphasis on a person's right of reply and urges "the fair correction of errors" (See Appendix 15). This implies a general responsibility to correct errors. The 1984 code required errors to be "harmfully inaccurate" before a journalist was ethically obliged to correct them.

With all eyes on the press and little concentration on television or film journalism, the rapidly changing television industry escaped scrutiny. This occurred at a time when journalism digital video cameras were increasingly deployed in freelance and contracted manner. These operators were largely filmmakers who naturally tended to use DV in a filmic and more probing tabloid-like style.

The sole operator journalist owned their DV broadcast camera and videotape and so they were able to assume control by contract over the copyright to the material, which had previously belonged to the networks. With this independence, freelance camera journalists began to

negotiate lucrative contracts with various media outlets ranging from print to broadcast. The anticipated notion of convergence, as discussed by academics in many texts on the future of journalism, was becoming a reality for the highly skilled few. As the late filmmaker and journalist Mark Worth put it:

Now in 1997, Vertov's dream has finally been realised, as digital video technology has liberated the Kino guerrillas, we head into the field.<sup>258</sup>

Dziga Vertov, a Russian director in the 1920s, was recognized as a founding genius of documentary and produced a manifesto saying the ideal in art was filming real life through a system of roving cameras ("Kino guerrillas"). Interestingly, Vertov also believed that it was socially irresponsible (unethical) to include elements of fiction in documentary through staged or re-enacted events.

As a film student in 1984, Mark Worth honored Vertov, by making a spoof film of Vertov's notable documentary, *Man With a Movie Camera*. Made in 1928, Vertov's landmark motion picture on the rhythm of peoples' daily lives depicted heroic worker scenes, especially Moscow factory workers. This supported the Revolution's great progress under Lenin.

Mark Worth always aspired to set new benchmarks in film, like Vertov, Parer, Brill and Neil Davis. Worth is credited as the first sole-operation camera journalist in Australia to broadcast a story that was sourced on a domestic mini Hi 8 video camera, an immediate precursor to DV. Like DV, Hi 8 was a budget miniature format, which the television industry of the time considered as sub-broadcast quality.

In 1995 Mark Worth was funded by the Australian Film Commission to produce his film, *Raskols*, on lawlessness in Papua New Guinea (PNG). It was to be lavishly shot on 16 mm film

rather than the industry standard at the time - Betacam video. *Raskols* was commissioned with a high budget at a time when the documentary industry was infatuated with lavish film based *Essay Documentary*. This was particularly so after the international success of Lawrence Johnston's *Eternity* (1994), a lyrical, photographic and essayist reconstruction of a loner's life in Sydney in the 1950s.

Johnston<sup>259</sup> deliberately reconstructed a period and mood in *Eternity* by referencing the black-and-white photographs of Max Dupain, the master with whom Damien Parer had worked, prior to World War II. *Raskols* was about PNG lawlessness and the finished film received criticism due to its dramatized reconstruction of events, such as a protest march, which was completely and stylistically reenacted. The filming caused considerable disruption to traditional villagers.

Vertov's philosophy, that it was socially irresponsible to include elements of fiction in documentary, nagged at Mark Worth while he and his crew were filming *Raskols*.

The first of many problems when I returned to make *Raskols*, was the bulky 16mm equipment and stock being held up in customs for nearly a week. Traveling through the highland jungles of New Guinea with a cautious crew didn't help either. In the end, once I had returned to Australia, I resigned from that film. However, a month later, I was back in PNG on a journalist visa, with a high 8 camera, .....<sup>260</sup>

After in fact being sacked from *Raskols*, Worth produced the Hi 8 sourced current affairs story for *Foreign Correspondent*, a television current affairs program with the Australian Broadcasting Corporation. Entitled *The Highway Men*, co shot by Mark Davis, the piece as a classic example of journalism convergence, centered around observational filming on the lawless problem in PNG.

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<sup>258</sup> Worth, M. 1997, *From Radio Eye to Kino Eye*, Independent Filmmaker's Journal, issue 3. p. 26.

<sup>259</sup> Johnston, L. 1995. *Eternity* Press Kit, p. 13.

<sup>260</sup> Ibid.

On return, I sold the report to ABC's *Foreign Correspondent*. I dubbed off the audio rushes and cut a thirty-minute radio doco for the ABC..... months later I used the sound rushes as transcript for several print stories. It didn't stop there, I later sold parts of the TV report to John Hillcoat's feature film, *To Have and to Hold*. The Hi 8 images, were kinied [sic: transferred] up to 35mm (film) and looked great.<sup>261</sup>

*The Highway Men* was a dramatic contrast to the expensive, reconstructed and dramatized essay documentary style of *Raskols*. Indeed, the rascal Mark Worth outfoxed the *Raskols* production. *The Highway Men* was broadcast nationally before the essayist documentary had even completed its editing process. Worth says that he owes a lot to the foresight of John Budd, at the time, the executive producer of *Foreign Correspondent*<sup>262</sup> who convinced the ABC to broadcast the Hi 8 material.

The broadcast of *The Highway Men* was a breakthrough: firstly, because it was in the international public interest, exposing lawless gangs in PNG and secondly, that a broadcaster had acknowledged the technical quality in Worth's Hi 8 video as acceptable for transmission. Previously, 'sub-broadcast video' was only used when it proved to be all that was available to an important story.

*The Highway Men* was significant in that the entire twenty-minute piece comprised of Hi 8 video of excellent quality. This vague broadcast industry standard was supposedly determined by signal strength and picture quality at broadcast. Mark Worth subverted that standard in one action.

Unsurprisingly, the crews and journalists of broadcast news and current affairs resisted the idea of film-trained correspondents, like Worth and Davis, self-operating small digital video.

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<sup>261</sup> Ibid.

<sup>262</sup> Worth, M. 1995-2003, Series of informal interviews made with this writer.

Eventually however, there was acquiescence and some began to envisage themselves also working in this freelance, heroic and lone capacity in the tradition of Neil Davis.

After *The Highway Men* drew favorable responses from the public, Mark Davis who filmed sections of the piece, won a freelance contract with the ABC's *Foreign Correspondent* to film a story in Afghanistan. This led the lawyer and documentary filmmaker Davis to specialize in current affairs, and eventually, in peer recognition, his winning many journalism awards.

Within years he was taking convergence to new heights: he was shooting his own DV and digitally editing the stories on a Macintosh iBook laptop. Although he sees no problem with this 'one-man-band' approach, it is commonly held in filmmaking that editing one's own material places the resultant package at risk of narrow perspective. Also at risk is story structure, impartiality and a clarity that comes with the use of fresh and independent editors. Naturally, the accountants and budget makers within the television networks appreciate the 'one-man-band' approach.

In 2003 Mark Davis became the presenter for SBS *Dateline*. While he tended to employ a second camera operator, who filmed him presenting foreign correspondent pieces to camera in various international locations, he still managed to shoot, write and edit the occasional DV self-operated story. In keeping with Vertov's philosophy and with an abundance of stories in the region suited to the low-budget, unobtrusive and sole operated DV camera - a number of Sydney based freelance camera journalists amalgamated. These camera centered journalists - like Mark Davis, Mathew Carnie and Mark Worth - shared stories, fixers, footage and contacts - enabling them to on sell to international networks like Channel 4 in the United Kingdom. This cooperation was unusual in such a competitive industry. Their solidarity empowered their political position, forcing the television industry to accept their methods and their retaining copyright in the original camera tapes. Their stories were sold through convergence to a range of media outlets: print, photograph, radio, on-line and television. They produced a significant proportion of the world's current affairs and news for the remote trouble spots around

Australia: Bougainville, East Timor, PNG, the Solomon Islands, Fiji, Aceh, Ambon, and West Papua.

Sole operation digital-video was quickly accepted because it met broadcast standards and was serving current affairs and news in economies of scale undreamt of by television economic rationalists a decade before. DV is excellent for gathering the vision and sound of war and social unrest. It is capable of a hand-held actuality that is simply not possible with much heavier and bulkier electronic newsgathering video equipment.

DV cameras revolutionized the news and film processes. They had the same effect on the industry as the wind-up 16 mm film cameras in the 1960s and 70s for correspondents like Neil Davis or filmmakers like Jean Rouch. The relative size and weight in both technologies provided the advantage, but DV cameras offered more with the highest quality in-camera, digital sound recording. The smallest of the film cameras of the 1960s did not record sound.

Critics have identified DV with a hurried and unprofessional filming that rarely takes the trouble for extra lighting. In spite of this grainy, poorly framed and shaky hand-held vision, audiences have come to see DV as more authentic visible evidence in that it can be acquired by anyone. The television networks soon noticed this and began to exploit the idea of everyday people recording events unfolding through their 'being there' with a small camera. These biographical films have been immensely popular in the US.

Audiences have come to assume that DV, with its relatively low intervention and unobtrusive camera, is less likely to influence the event and the subjects being filmed. Thus DV video actuality is acquiring an authenticity that highly produced material cannot claim. Networks and producers now promote as the central attraction, programs containing material with this mini DV assertion. Assumptions like this were being made forty years earlier, in respect to the

inherent truth of the new and highly portable observational cameras of direct cinema in the US and *Four Corners* in Australia.

Some of these notions over authenticity are nonsense. A lone camera-operator is just as likely to be affected by subjective bias and the pressures of filming in tense international situations, as a journalist working with an agenda, a full camera crew and a string of network producers, researchers and writers. Criticism aside, the DV camera method has succeeded in providing certain kinds of actuality and visible evidence that was not possible ten years earlier with heavier and more obviously professional equipment.

Strident admirers of Dziga Vertov, Mark Davis and Mark Worth were among a number of filmmaking journalists employed to train young camera operators for the ABC TV program, *Race Around the World*.<sup>263</sup> This television experiment (1996-97) intensively trained each young filmmaker in the 'tradition' and skills necessary to make DV travel pieces from throughout the world. The journalistic, youthful, sometimes quirky five-minute vignettes drew enthusiastic audiences for the ABC, especially in the first year.

After recovering from *Race Around the World* some of the participants went on to become successful sole camera journalists producing pieces for *Foreign Correspondent* and *Dateline*. Having trained for *Race Around the World* with filmmakers (Dennis O'Rourke, Bob Connolly, Mark Worth and Mark Davis), meant this next generation of DV journalists was imbued with a film tradition, again without a focused awareness of the journalist's imperatives.

Despite this lack of journalism focus, one of the 'Racers', Bently Dean, like David Brill, seems to have an acquired sophistication in respect to camera ethics. Through interview for this

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<sup>263</sup> Blackall, D. 1997, filming of Mark Worth lectures for *Race Around the World* at the Australian Film, Television and Radio School.

research, filmmaker and journalist Dean says that the *Race Around the World* training touched on ethics in a workshop with the famous documentary filmmaker Bob Connolly. Each *Race Around the World* trainee was given a copy of the ABC Code of Practice, which Dean says was not devotedly read. He now works on contract in both documentary film and current affairs journalism, consistently for *Dateline*. In 2003 he worked as co-director with the veteran documentary maker, Kurtis Levy, on a film about the dramas endured by the father of David Hicks, the alleged Taliban prisoner held without charge by the US in Cuba.

A recent characteristic of *Dateline* has been this deployment of the younger travel savvy camera operator as Vertov inspired journalist.<sup>264</sup> These contract workers are expert at fulfilling the main requirement of television – high quality story telling pictures and sound. These youthful observational-camera *Dateline* stories, through budgetary restraint, are bound to lack the in-depth investigative journalism that *Four Corners* has enjoyed for forty years.

Experienced journalists like Mathew Carnie (with *Dateline* since 1991) also shoot their own material. The journalism in Carnie's pieces, though, is notable, investigative and sophisticated. The younger and film oriented *Dateline* journalists rely on a provocative camera approach to a certain kind of international story - one that assures visually exciting material for a sole operation camera. This approach was emphasized in *Race Around the World* - the filmmaker-journalist in the text as a protagonist. This identifies as another point from which investigative journalism is squeezed out and replaced by cost effective and visually entertaining camera journalism.

Arguably, the subjectivity inherent in these kinds of texts produced by young, lone-video journalists, who trained as filmmakers, could amount to a negation of a public assumption: that



experienced and investigative accountability is an imperative of the foreign correspondent. This is unfortunate at a time when aggressive investigative journalism is disappearing and negative public opinion of journalism increases.

What might have been different, if these new film oriented camera journalists on their first *Dateline* assignments, were obliged to spend time perusing and discussing, for instance, the *Recommended revised MEAA - Code of Ethics* (cited in chapter one and provided in full in the Appendix 15)? With this information, would they stand a better chance of having more definition of their professional role in journalism and when negotiating consent from sources crucial to their story? In spite of never seeing the MEAA code, the now experienced Bently Dean, and his contemporaries, have developed understandings of the journalism ethos by way a process of trial by fire. Had they been exposed to journalism education with professional definition of ethical practice through a code,<sup>265</sup> they might have faced less risk of doing unintentional harm to camera subjects or themselves in hazardous situations.

For most young professionals the focus is not on ethics, rather the serious concern is on conditions of employment. On the Media Alliance Website in 2003 we saw:

TV Freelancers have met in Melbourne to launch a new Alliance sub-section. Camera operators, lighting, videotape operators and people from a wide range of freelance areas heard a presentation put together by freelancers about changes in the industry over the past ten years.<sup>266</sup>

The *Association of Television Freelance Crew* was set up to represent the issues of the freelance crew in feature film and advertising. They aimed to “formulate a workplace

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<sup>264</sup> Video Studio Interview with Kim Trail by Journalism Students, 1997, Graduate School of Journalism, University of Wollongong. Regular conversations with TV journalists: Bently Dean, Mark Worth, Mathew Carnie, Mark Davis, Ben Bohane, Evan Williams.

<sup>265</sup> *Recommended revised MEAA - Code of Ethics*, 2002, Social Communication and Journalism – points of friction, University of Technology, Sydney, Website. [Accessed August 2002]

agreement that sets the minimum standards in remuneration, terms and conditions of engagement”.<sup>267</sup> It remains to be seen as to whether the Association and its agenda will be taken up by the sole-camera journalist and documentary industry. It also remains to be seen whether camera based ethics will become an issue for the Association. At the time of writing this action seemed unlikely as a result of in E-mail dialogue with the Association.

#### 4.12 Conclusion

As ethnographic filmmaker David MacDougall argues: the viewers have consent manufactured for them as ‘spectators-in-the-text’. Audiences are conditioned to see genres like DV journalism in a heroic and investigative context - the political position is woven into the fabric of the story as one acceptable and attractive to the market. In the tradition of the legendary Neil Davis, the DV correspondent’s ability to obtain a certain kind of ‘fly-on-the-wall’ truth becomes a central aspect to the story. The DV journalist, ostensibly by training and practice a filmmaker, is then marketed by the networks as auteur, as owning the film, as being part of the action, outside of journalism. This brings on the myths of journalistic independence, freelance, committed, courageous and involved in the tradition of Neil Davis.

This is illustrated in the presenter’s introduction for *The Highway Men*:

.....*Foreign Correspondent* assigned Papua New Guinea born, Pidgin speaking Australian filmmaker Mark Worth to take a look first hand at the havoc being caused by the breakdown in the country’s law and order.<sup>268</sup>

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<sup>266</sup> Association of Television Freelance Crew Media Entertainment Arts Alliance, 2003, Alliance on line. <http://www.alliance.org.au/> [Accessed Sept 3 2003]

<sup>267</sup> Association of Television Freelance Crew 2003, PowerPoint presentation sent to this writer.

<sup>268</sup> Negus, G. 1997, ‘The Highway Men’, intro, *Foreign Correspondent*, Australian Broadcasting Corporation.

This carefully phrased introduction, spoken by George Negus, distanced *Foreign Correspondent* and the ABC from video material that was provocative, film-like and experimental for the time. The Pidgin-speaking credentials explained the current affairs story in terms of it being reported from inside PNG raskol culture. The filmmaker's credentials promoted the piece in respect to its documentary style, unusual for television current affairs. Mark Worth and Mark Davis filmed masked raskols who were very much at ease. The confidence of the camera gave the audience a close insight into misguided raskol black magic being focused for ill-gotten gain. It revealed PNG style mob-lawlessness selling cannabis to buy weapons for use in armed robbery. The story was criticized for its filming of illegal acts. A roadside robbery had every potential for violence with murderous results and were the camera subjects performing for the camera? In the context of journalism, critics would argue, Worth may have breached basic ethical principles, or the law, in filming an actual crime. The camera's presence might have incited intoxicated subjects to violently act up for the camera. Or perhaps the camera moderated the situation as the event and raskol behavior goes on the record. After all, Neil Davis argued in *Frontline* that his camera, on occasions, had moderated indiscriminate killing of civilians by US marines.

In defining him as filmmaker rather than journalist, *Foreign Correspondent* provided Worth the filmmaker's imperative of high quality filming, which can show more of truth as *sense* in the interface between the human reality and the event.

Our reading of a film, and our feelings about it, are at every moment the result of how we experience the complex fields this orchestration creates - partly dependent again upon who we are and what we bring to the film. This complexity extends to our relation to different cinematic address.<sup>269</sup>

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<sup>269</sup> MacDougal, D. 1995, *Ethnographic Film* in Devereaux, L. & Hillman, R. (eds.) *Fields of Vision, Essays in Film Studies, Visual Anthropology, and Photography*. University of California Press. London, p. 223.

The miniature DV video camera gaze is now finding a role in non-journalism, human rights imperatives. Narration from the documentary *Seeing is Believing - Handicams, Human Rights and the News* explains:

. . . What happens when ordinary people pick up Handicams to document what they see? . . . How do these amateur images affect what we watch on the evening news every night? From human rights activists, to soldiers, to astronauts, to terrorists. On all sides of the political spectrum people everywhere are picking up Handicams to show the world that seeing is believing.<sup>270</sup>

Amateur video evidence is being used in prosecuting US soldiers involved in torture in Iraq and it was previously used in court against the human rights abusers of Rodney King:

In the aftermath of the King trial and the riots that followed it, Peter Gabriel, the British pop star and human rights activist, helped establish a group called Witness, a non-profit organisation that uses video and other communications technology, to promote and defend human rights.<sup>271</sup>

Witness made an undercover investigation on Russian Mafia involvement in trafficking women for enslaved prostitution. Between 1995 and 1997 this campaign and its DV filmed evidence had effect internationally, increasing public awareness and so enabling the law to move against trafficking.

The United States government passed a Trafficking Victims Protection Act, the Soros Foundation launched a regional initiative in 30 countries throughout the former Soviet Union to provide support to local groups who were doing education and awareness around trafficking. The United Nations developed a new protocol on transnational

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<sup>270</sup> Wintonick, P. 2003, director of documentary, EXCERPT from *Seeing is Believing - Handicams, Human Rights and the News*, session, 'Meet the Makers – Americans', Australian International Documentary Conference 2003.

<sup>271</sup> O'Regan, M. 2003, 'Hand-to-hand filming: digital cameras and the re-making of News', The Media report, ABC Radio National <http://www.abc.net.au/rn/talks/8.30/mediarpt/stories/s792226.htm> [Accessed 8 March, 2003]

organised crime, there was an executive order for \$10-million issued by President Clinton for violence against women with a special emphasis on trafficking.<sup>272</sup>

In the absence of journalism, a video campaign supported by the public relations power of Witness was able to bring the issue to the attention of critical international discourse. Perhaps these are the first signs of the post-journalism and advocacy phase of the news media in using miniature digital video actuality.

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<sup>272</sup> Caldwell, G. 2003, (Director of Witness, NY) in O'Regan, M. 2003, 'Hand-to-hand filming: digital cameras and the re-making of News', The Media report, <http://www.abc.net.au/rn/talks/8.30/mediarpt/stories/s792226.htm> [8 MARCH 2003]

## Chapter Five: The Case Studies

5.1 Preamble	208
5.2 Representational issues and <i>The Battle for Byron</i>	211
5.3 Beyond <i>The Battle for Byron</i> - <i>Delinquent Angel</i>	215
5.4 <i>Delinquent Angel</i> – linking legal to ethical	217
5.5 Enticement to participate	219
5.6 Gauging ability to foresee risk	222
5.7 Releases can define the issues for best possible informed consent	225
5.8 Consideration	227
5.9 In the event of breach of contract	229
5.10 Informed consent as a core issue	231
5.11 Shifting contexts and perceptions	233
5.12 Informed consent and the delinquent angel	234
5.13 <i>The Wonderful World of Dogs</i>	237
5.14 The social actor	239
5.15 Formative agreements	240
5.16 A problem develops	242
5.17 Escalating legal involvement	243
5.18 <i>Dogs</i> and informed consent	250
5.19 <i>Cop it Sweet</i> - public interest and journalism	250

5.20 A matter of style in approach	254
5.21 Informed Consent in <i>Cunnamulla</i>	255
5.22 The Court – seek justice and set precedents	258
5.23 What do we get from all this?	262
5.24 Release forms - a legal document summarizing what is agreed	263
5.25 Ethically hazardous professions	265

## CHAPTER FIVE: THE CASE STUDIES

### 5.1 Preamble

This chapter is designed to examine the findings of my research around informed consent issues in three major documentary case studies. These are: *Delinquent Angel*, *The Wonderful World of Dogs*, and *Cunnamulla*. A number of minor case studies are also included for contextualization and reinforcement of the main argument: that ethical behavior in journalism and documentary decreases the risk of legal problems.

The purpose of selecting and presenting these case studies illustrates the extent of the lack of commitment to ethics in contemporary Australian documentary. The case studies also provide some relativity for the informed consent approach taken in the making of *Delinquent Angel*. These famous Australian films, *The Wonderful World of Dogs* and *Cunnamulla*, as the main and in-depth case studies, supply this thesis with the cultural, ethical and legal discourse of the mainstream film industry and so demonstrate the pitfalls when the camera intervenes without informed consent.

The screening of *Cunnamulla* has become relevant to journalism, film and the Fourth Estate generally in that it “opened up a minefield of litigation that commercial news and current affairs will have to negotiate”<sup>273</sup>.

The implications for journalists, especially broadcast journalists, from this decision [of the full bench of the Federal Court of Australia] are significant. During the appeal hearing counsel for O’Rourke [the director of *Cunnamulla*] put forward a hypothetical situation that if, for example, the filmmaker had said to someone in *Cunnamulla*, “I’d like to film your house”. The person says, “Don’t film the backyard; it’s a mess,” and the backyard appears in the film then that conduct, if *Hearn v O’Rourke* is upheld, could enliven S52 of the TPA[Trade Practices Act].<sup>274</sup>

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<sup>273</sup> Burgess, C. 2003, *Hearn v O’Rourke. What does it mean for journalists?* Journalism Education Association Annual Conference, unpublished, p. 1 (Abstract).

<sup>274</sup> Ibid p 5. Information from *Hearn v O’Rourke* [2003] FCAFC, Transcript of Proceedings, (20 February 2003) p.28 (Finn, J. Dowsett, J. and Jacobsen, J. during argument).



This means that commercial television news, current affairs, and documentary in particular, may by law be required to apply informed consent and release forms before screening an interview. This level of accountability is unheard of in an industry where there exists a culture that tends to suppress any promise of providing informed consent to camera subjects.

After *Hearn v O'Rourke*, the act of filming an interview is to now be interpreted as part of a commercial activity in its own right, and so is accountable to Section 52 of the Trade Practices Act. That is, the subject before the camera could 'enliven S52 of the TPA' if they could show they were deceived when the filming occurred. Already standing, is that a deception of this nature might also be up for scrutiny under the Australian Broadcasting Authority or the Federation of Commercial Television Stations Code of Practice. However, this is rare, with commercial networks generally getting away with all sorts of deceptive practice in the name of dramatizing and increasing commercial viability.

Before this chapter moves onto the main case studies in detail, it is critical to firstly scrutinize, for context, some smaller case studies that were part of this examination of ethics in the mutual contexts of camera journalism and documentary.

## **5.2 Representational issues and *The Battle for Byron***

In researching for both my thesis and film (*Delinquent Angel*) I was obliged to focus on the process of determining the appropriate levels of camera closeness on John Perceval. As camera style influences the final style of a film (as described in Chapter Three), so do processes like script writing, which must also have an ethic of responsibility. While it was important to get the editing script into a structure that was dramatic and entertaining, it was also important to be truthful and ethical to the film subjects. Deceitful editing, after all, might negate final consent from subjects, the counterproductive result being that raw material as scripted would be rendered irrelevant.

In 1998,<sup>275</sup> during this script writing process, I made inquiries as to whether there had been formal complaints from camera subjects, or the public, over privacy matters following a documentary's broadcast. I hoped the research might provide insights into social perspectives that would help define the boundaries between exploitative and ethical documentary filming of John Perceval.

There didn't appear to be much definition in the Australian context, but the Advisory Opinion issued by the New Zealand Broadcasting Standards Authority in 1996 acknowledged the overlap between privacy and fairness, saying that ethical issues are highlighted in privacy complaints.

"The concept of fairness, as with the concept of privacy, includes ethical overtones"<sup>276</sup>.

The Australian Broadcasting Authority, which has a legislative framework requiring each industry sector to develop codes of practice relating to program content, issues and complaints handling processes,<sup>277</sup> also provided a response saying: "Unfortunately the ABA has not conducted any investigations which would fit this description".<sup>278</sup> After my New Zealand finding on 'the concept of fairness', this was disappointing.

The research question put to the Australian Broadcasting Authority was framed in terms of complaints over camera closeness and intrusions on privacy. For the print media, privacy issues are relatively well defined in the MEAA Journalist Code of Ethics and the Industry Code of the Press Council. These at least provide a benchmark, setting definition, standards

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<sup>275</sup> Smith, D. 1998, *Privacy and the behaviour of broadcast documentary makers*, Codes and Conditions, Policy and Content Regulation Branch, letter and enclosures in response to inquiry from Blackall, ABA File Reference: 97/0404.

<sup>276</sup> Stace, M. 1998, *Privacy – Interpreting the Broadcasting Standards Authority's Decisions, January 1990 to June 1998*, Dunmore press, Palmerston, NZ, p.100.

<sup>277</sup> Section 123 of the *Broadcasting Services Act 1992* ('the Act').

<sup>278</sup> Smith, D. 1998, *Privacy and the behaviour of broadcast documentary makers*, Codes and Conditions, Policy and Content Regulation Branch, letter and enclosures in response to inquiry from Blackall, ABA File Reference: 97/0404.

and requirements on privacy. However, unlike the Press Council, the Australian Broadcasting Authority does not set standards, rather it has authority over government-funded broadcasters. Section 150 of the ‘Act’ states that if a person wishes to make a complaint to the ABA they first have to exhaust avenues of complaint to the responsible broadcaster:

(a) a person has made a complaint to the Australian Broadcasting or the Special Broadcasting Service Corporation on the ground that the national broadcasting service has acted contrary to a code of practice developed by that national broadcasting service and notified to the ABA; . . . <sup>279</sup>

In response to my 1998 inquiry, the ABA wrote that it had one case, which related to the issue of privacy and possibly to an invasive camera. Interestingly, the complaint was framed in terms of journalistic issues of accuracy and bias, rather than over documentary film’s tendency to use the dramatic story telling strategies of fictional film.

The complaint related to a documentary entitled *The Battle for Byron*. The film documented the struggle between the pro and anti-development blocs of the Byron Bay Council and the local community in the lead-up to the Byron Shire council elections late in 1995. “The documentary was unashamedly anti-development in the stance that it took.”<sup>280</sup>

On 26 June 1997 the Australian Broadcasting Authority (‘the ABA’) received an unresolved complaint regarding the documentary “The Battle for Byron”, broadcast by ABC TV on 7 November 1996 as part of the “True Stories” documentary series. The complainant alleged that the program contained factual inaccuracies and was biased against developers. The complaint also alleged that an interview conducted on ABC radio station 2NR between presenter Cath Duncan and the maker of the abovementioned documentary encouraged denigration of and discrimination against land developers. The

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<sup>279</sup> Section 150 of the *Broadcasting Services Act 1992* (‘the Act’) in *Report of Investigation ABC TV – “The Battle for Byron” ABC radio – interview by Cath Duncan on 2NR*, Australian Broadcasting Authority, 1997. File No. 97/0404, Complaint No. 9725, Investigation No. 462. P. 1.

<sup>280</sup> *Report of Investigation ABC TV – “The Battle for Byron” ABC radio – interview by Cath Duncan on 2NR*, Australian Broadcasting Authority, 1997. File No. 97/0404, Complaint No. 9725, Investigation No. 462. p. 1.

complainant was also dissatisfied with the time taken by the ABC to respond to the initial complaint.<sup>281</sup>

The ABA assessed the complaint against the discrimination and complaints sections of the ABC

Code of Practice:

#### 2.4 Discrimination

The presentation or portrayal of people in a way which is likely to encourage denigration of or discrimination against any person or section of the community on account of race, ethnicity, nationality, sex, age, physical or mental disability, occupational status, sexual preference or the holding of any religious, cultural or political belief will be avoided. The requirement is not intended to prevent the broadcast of material which is factual, or the expression of genuinely-held opinion in a news or current affairs program, or in the legitimate context of a humorous, satirical or dramatic work.<sup>282</sup>

The complainant also raised objections, but to no avail, over *The Battle for Byron* in respect to section 4 of the Code, which refers only to news and current affairs and not to documentary. The 1996 interview between the ABC presenter, Cath Duncan, and David Bradbury, the co-director and producer of the documentary followed up on a scuffle that had occurred the previous evening at the council meeting involving Bradbury and one of the councilors. The ABA found nothing in the interview that it considered in breach of section 2.4 of the Code, the interview could not be said to have denigrated anybody.

The complaints over bias, accuracy and denigration, imply that the complainant (albeit in supporting real estate developers), like the public, sees documentary as fulfilling a similar role to that of journalism - of providing information in the public interest or benefit. This perception also prevailed in subsequent case studies in this chapter. From these few in-depth case studies, it is

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<sup>281</sup> *Report of Investigation ABC TV – “The Battle for Byron” ABC radio – interview by Cath Duncan on 2NR*, Australian Broadcasting Authority, 1997. File No. 97/0404, Complaint No. 9725, Investigation No. 462. P. 1.

<sup>282</sup> Australian Broadcasting Corporation Code of Practice, Section 2.4. Discrimination. Quoted in the *Report of Investigation ABC TV – “The Battle for Byron” ABC radio – interview by Cath Duncan on 2NR*, Australian Broadcasting Authority, 1997. File No. 97/0404, Complaint No. 9725, Investigation No. 462. P. 2.

noted that the perception held also by social actors (as members of the public) is that documentary has a journalistic role. This is in sharp contrast to filmmaker's understandings of documentary, direct cinema or observational filming: seeing the form as art, or as a text of high culture and certainly above the role of journalism.

In spite of this *The Battle for Byron* complaint was focused upon journalistic issues. It highlights a perception held by the complainant that journalism imperatives were highly relevant to documentary. However, the avenues available for complaint over documentary are less than those available for complaints about journalism, which at least have avenue for complaint and a means of definition in discourse like the MEAA Code of Practice.

The ABC said in their letter of response to the ABA dated 29 July 1997 that:

There was no focus on any occupational group and the broadcast did not denigrate or discriminate against land developers.<sup>283</sup>

The ABA concluded that neither, radio or television programs on the Byron Bay issue, breached the ABC Code of practice. The ABC “admitted, though, a breach of section 8 of the Code (complaints handling) in relation to the time taken to respond to the initial complaint”.<sup>284</sup>

### **5.3 Beyond *The Battle for Byron* - *Delinquent Angel***

In 1998, after *The Battle for Byron* ABA inquiry, I decided to continue the research process, of defining the appropriate camera and editing conduct for *Delinquent Angel*, onto the Australian funding bodies. These were the points, after all, at which projects received public money for

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<sup>283</sup> *Report of Investigation ABC TV – “The Battle for Byron” ABC radio – interview by Cath Duncan on 2NR*, Australian Broadcasting Authority, 1997. File No. 97/0404, Complaint No. 9725, Investigation No. 462. P. 3.

<sup>284</sup> *Report of Investigation ABC TV – “The Battle for Byron” ABC radio – interview by Cath Duncan on 2NR*, Australian Broadcasting Authority, 1997. File No. 97/0404, Complaint No. 9725, Investigation No. 462. P. 5.

production or development. The funding bodies were making critical decisions over competing film proposals – I decided that it therefore should be possible to extract discourse with an indication of norms in respect to filming people. This decision, as this chapter later testifies, led to the use of the Freedom of Information Act with the Australian Film Commission (AFC) and subsequently a concentration on the major case study, *The Wonderful World of Dogs* (examined in detail below).

Despite my previous documentary and current affairs work centering on some delicate issues - teenagers in trouble, Aboriginal art and oral history, youth suicide, observational filming of a fragile old person who spent a decade in a mental hospital - my filmmaking with the SBS and the AFC had never been required to undergo scrutiny in terms of ethics at the point of funding. There have never been questions asked, by the broadcaster or funds provider, over questions of accuracy in the script, privacy for the subjects being filmed, potential for ethical malpractice generally or even on the potential for deception. Rather, questions were always framed in terms of legalities in respect to camera techniques and final presentation.

In the production of a film about the demise of Indigenous languages in Australia, *Keep our Language Strong* (1989) was broadcast on SBS, and no release forms were required. In *Nukan Nungas* (SBS 1990), I sought clearance for filming sacred Indigenous performance, objects and paintings and sent the rough cut back to the Central Australian Papunya Tula community for final clearance. Otherwise, SBS local production allowed me total freedom, without question. Later as an independent producer and director, in making *Can it Hurt Less?* (1992), SBS was only vigilant over my avoiding the possible legal problems associated with the identification of minors involved with crime.

#### 5.4 *Delinquent Angel* – linking legal to ethical

The ethical justification and the practical diplomacy to assure a viable and continuing *Delinquent Angel* project, depended on gaining informed consent from Perceval and his manager, Ken McGregor, who held power of attorney.

They both agreed to participate but John's periods in hospital and his surgery for cranial hemorrhage had to be borne in mind. These may well have related to bouts of heavy drinking and, it could be argued, were self-inflicted. However, it had to be remembered that these medical conditions could also be exacerbated by repeated requests for a drawing or a performance for the camera, especially if they made him angry, anxious or depressed. The camera's gaze – filming indifferently like a machine – could not be justified if it inflicted trauma on a consenting subject. His safety was of paramount importance, no matter what the cause of his ill health.

Despite his decade in Laurundal, a psychiatric hospital, and his notorious drinking, John was fully capable of making rational judgments, while using McGregor's judgment as a reference. In the public domain, John was always considered childlike, a naïf, and this contributed to his artistic stereotype. He would play on this occasionally, perhaps as protection from the glare of publicity, from dealers or buyers, or simply to be mischievous. Assuming him incompetent, people would speak about him in his presence as though he was deaf – and yet he would always understand. His reality was unconventional and his life-style was reclusive but his perception remained acute: "I have fought adulthood all my life"<sup>285</sup>.

Providing information, without being patronizing, to a subject such as Perceval about the real or potential risks and outcomes of filmmaking means taking account of his different and

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<sup>285</sup> Perceval, J. 1989, in Reid, B. 1992, *Of Dark and Light: The Art of John Perceval*, National Gallery of Victoria, Melbourne.

variable verbal comprehension. Other parameters included his level of sobriety, his conceptualization of the world and his decision-making power at the time, his capacity for logical abstraction, his hypothetical thinking or reasoning and his understanding of moral issues (at the time). From the beginning in 1994, his minders, Matt Foster and Ken McGregor, fully comprehended these issues and the related ethics of informed consent. This was due to their experiences with him in the medical system and so they were able to provide highly relevant interpretation and assessment of Perceval's competence.

A subject's competence to be able to provide informed consent may take time to develop. While all the necessary information is provided to a subject at the outset, he or she may not have a clear understanding of the implications until filming has commenced. Some subjects will need to view a rough-cut to clarify these issues and visualize a film. Even fully competent subjects may not be capable of informed consent until they see how they are represented, the emerging structure of the film and the nuances conveyed. This was an issue in all of the case studies in this PhD.

Filmmakers are, most often, unprepared to concede this level of consultation because it might interfere with their editorial control or delay production in tight schedules. It is difficult to envisage how consent can be truly 'informed' if it is obtained once, at the outset, without opportunities for review as filming proceeds and the concept evolves.

With *Delinquent Angel*, the rough cut and then the fine cut were shown a number of times to Perceval and the other social actors: Ken McGregor, David Larwill and David Boyd. Alice Perceval and Marlow Perceval Blackall also saw both the rough and final cuts - their consent and final signing of releases was crucial.

This process of continuing consultation to provide informed consent resulted in the signing of four release forms in some of these instances. These releases, particularly Perceval's, were revised as the legal considerations in the film evolved. The levels of lawyer involvement



increased dramatically after the final cut and the AFC Production Agreement defined this. Issues arising from the specific development of informed consent and its impact on the legalities around the final cut of *Delinquent Angel* are discussed at length in Chapters 6 and 7.

### **5.5 Enticement to participate**

Voluntary consent to participate in a documentary or journalism film implies that subjects are not coerced into participation. A truly disinterested participant, however, is a rarity and inevitably subjects will anticipate some form of reward for participating. In the case study that follows, Mark Lewis's *Wonderful World of Dogs*, the incentive for consideration was the opportunity to have a local governance issue aired publicly. Other incentives might include the attention and publicity given to each social actor and the possibility a subject might see some glamour in being associated with the film. These incentives do not necessarily amount to coercion as they are not proportional to the potential for inconvenience, embarrassment or expense suffered by the subject.

Another incentive to participate for the disadvantaged (the conventional Griersonian victims) could be the attention drawn to their plight, or the opportunity to have their voice heard. There may be an ethical obligation to take account of the effect of such unaccustomed attention – as there was for the remote, austere and reclusive John Perceval.

Any documentary film about an artist generally tends to increase the market price of their works. In the case of *Delinquent Angel*, this economic incentive to participate could constitute an enticement in its own right, imposing a certain commercial style on how an artist's works were presented. Three additional elements could have acted as powerful incentives to participation. The first was his family and friends' desire to see Perceval on film and elevated in the public eye to the stature of his peers such as Arthur Boyd and Sir Sidney Nolan. The second was the

attention given to each participant, as being one who is friend or family to a famous painter. The third was promoting them as artists in their own right and promoting their work, no matter how eccentric. Finally, there was the incentive of film-related glamour if successful – the launches, the broadcasts, the award nights and the film festivals.

A more contentious issue, which did not apply in *Delinquent Angel* or to most documentaries, is a cash consideration, an incentive to act or to appear. This type of payment may be commensurate with the service provided but is significantly greater than a mere token payment. Significant payments in documentary discourage objectivity and possibly reduce the public benefit of the finished film.

Resorting to a defined parallel found in the analogy of medical research (where like journalism, accuracy and accountability are also in the public interest), the National Health and Medical Research Council (NHMRC) stated the nub of the issue of payment as follows:<sup>286</sup>

Volunteers may be paid for inconvenience and time spent, but such payment should not be so large as to be an inducement to participate.

In *Delinquent Angel*, and in many documentary films now, a token fee of \$1.00 was paid to ratify the contract, which may have legal problems as discussed later in this chapter. A further point, raised above in the Preamble, is the possibility of breaching the Trade Practices Act if a social actor is deceived, or asked to do several takes, re-enactments or act out certain material as if a paid actor, contrary to the filmmakers' original representation of the film as documentary. If in fact their role was deemed as professional actor, this would require award rates of pay and other conditions under Actors Equity.

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<sup>286</sup> (NHMRC 1987: 3) (Australian) National Health and Medical Research Council.

The ultimate responsibility for incorporating, disclosing and resolving all these tensions situates itself at the point of the final edit. Ethicist Peter Sellars summarizes the essential argument.<sup>287</sup>

We live in a multicultural, global world in which there is no last word, there is no final point of view, there are just simply a series of emerging and complex voices. Therefore one of the most powerful, powerful tools we have in our line as film-makers, and the most overwhelming tool we have, is the edit. What it philosophically means (is) that you can put this piece of reality next to that piece of reality. . . . What is an image? An image is the juxtaposition of two realities, or less distant, to form a single reality. The more powerful the image, the more distant the realities that are being brought together. . .

An edit (is) when we're actually connecting two completely different experiences and inviting them to enter into dialogue and proximity, but the inter-relatedness, the web of inter-relatedness of the world is actually being deepened in that one cut.

During the post-production of *Delinquent Angel*, these sometimes-complex issues were explained to participants who were then encouraged to engage in the editing by commenting on scripts and rough-cuts. Many filmmakers and journalists would reject this sort of engagement as damaging to objectivity and editorial autonomy.

There was a long time lag between the filming of *Delinquent Angel*, which started in 1994 and the editing, which started in 1999. Once the editor was engaged, a degree of control inevitably shifted to her hands. The director should guide the editing process but not hinder it, trusting in the informed choice of a sympathetic editor. The film's style and structure changes during the edit to the extent that the social actors may begin to overlook how they were filmed originally. By the time a rough-cut emerges, they may have lost enthusiasm and interest in the tedious processes of the cutting room. The daily demands of their lives may limit their involvement in editing or viewing fine cuts, leaving them ill prepared for the final broadcast or cinema premier.

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<sup>287</sup> Sellars, P. 1999, *Ethics, Documentaries & Film - Peter Sellars on Cultural Activism*, ABC transcript: <http://www.abc.net.au/arts/sellars/> Australian International Documentary Conference 1999, <http://www.aidc.on.net/adef.html> On Radio National's Weekly Investigative Documentary: Ethics, Documentaries and Film. Produced by Kirsten Garrett. [Accessed 8 May 2000]

## 5.6 Gauging ability to foresee risk

Understanding the potential risks of participating in a documentary is difficult for anyone, more so for the disadvantaged, the emotionally vulnerable and the victimized. With my previous experience in filming Aboriginal elders and in another instance, young people at risk, particularly Indigenous adolescents, I was able to gauge Perceval's fluctuating ability to rationally assess the risks and benefits of proceeding. To over-estimate this would have been patronizing, to under-estimate it, dangerous to Perceval's health and the film.

My documentary, *Can it Hurt Less?* (1992), dealt with juvenile offenders in family conferencing, away from the conventions of legal hearings and mandatory sentencing. The process revealed some who previously had been exploited and damaged by film crews in the making of highly reputed documentaries.

In 1996, I filmed young people considered traumatized and at risk of further suicide attempts. The public-health research filming took an in-close approach, recording only hands as they were being wrung, lips as they trembled, eyes as they shed tears or a blurred face while the focus settled on the fly screen in the window behind. This avoided identification, which would be unethical and illegal, as their statements related to heroin addiction, child abuse and incest.

Before any filming, we were obliged to seek approval from the University of Wollongong ethics committee and to arrange optional counseling for the subjects before, during and after the filming sessions. This process was well in advance of, and in keeping with, the *Draft Film and Television Safety Code* as part of the Occupational Risk Management in the Australian Film and Television Industry, National Safety Guidelines – Second Published Draft – 8 November 2002 (see Appendix 16):

### Section 45.6 STRESS AND TRAUMA

1. Situations that might give rise of [sic] stress or emotional trauma, even when they are dramatised, should be treated as health, safety and well being hazards. Adequate time should be provided to explain to the child what measures are being taken to eliminate or reduce perceived threat. Where appropriate, expert advice should be sought, from the appropriate statutory authority.

2. For scenes that involve highly traumatizing events, such as child abuse or incest, it must be ascertained (with the assistance of a professional counsellor) that the child actor is emotionally able to deal with the scene. After the scene is shot, the child should be debriefed by the counselor.<sup>288</sup>

Our 1996 public-health research filming was part of funded action research to provided data for analysis of youth issues in public health and, in particular, youth in Emergency Care, post suicide attempt. The University of Wollongong Ethics Committee approved the process, but such checks and balances are rare in filming actuality - whether it is intended for corporate video, as educational product, journalism or documentary film. In a paper presented in summary of the public-health research, we acknowledged the power differences between the filmed and those doing the filming:

Reality for these young people is a world tainted by mistrust, fear, desperation, addiction, self-harm, anger and pain - with occasional glimpses of hope. Their world is very different from the secure one experienced by many health and community professionals. If these young people are lucky, they find others to share some substandard rooms on a temporary basis. Many have difficulty communicating, even with their peers. They do not make friends easily. One youth worker involved in the project commented that he would be happy if one in five of his clients lived for five years.<sup>289</sup>

In considering the project, the University Ethics committee most likely would have referred to the National Statement on Ethical Conduct in Research Involving Humans, Part 4 - Research Involving Children and Young People:

4.1 Research is essential to advance knowledge about children's and young peoples' well-being but research involving children and young people should only be conducted where:

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<sup>288</sup> *Draft Film and Television Safety Code* as part of Occupational Risk Management in the Australian Film and Television Industry - National Safety Guidelines – Second Published Draft – 8 November 2002, *Media Entertainment Arts Alliance* website, [26/11/02 via <http://www.alliance.org.au/>]

<sup>289</sup> Blackall, D., Blackmore, K., Bowen, I. & Watson, M. 1996, *Informed consent? Ethical dilemmas in filming marginalised youth*. Unpublished paper presented to the Illawarra Area Health Service and to a modest conference on ethics, in the University of Wollongong that year.

(a) the research question posed is important to the health and well-being of children or young people;

(b) the participation of children or young people is indispensable because information available from research on other individuals cannot answer the question posed in relation to children or young people;

(c) the study method is appropriate for children or young people; and

(d) the circumstances in which the research is conducted provide for the physical, emotional and psychological safety of the child or young person.

4.2 Consent to a child's or young person's participation in research must be obtained from:

(a) the child or young person whenever he or she has sufficient competence to make this decision; and either

(b) the parents/guardian in all but exceptional circumstances; or

(c) any organisation or person required by law.

4.3 An HREC must not approve, and consent cannot be given for, research which is contrary to the child's or young person's best interests.

4.4 A child's or young person's refusal to participate in a research project must be respected.<sup>290</sup>

This Statement could be used as a basis for filming. In essence, filming is like research and the early observational filming in *Delinquent Angel*, funded by the AFC, was referred to as 'research filming'.

In observational filming the process is 'experimental' as the director and camera operator adopt a filming style that is responsive to the subjects and story being filmed. Therefore, the observational documentary process in particular, should ensure that subjects (especially children)

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<sup>290</sup> National Statement on Ethical Conduct in Research Involving Humans, Part 4 - Research Involving Children and Young People <http://www.health.gov.au/nhmrc/publications/humans/part4.htm> [Accessed 17 March 2003]

are treated similarly to those envisaged in relevant discourse like the National Statement on Ethical Conduct in Research Involving Humans, cited above. This referencing would assist camera-crews, filmmakers and journalists (filming people and their lives) in minimizing the chance of precipitating a life crisis or Post Traumatic Stress Syndrome, as discussed in the previous chapter.

While there nearly always will be some ethical risk in filmmaking this should not prevent the production of good journalism or films. The young, homeless and abused people who participated in *Can it Hurt Less?* stated emphatically that their stories had to be heard – the public at large had to be informed.

Perceval's circumstances were different. His professional career was distinguished and his life history well known. He did not want favorable treatment but accommodated the camera's gaze in a variety of ways. Sometimes that must have been painful and at other times rewarding. He was generally prepared to tolerate the camera because he wanted his story broadcast. Thus, he was prepared to discuss concepts and sign releases as part of a process, which was as near to informed consent as it could be.

### **5.7 Releases can define the issues for best possible informed consent**

Subjects involved in *Delinquent Angel* were quietly assured that they could discontinue at any time, withdraw their contributed material, and no detriment would be incurred. This had an important role in building trust, the consequences of which were felt in negotiations with the family subjects - particularly David Boyd, Alice Perceval and Marlow Perceval-Blackall. These consequences are detailed in the context of release and other legal processes in chapters six and seven.

Most of *Delinquent Angel* was shot in Melbourne or outside Australia – China, the UK and South Africa. It was edited in NSW, where the funding, legal processing and post-production took

place. This chapter will therefore centre on the NSW jurisdiction in terms of the law and *Delinquent Angel*, but the findings and conclusions of the other case studies are generally applicable Australia wide.

Throughout this participatory action research and running parallel with the actual making of *Delinquent Angel*, it was understood that when a subject agrees to participate in a documentary, it is vital (particularly for a freelance filmmaker, as opposed to news and current affairs) that the agreement occurs as a written deed or a contract. This was essential with a camera subject like John Perceval. As previous chapters have espoused, these famous subjects are accepted in public discourse as being of a certain pre-conceived, packaged and publicized character. Their consent and release to be filmed is complicated by that well known personality, reputation and stereotype, and this extends beyond the average person to their copyright in their story, or in biographical items like valuable paintings and sculptures.

So that *Delinquent Angel* could proceed smoothly, I strategically used the release agreements to emphasize the informed consent process. The advantage of this is that if a dispute arises, an original oral agreement is then supported by the subsequent written release agreements and the transparent process that lead to it. This is done with an understanding that the first requirement in a deed or contract is that there is agreement between the parties and the second requirement is that the parties intend the agreement to be legally binding.

A film release is a deed formalizing the agreement of a subject to allow their biography, ideas, image, likeness and voice to be exploited in a film. A release is also required if there is a need to use a particular location for filming and an agreement has been reached with the person or body responsible for that location. A release then, with words describing what is expected of the social actor at the time of filming and after the film is made, is a significant step towards informed consent.

To be effective, deeds must be signed by the parties and by a witness to the agreement and in order for it to be final, questions of deception and misrepresentation must not arise. If one of the parties is a corporation, its seal must be used and the people signing must be directors or



authorized officers of the corporation. A contract differs from a deed in that it includes a consideration. A consideration is “the price, detriment, or forbearance given as value for a promise”.<sup>291</sup> In most cases, the consideration is a sum of money paid from the person receiving the service or thing to the provider. A contract is only binding on the parties if the consideration is paid.

## 5.8 Consideration

After signing a contract and receiving the consideration, the participants, social actors or subjects in a film are bound to fulfill its terms. The consideration means that they have been rewarded as agreed, and establishes the relationship as commercial. The producer is then able to exploit the material made available by the subject in terms of the agreement. The holding of considerable rights by the producer is necessary so that the material may be edited as required and the finished product sold without restriction.

The effect of the agreement must be explained clearly to the subject and, preferably, be written into the deed or contract. When a participant subsequently contests an agreement, it is often on the grounds that its effects were not made clear to them at the time of signing. This serves to illustrate one of the arguments of this thesis – that informed consent is not only an ethical requirement, it is in the best interests of ensuring the film is not threatened by litigation and dispute.

In response to legal advice, at the end of the post-production of *Delinquent Angel*, the existing deeds of release were converted into contracts. This required new documentation and the payment of a consideration, one dollar, by the filmmaker to the participants. It was done to bring the agreements inside the ambit of the law of contract. This was felt to be more appropriate to the relationship between the parties. The legal advice was that the deeds of release could be revoked and that the contracts were more secure.

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<sup>291</sup> *Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd* [1915] AC 847 in *Butterworth's Concise Australian Legal Dictionary*, Second edition, 1998, p.88

The payment of a nominal dollar for the rights to exploit a subject's image, likeness, story and voice may become contentious. The consideration is in return for consent and the waiving of claims that might be made against the producer at a later stage when the film is released. In this context, it might be argued that one-dollar is hardly adequate. However to pay a subject a considerable rate is (in most cases) to negate the documentary's claim on the real. The amount required fair consideration and was summed up by one legal authority as: "The value of the consideration need not be adequate, but must be sufficient."<sup>292</sup> While a nominal consideration will usually be sufficient to bind the contract, its adequacy may be tested if, firstly, the terms of the contract are not fulfilled by the subject and, secondly, if the finished film is challenged because of deceit on the part of the filmmaker, the film's content or its portrayal of the subject.

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<sup>292</sup> *Butterworth's Concise Australian Legal Dictionary*, Second edition, 1998, p.88.

## 5:9 In the event of breach of contract

In the first case, the filmmaker may sue under the common law for damages resulting from the breach of contract by a camera subject as a result of their withdrawal from the film, causing loss of profits or the cost of making alternative arrangements. The filmmaker may seek a court order compelling the performance of the contract by the subject but this is rarely granted in cases where goods or land are not involved – damages are regarded as adequate compensation.<sup>293</sup>

The defenses available to the subject include misrepresentation (deception), which is sufficient to cancel a contract. In order to make a counter-claim for damages however, the subject will have to establish the misrepresentation was either fraudulent or negligent. The former is difficult to prove and the latter requires the establishment that the filmmaker owed a duty of care to the subject. In any case, the amount of damages will be based on restoring the subject's original status.

The defense of undue influence requires the subject to have been under the dominating influence of another person to an extent where the decision to participate was not free and independent. Duress implies a physical threat at the time of signing. The defense of unconscionable conduct would be available if a subject, like John Perceval, had a special disability such as age, mental illness, ignorance or impaired faculties and the filmmaker took unfair advantage of it.<sup>294</sup>

Converting the deeds of agreement into contracts in the case of *Delinquent Angel* also brought the relationship between filmmaker and subject under the Contracts Review Act NSW which provides a list of factors which a court may take into account when deciding whether or not a contract is unfair.<sup>295</sup> These are similar to the provisions already mentioned.

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<sup>293</sup> Sripathy, V. & Ogle, L. 1997, *The Law Handbook*, Sixth Edition, Redfern Legal Centre Publishing, Sydney, p.312

<sup>294</sup> Sripathy, V. & Ogle, L. 1997, *The Law Handbook*, Sixth Edition, Redfern Legal Centre Publishing, Sydney, p.313

<sup>295</sup> Contracts Review Act 1980, Sec.9(2), (NSW)

Where a subject takes legal action after a public screening, its most usual form is defamation (see below) but an action for damages under the Trade Practices Act (TPA 1974) could be brought. As mentioned in the Preamble above, S52 of this Act may become a key factor in changing the manner in which documentary subjects are filmed in Australia.

The TPA is administered by the Trade Practices Commission (TPC), and while some partnerships and sole traders may not be covered by the Act itself, they may be covered by mirror legislation now existing in most States. A subject could attempt to establish that the filmmaker misrepresented the film's intentions and so the subject was not given the courtesy of informed consent: in which case the adequacy of any consideration is unlikely to be an issue. The requirement under contract law to prove that the misrepresentation was fraudulent or negligent is replaced by a provision covering all forms of misleading conduct that the consumer (subject) may have relied upon before the agreement was signed.<sup>296</sup>

One of the benefits, either expressed or implied, accruing to the subject as an inducement to participate is the opportunity to place their opinion, explanation or other information on the public record. This implies, in both journalism and documentary, a freedom on the part of the subject to express their information in their own words and to be filmed in certain actions that are of their own choosing. While the filmmaker is free to make suggestions, if the terms of the contract or its performance have the effect of placing the subject under the filmmaker's detailed direction, the relationship could begin to evolve into one resembling that of employer and employee.

The legal definition of an employee is in terms of the traditional relationship of master and servant – a situation, should it exist, that journalists and documentary makers would not wish to be generally known in the public sphere. For income tax purposes, an employee is a person who receives or is entitled to receive... payments and benefits.<sup>297</sup> According to the NSW Industrial Relations Act 1996, Section 5, "an employee is a person employed in any industry, whether on

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<sup>296</sup> *Trade Practices Act 1974*, Sec.52 (Comm) and *Fair Trading Act 1987*, Sec.42 (NSW)

<sup>297</sup> *The Income Tax Assessment Act 1936*, Sec.221A (Comm)

salary or wages or piece-work rates”. Some pieces of legislation are more precise: “A person who is paid to perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast is an employee of the person liable to make the payment.”<sup>298</sup> A more realistic definition in the current context might be a person who performs on camera substantially under the direction of the filmmaker as to details of the person’s movements, behavior or spoken communication.

Actors and workers employed in film have minimum rates of remuneration and conditions of employment under an industrial award.<sup>299</sup> If a nominal consideration is paid to the subject who is then expected to follow a script or is otherwise directed, problems relating to the award rate of remuneration could arise. On the other hand, if an award rate of pay is made, the payment may become a significant motivation for the subject’s agreement to participate at the behest of the filmmaker/journalist, thus compromising and contradicting the spirit of documentary or journalism. A subject’s willing participation with minimal payment is more likely to be in the spirit of providing a public benefit in placing information on the public record without inducement.

### **5.10 Informed consent as a core issue**

The contractual relationship between filmmaker and subjects, and other participants, as defined by formal agreements or contracts, includes waivers of certain entitlements by participants in return for certain benefits. These agreements include those made for appearing on camera, the use of locations and the assignment or release of copyright in art works and music. Although the terms of these agreements may not specifically mention ethical conduct or the protection of the rights of filmmakers, or subjects, they could be used in defense by filmmakers with assured legal support. They could then defend complaints of ethical misconduct or litigation by referring to conditions such as waivers in the subject release agreement. Although, perhaps not intended as

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<sup>298</sup> *The Retirement Savings Accounts Act 1997*, Sec.19 (Comm)

<sup>299</sup> Actors Feature Film Award, <http://www.alliance.org.au/equity/film.htm>, accessed 19/02/02

conferring any distinct protection, their mere existence can provide an effective safeguard for journalists and filmmakers.

Informed consent is the foundation upon which the legal structures relating to the use of copyright, the agreement to participate and the concept of fair-trading are based. Informed consent can also be used as a defense in a defamation action or in breach of confidentiality - the balance between the public benefit and individual rights is of vital concern to filmmakers and journalists alike.

The freedoms implied in the above, place reciprocal responsibilities on filmmakers; particularly that of obtaining continued informed consent from subjects who may be adversely affected by unintended consequences or conceptual changes that emerge in the course of filming. For their part, subjects whose consent was obtained on an informed and fair basis should also accept their contractual obligations to co-operate or at least to refrain from placing restrictions on directors during filmmaking. These reciprocal obligations should be based on trust, even if the parties are not bound in a strict legal sense.

While the legal requirements related to intellectual property and defamation may be met, they can spill over into ethical considerations, particularly around privacy and the question of whether consent was obtained on an informed basis or not. When filmmakers in fact assess the ability of subjects to meet the cost of taking legal action against the film, or when the filmmaker intends to impugn a subject's reputation or infringe their intellectual property rights, and that is not in public interest, they are entering a problematic ethical area. This kind of calculated risk or "toughing-it-out" is taken on many occasions, defying the principles of informed consent – if not the letter of the law. This "toughing-it-out" was the case in *The Wonderful World of Dogs*, below.

Much rests on the nature of the informed consent obtained by a filmmaker. The better informed the subject is as to the filmmaker's intentions and the nature of the film, the more the filmmaker

can rely on the consent. Just as much depends on how the consent was obtained (as above) and in what form it is documented.

### **5.11 Shifting contexts and perceptions**

Contexts of production and broadcast have changed substantially in recent years and perceptions within the industry over what constitutes ethical treatment of filmed or photographed subjects have changed accordingly. The practice and standards of television broadcasting affects the public's perception of what constitutes an invasion of privacy. How today's events and victims are represented on tonight's television or Internet site, and then how this is discussed in the media, will feed into the practice and standards of tomorrow's production.

Most of the public's views on media practice, content and conduct derive from exposure to this evolving mass media. Cases of journalistic malpractice, such as cameras intruding into grief or misrepresentation, can become news stories in their own right, initiating discussion of the ramifications of informed consent. Always, the subject's unpaid cooperation may be crucial to the success of a film and the funding of future films.

The power balance, however, in these situations generally favors filmmakers because of their understanding of the medium and their support structures. A successful but arrogant practitioner may be indifferent, even insouciant, to the process of informed consent - resulting in intimidation of camera subjects and creating a raft of potentially damaging legal and ethical complications.

If ethical principles underpin understandings of privacy, a film director's style may be transparent enough to reveal how much consideration was given to the subjects and their mode of representation within the documentary itself. Style, as Nichols suggests, is intimately attached to the idea of a moral point of view:

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.<sup>300</sup>

This ideological perspective of the filmmaker is quite transparent in the products of reality television - a vexed issue as discussed and demonstrated in previous chapters. While reality television follows documentary conventions, it relies upon theoretical canons and conventional practices established over a century in fiction filmmaking.

### **5.12 Informed consent and the delinquent angel**

This last section summarizes, essentially, the limited discourses on the ethics of informed consent and camera style that were available throughout the production processes of *Delinquent Angel*. The two contexts of both filmmaking and participatory action research informed each other and occasionally became one. References like those of Bill Nichols and Brian Winston were referred to during the production process. As a result, the following issues were identified as having ethical implications. The thinking went as follows:

1] There are direct social benefits deriving from the documentation of a master painter’s day-to-day working methods – the cultural record of the artist at work. The myth of the artist as aesthete, languidly awaiting the muse of inspiration, can then be thoroughly debunked. As a cultural artifact, this would fill a need because a film in any such vein had not been made on Perceval, his reclusive nature becoming mythical in its own right. The benefits of this filmic approach would flow on to knowledge in its own right; film as a form, film festivals, national broadcast, cinema screenings and then to arts education and professional instruction.

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<sup>300</sup> Nichols, B. 1991, *Representing Reality - Issues and Concepts in Documentary*. Indiana University Press. p.80. He notes: “For a discussion of the prefiguration of moral perspective in historical writing, see Haydon White, *Metahistory*, especially 1-43 (The Johns Hopkins University Press, Baltimore, 1973)”



2] A film would enhance public knowledge and awareness of the emotional and physical traumas such as polio, alcoholism and mental illness, as experienced by Perceval, which in turn has informed his work, or at least contributed to his artistic sensitivity.

The impact of such traumas affect everyone and in many instances contribute to the artistic genius of people, such as the painter Pablo Picasso who, as a child witnessed the trauma of a devastating earthquake. In Alice Miller's *The Untouched Key*,<sup>301</sup> we read of Pablo Picasso's childhood experiences and traumas, and of his mother's aspirations of what he should be. There is a strong parallel in this to John Perceval, especially in terms of his suffering and his relationship with his mother:

We don't know precisely what was taking place on the Calle de la Victoria as little Pablo was being carried down the long street by his father, but we have a good idea. No doubt the boy saw horses lying in the street, contorted faces, children wandering around. He must have heard terrible screams of fear. Unfortunately, no scholars have yet tried to find out how severe the earthquake in Málaga was, whether houses collapsed as well, and what scenes of human misery and suffering took place before the observant eyes of a child who was later to be a genius. For lack of this information, we can turn to *Guernica*, painted in 1937, in which Picasso portrayed the misery of a war he never was in. He painted the scene in such a way that those who see it can experience their own feelings of horror, terror, and helplessness in the face of total destruction – provided they do not let themselves be distracted by the opinions of art critics. He even painted himself over to the right as the bewildered child in the cellar.<sup>302</sup>

Perceval depicted *Guernica*-like scenes in the painting *Exodus from a Bombed City* (1942). He placed his face in the centre left foreground and used the image of a broken cartwheel from childhood, as he did in many of his works. Perceval's psychological dimensions, his childhood and his personality in his work generally, had been covered extensively in books, newspaper articles and in television news and current affairs. In some instances, the focus of the reportage was, in spite of his requests, on his alcoholism and his decade in the mental institution to which

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<sup>301</sup> Miller, A. *The Untouched Key*, 3-18. New York: Double Day, 1990. (© Copyright Double Day, 1990) After Jeni Thornley's recommendation in her assessment, May 1999. Miller's essay on Picasso referred to here at: <http://www.tamu.edu/mocl/picasso/study/miller.html> [Accessed July 1999]

he had committed himself. As Nichols says: “the camera’s gaze may signal the ethical, political, and ideological perspective of the filmmaker” or their employer dictating the spin on the story.

When planning *Delinquent Angel* in this climate, I became convinced of the importance of ethical issues involving Perceval’s privacy and the conflict between society’s agendas and his individual rights. The individual interests of the participants (including Perceval’s friends, family, manager and the manager’s family) and their privacy suggested that they should always be respected and consulted, and that this should be built into the narrative as a transparent aspect to the finished film.

It was decided that the public benefit or the public’s interest in a national public figure did not overrule the participants’ right to their privacy. This meant that the obligation to the research<sup>303</sup> and the filming had to be tightly controlled and minimized to avoid stressing a subject who was frail and frequently in hospital.

Reality, for Perceval, at times was tainted by mistrust, fear, desperation, addiction, self-harm, anger and pain. Despite occasional glimpses of hope, his world contrasted starkly with the relatively secure one of some of his colleagues, like the Boyds, Pugh, Tucker, Nolan, Dickerson and Harris. Commercially successful with relatively stable family lives, they were spared much of the emotional turbulence that was Perceval’s everyday life. An ethical framework was therefore an imperative for the emergence of a truthful filmic representation of Perceval’s art and work without sensationalism and undue emphasis of his deviance. This way, the documentary should portray cultural identities within axiographical categories of truth, freedom and justice. In discussing axioms, Nichols notes that:

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<sup>302</sup> Ibid

<sup>303</sup> Funded by the Australian Film Commission. \$20,000.

Axiographics extends those classic topics of ethical debate – the nature of consent; proprietary rights to recorded images; the right to know versus the right to privacy; the responsibilities of the filmmaker to his or her subject as well as audience, or employer; codes of conduct and the complexities of legal recourse . .

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Different cultures and perspectives provide different references for the criterion of truthfulness and the notion of truth as opposed to deception and lies. These cultural and social differences in audiences guarantee disagreement: that the argument or story, when presented by documentary film as a type of public trial, does not provide a universally acceptable fair hearing and so can have no final resolution.

A film producer, holding a simplistic and perhaps narrow commercial view of the audience and using a formulaic current affairs style, will assume unambiguous mainstream ‘truthfulness’ as their basic norm of communication. This depends on the contexts of the film’s production, mode of distribution and audience, and therefore remains politicized rather than absolute. No consensus exists about these matters, especially amongst academics.

Three recent Australian documentaries as case studies selected for this chapter, accompanied by the minor cases, illustrate this point. The case studies and subsequent discussion provide a context for the care taken in *Delinquent Angel*.

### **5.13 *The Wonderful World of Dogs***

Made by the prominent Australian filmmaker Mark Lewis, *The Wonderful World of Dogs* and certain documents relating to its consent processes provide an interesting case study. A subject of this documentary realized too late that his expectations of the film were markedly different from the producer director - Mark Lewis. One of the film’s subjects, Harold Scruby, felt there was no informed consent and so felt betrayed by a film funding and production process in which parties

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<sup>304</sup> Nichols, B. 1991, *Representing Reality*. Indiana University Press, Indianapolis, p. 77.

acted legally in protecting the film. Scruby feels that production was a process in which ethical considerations were much less important than the film and its legal position.<sup>305</sup>

The production documents for *The Wonderful World of Dogs* (see Appendix) show little attempt by the producers to balance the public benefit of producing an entertaining documentary film against the film's possible detrimental effect on the subject's image and self-respect. The documentation that demonstrates this was obtained from the Australian Film Commission under a Freedom of Information application. (Appendix 1)<sup>306</sup>

This one-hour documentary followed Lewis's earlier film *Cane Toads*, a mock-heroic, highly constructed documentary on the spread of the South American cane toad through eastern Australia. South American toads were introduced to northern Queensland to control a sugar cane pest but, in the absence of predators, they spread inexorably. This highly successful film presented an Australian icon with wit and sophistication. It was successfully promoted internationally, particularly in the US.

*The Wonderful World of Dogs* applied a similar whimsical approach with set-ups and reconstructions to a more ubiquitous creature, the domestic dog. This may have resulted from increasing demands on Australian filmmakers to appeal to international audiences and continue to make films that have appeal in the US market. Considerations such as overseas pre-sales, marketing ploys and international allure are considered at length before approving film development finance.

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<sup>305</sup> Scruby, H. 2001-03 Series of telephone interviews.

<sup>306</sup> Verge, C. 1999, Australian Film Commission letter to D Blackall, 31st May. See appendix Ch4:1. The appendices Ch 4:1 to Ch 4:12 are selected from this material and arranged in chronological order as received by the AFC.

*The Wonderful World of Dogs* was intended for a general release in Australian cinemas and international television. It was made in 1990 when documentary film was venturing further into re-enactment and other artifices, using subjects, or social actors, in a broader way, sometimes to the point of caricature. The film's problems derived from that constructed narrative approach, which is generally applied to the delivery of more fictional forms.

#### **5.14 The social actor**

Harold Scruby, a local councilor, was relevant because he used municipal by-laws in an attempt to reduce fecal pollution of water in the swimming beaches of Sydney Harbor by restricting dogs on urban streets. The release form he signed was standard, assigning to the producer all copyright in appearance, agreeing that his participation might be edited as required by the producer who could also make changes deemed appropriate and that he was not to be paid. Before signing the release on the day of filming, 31st October 1989, Scruby crossed out the following words: "(The producer may) fictionalize persons or events including me". (Appendix 7)<sup>307</sup> Despite this clause indicating intent to fictionalize, Lewis maintains that he always works in the domain of truth in that he recreates or reconstructs it for the camera. This references the filmed event as it would have happened the first time; he said he does not fictionalize. With truth, he said there was no absolute but there was always a truth in a story that the filmmaker wishes to reveal and highlight in making the film.<sup>308</sup>

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<sup>307</sup> Lewis, M. for Radio Pictures, 1989, Correspondence and 'Clearance and Release Deed'. A copy of this deed was included in the material obtained from the AFC but is the only such deed included. It was faxed to the AFC from Mark Lewis on 28th August 1990. See Appendix 7.

<sup>308</sup> Lewis, M. 2003, *Truth is a Special Effect* session at the Australian International Documentary Conference 2003, Byron Bay.

### 5.15 Formative agreements

Under their contractual relationship with the funding bodies, producers are obliged to maximize commercial opportunities. If participating subjects knew the full extent of the commercial considerations or that the film might expose them to ridicule; they might demand involvement in the film's production, a cut of the profits or even withdraw their participation. Scruby claimed that the producer of the film, Mark Lewis (trading as Radio Pictures) had secured his co-operation by misrepresenting the film as an educational documentary about dogs for ABC Television. It seems that there are no written records of the negotiations leading up to his participation, but Scruby's subsequent behavior and the fact that he altered the consent form before signing, seem to support his contention.

The producer also reached an agreement with Mosman Council<sup>309</sup> whereby it would not charge fees for filming on land and property under its authority. The Council later asserted this was because it also understood the film was to be an educational documentary and to be shown on the ABC. Again, it is difficult to test this, but one item of correspondence from Mark Lewis to Harold Scruby before the filming mentions a "letter of support from the ABC" in relation to the waiving of location fees. (Lewis, Appendix 7)<sup>310</sup>

On March 22, 1990, nearly five months after filming, Harold Scruby was concerned enough to telephone Mark Lewis seeking certain assurances. He raised six points in the letter that followed:

- (1) That there will be no fictionalizing of any events either directly or indirectly concerning myself or related to myself.

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<sup>309</sup> Telephone and E mail interviews with Mosman Council Staff – Vivian May and Max Glyde, 2004.

<sup>310</sup> Lewis, M. for Radio Pictures n.d., fax to Harold Scruby. A copy was faxed to the AFC on 28th August 1990. See Appendix 7.

(2) That absolutely no scenes filmed inside my car or of my car will be used and that the only footage you will use of me is that which was filmed in my office at Neutral Bay.

(3) That it will be made quite clear and stated in the film that I own a dog and like dogs.

(4) That at no time will it be stated, suggested or implied that I dislike dogs.

(5) That in no way shape or form do you or any person appearing in the film ridicule, deride, belittle or mock my attitudes, perspective, viewpoints or stance on any matter concerning dogs or the laws relating to the control of dogs.

(6) That the film will not be shown in Australia until 1991. It will be shown in the UK later this year and I will be invited to attend a preview within the next few months; in any event, well in advance of any screening in Australia.<sup>311</sup>

Mark Lewis replied on April 4 (Appendix 4), apparently without legal advice or reference to the AFC, and gave assurances on two of Harold Scruby's concerns. Dealing with the six points in order, the first is a restatement of Scruby's intentions when he amended and signed the original release. Mark Lewis did not provide this assurance to the amendment. The second is a withdrawal of permission to use any material filmed outside his office. Since this filmed interview took place pursuant to a signed release, Lewis had a legal right to use the material. Nevertheless, he gave Scruby this assurance in a limited form. The filmed material, other than his office, was in Scruby's view fictionalized to the extent that he was asked to "look angry" when he wasn't and act as though he was driving around in the car looking for dogs running loose in the park.<sup>312</sup>

The third, fourth and fifth points also represent an understandable attempt to exercise control over the final film, apparently to make it conform to Scruby's earlier understanding of the type of film it was to be. Lewis gave a limited reassurance on the third point. Scruby's sixth point, requesting a preview of the film, as distinct from a seat at the first public screening, was ignored.

This sixth point was taken up three months later by Harold Scruby's solicitors, probably realizing that without seeing the film their client's concerns were based on conjecture and that the sooner they did see the film, the better their chances of satisfying their client. In their letter of 18th July,

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<sup>311</sup> Scruby, H. 1990, letter to Mark Lewis, Appendix 4.

<sup>312</sup> Scruby, H. 1999, telephone interview, Sydney.

they claimed the film had already been shown and Scruby had not been invited. They asserted that this was contrary to an oral condition of the deed of release and, since their client was concerned he may have been portrayed negatively, threatened to seek an order for specific performance in the Equity Division of the NSW Supreme Court that Lewis provide a viewing of the film in seven days and, more importantly, that Lewis be restrained from showing the film in public or elsewhere. Again, apparently without reference to or advice from the AFC, Lewis replied July 24 1990, saying he would invite Scruby to “the opening preview” but was under no obligation to do so. (Appendix 4)<sup>313</sup>

### **5.16 A problem develops**

It was almost three weeks later (6th August 1990) that Mark Lewis wrote to the AFC, the film’s funding body, informing it of the possible problem of “a potential claim that has been made against the film” (Appendix 5). He pointed out that the film was, by then, complete and all its participants had signed release forms, satisfying the requirements for release of the film and Errors and Omissions insurance cover. Two sets of lawyers, those representing Mark Lewis and those representing the ABC, had seen the film and said it was not defamatory. However, Harold Scruby was concerned at how he might have been portrayed and was demanding the film be shown to him within seven days. (This deadline was by then two weeks over) (Appendix 5)<sup>314</sup>

Lewis said he had agreed to invite Scruby to the film’s opening, explaining his reasons for refusing to show the film to Scruby before then. He said that he was under no legal obligation to do so and that it would be a breach of his contract, unwise and contrary to standard industry practice. He maintained this position. Despite several requests, Scruby did not see the film before it was released because Lewis feared it might lead to an injunction preventing a public showing.

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<sup>313</sup> Lewis, M. for Radio Pictures, 1990 letters to Harold Scruby and Peter Saisbury, Film Development, AFC. Mark Lewis sent copies of these four letters, with a covering letter, to the AFC on 10th August 1990. See Appendix 4.

<sup>314</sup> Lewis, M. for Radio Pictures 1990, letter to AFC, 6th August. See Appendix 5.



In a later fax to the AFC dated 28th August, he said, “Mr Scruby is clearly being vexatious” and “I am of the opinion that to show him the film would only court disaster.” (see Appendix 7)<sup>315</sup>

The AFC’s opinion was that the denial was counter-productive. It believed that, since the film was not defamatory, an application for an injunction was unlikely to succeed. It suggested that the film be shown to Scruby on the understanding it was without obligation and that Scruby had no editorial rights (Appendix 5).<sup>316</sup> The AFC seems to have reached this opinion before seeing the release signed by Scruby or the correspondence between the other parties, which did not mention defamation. Lewis then forwarded copies of the letters from Scruby and his solicitor with his replies, reaching the AFC on 13th August 1990 (Appendix 4).<sup>317</sup> The AFC apparently did not seek independent legal advice at any stage but relied on advice from solicitors acting for Mark Lewis as producer, the ABC as an exhibitor, and later, the Film Insurance Underwriting Agencies as insurer (this is usual).

Peter Sainsbury (Executive Director, Film Development) advised the Chief Executive of the AFC, Cathy Robinson of the “potential claim” in a memo on 10th August. She sought a comment from Sue Murray who summed up the position: “I have limited knowledge about the legal aspects but I think Peter’s advice is appropriate. Mark (Lewis) has obtained the necessary clearances and E & O (Errors and Omissions insurance) so he has done what is required of him. Mr Scruby will not like his portrayal, I suspect, but there again he may become doubly righteous. If denied a viewing he may become very difficult” (Appendix 5).<sup>318</sup>

This parallels the post-production history of *Delinquent Angel* in that a subject was unhappy with the way she had been represented in the finished film, despite having signed a release to participate and despite the existence of raw film in which she can be seen participating willingly.

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<sup>315</sup> Lewis, M. for Radio Pictures 1990, fax to AFC, 28th August. See Appendix 7.

<sup>316</sup> Sainsbury, P. Australian Film Commission 1990, memo to Cathy Robinson, 10th August and Sainsbury’s reply to Lewis, same date. See Appendix 5.

<sup>317</sup> Lewis, M. for Radio Pictures 1990, letter to AFC with four attached letters, 10th August. See Appendix 4.

<sup>318</sup> Murray, S. 1990, annotation dated 22nd August to AFC internal memo, 10 August. See Appendix 5.

## 5.17 Escalating legal involvement

Solicitors acting for Harold Scruby wrote to Mark Lewis on August 27 again claiming there was a contractual obligation to show the film to their client, and again threatening to have an injunction placed on the film. They claimed the purpose of the film was misrepresented originally as ‘educational’ rather than ‘commercial entertainment’, citing unnamed third persons who had seen the completed film (Appendix 6).<sup>319</sup> Lewis forwarded a copy of this and then, when forwarding copies of earlier correspondence to the AFC, seemed to admit in his letter dated August 28, to not correcting Scruby’s original expectation, and to representing the film as factual:<sup>320</sup>

Scruby was not told by me that it was an “education program for the ABC”. In fact I have no idea where this quote came from. I had mentioned to him that I hoped the film would be educational and that the ABC were to televise it. We have had various conversations on the phone and he knew full well that the film was about dogs, stories about dogs, the dog problem and how they conflict with man, etc . . . I have made no obligation to Scruby to present him in a good light or bad light but to present the facts of the case as was reported from all points of view including Fugly’s. [sic: ‘Fugly’ being the main dog character in the film]

The words: “present the facts of the case as was reported” have a journalistic ring, yet in a cultural context, filmmakers tend to avoid being seen as journalists. According to the documentation it appears that it was in this letter, three weeks after Lewis first notified the AFC of the “potential threat” and ten months after the day of filming, that he informed the AFC (under his obligation to the AFC) that Scruby had deleted from the Clearance and Release Deed, the words; “fictionalize persons or events including me”. Another legal opinion was sought, this time from solicitors acting for FIUA, the insurer, amid concerns expressed by Lewis about the mounting legal costs. He asked the AFC, as co-copyright owner, if it might be prepared to meet some of the costs.<sup>321</sup> He was reassured through his solicitor that the ABC’s Legal Department would support him, the AFC and FIUA.<sup>322</sup> On September 6, Lewis advised the AFC that the

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<sup>319</sup> Glasson, Gemmell & McGill 1990, letter to Mark Lewis, 27th August. Faxed to AFC with covering letter, 28th August. See Appendix 6.

<sup>320</sup> Lewis, M. for Radio Pictures 1990, fax to AFC with three attachments, 28 August. See Appendix 7.

<sup>321</sup> Lewis, M. for Radio Pictures 1990, fax to AFC, 29th August. See Appendix 8.

<sup>322</sup> Lewis, M. for Radio Pictures 1990, fax to AFC, 31st August. See Appendix 9.

insurer's solicitor agreed with the other two opinions in that "they can find no problem with the film."<sup>323</sup> Lynn Gailey (Assistant Director, Film Development) then wrote a memo to Cathy Robinson (Chief Executive, AFC):<sup>324</sup>

All three [solicitors] believe that the film contains no defamatory material and that there is no obligation on Mark to screen the film and that nothing further should be done at this stage and Mark should just wait and see if Mr Scrubie's [sic] lawyers take it further. All three solicitors have sighted and are satisfied with the release form signed by Mr Scrubie [sic].

In this legal environment, Harold Scruby's attempts to exert editorial control over his contribution to the film came to nothing. The legal environment favors the filmmaker. It only remained for Scruby to make one last plea, directly to the AFC's sense of fair play – an appeal to ethics in a world of expediency and commercial priorities. Peter Sainsbury, Executive Director Film Development returned his calls and made a comprehensive file note:<sup>325</sup>

Mr Scruby, an on-screen participant in THE WONDERFUL WORLD OF DOGS had been telephoning the AFC concerning his complaint about the production. It was thought proper that Mr Scruby's calls should be returned and I telephoned him at approximately 4.00 pm on Monday 24th September. Maureen Burns witnessed the conversation.

Mr Scruby's complaints (on the strength of which, he says, he has withdrawn his agreement to participate in the film) allege that:

1. He was misled by Mark Lewis when told that his participation was required for an "educational" documentary film about dogs for the ABC. He has subsequently discovered that the film was intended for international television and Australian theatric release.
2. He was further misled in the representation of the film as a "serious documentary": it has subsequently been suggested to him by some who have seen it as a largely fictionalized film and a "send up".
3. Considerable collaboration was freely given to Mark Lewis on the strength of Mark's account of the nature and purpose of the film, including access to Mr Scruby's files and the waiving of standard location fees in Mosman.

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<sup>323</sup> Lewis, M. for Radio Pictures 1990, fax to AFC, 6th September. See Appendix 9.

<sup>324</sup> Gailey, L. 1990, AFC internal memo, 18th September. See Appendix 10.

<sup>325</sup> Sainsbury, P 1990, AFC note to file, 26th September. The material obtained under FOI included Sainsbury's notes, the notes made by a witness, a first draft and the final draft, which is quoted here in full. See Appendix 10.

4. He was duplicitously persuaded into collaborating in the filming of a sequence involving driving his car around Mosman which was later edited into the film in such a way as to ridicule him.

5. He has been used in a film which was clearly not a documentary despite having deleted wording in the release form obtained by Mark Lewis which referred to non-documentary uses of his appearance.

6. Despite many requests and notwithstanding the holding of several previews of the film, he has been denied the opportunity to see it.

I pointed out to Mr Scruby that I could not comment on what had passed verbally between himself and Mark Lewis. I explained that the AFC acted as the financier not the producer and therefore bore no direct responsibility in the matters referred to. I also told him that the premiere to which he had been invited had not yet taken place; on this last point Mr Scruby asserted that a preview, not a premiere, was what he had been invited to.

Mr Scruby said he “would definitely take action” against Mark Lewis and “probably” against the film as well. Asked on what grounds, he said that his action would be based on breach by Mark Lewis of the verbal and written contracts they had entered into.

Mr Scruby also informed me that he was taking the advice of Actors Equity. He said that if Mark Lewis were to pay him a fee (unspecified) for his performance, then “maybe I would back off” (sic). I told him I took note of this point.

Mr Scruby reiterated that his objection was not to the film, which he had not seen, but to having been deceived. He said he would have his solicitors advise me in writing of the action they would be taking. I thanked him.

Comments:

I have previously told Mark Lewis in writing that I thought denying Mr Scruby the opportunity (not the right) to see the film was counter-productive. I remain of this view despite Mark’s fear that a screening would give Mr Scruby ample opportunity to seek an injunction against public showing of the film.

We have expected any action taken by Mr Scruby to be on grounds of breach of privacy or defamation and we have received plenty of legal advice to the effect that no such case could be sustained. We were merely concerned at the prospective cost of defending what may turn out to be a “vexatious” action.

We now contemplate an action based upon breach of contract and we need to clarify whether an action against Mark Lewis on these grounds could extend to an action against the film (prejudicing the AFC’s investment) and/or the AFC (as an accomplice in the alleged deception).

Mark Lewis is likely to seek assistance from the AFC in the event of action brought against himself. If Mark is in breach of the contract with Mr Scruby, he is also probably in breach of contract with the AFC.

We do not have but should try to obtain a copy of the release Mr Scruby signed.

We should contemplate the advisability/propriety of showing Mr Scruby the film with or without Mark Lewis' agreement.

(Initialled) Peter Sainsbury (see Appendix 10)

Assuming Peter Sainsbury had seen the film, the unease implied in his comments is understandable. Despite this, there is no indication that the AFC obtained further legal advice on any of these concerns. Sainsbury's comment about not having a copy of the signed release is difficult to understand since Lewis apparently faxed him a copy on 30th August. In any case, it was another five months before Harold Scruby saw the film and his solicitors wrote to Mark Lewis. Their letter of February 25 1991 (Appendix 11) said that Scruby had concluded that the film had been produced for entertainment purposes and commercial gain rather than for educational purposes as represented by Mark Lewis.

They said that that the film had important factual inaccuracies and fakery, including the use of a stand-in for the dog Fugly, the gross exaggeration of the number of times Fugly had been impounded, and there is a clear message in the film the efforts made to keep Fugly off the streets of Mosman were to no avail, when the opposite was the case. They added that Lewis failed to keep the undertaking to include in the film the views of the RSPCA and the Australian Veterinary Association on the subject of dogs being permitted to roam the streets and failed to fulfill his undertaking to include Scruby in the film with his dog. As well as requesting corrections of the factual inaccuracies, they demanded compensation of \$10,000 for the misrepresentation of the nature of the film, threatening proceedings under the Fair Trading Act. (See Appendix 11)<sup>326</sup>

In the absence overseas of Lewis's solicitor, the insurer's solicitor replied on March 1, saying the film was not defamatory and that Scruby had not suffered loss from any alleged misrepresentation. The letter added that Scruby's letters were "involving all parties in unnecessary, pointless expense". They would be advising the insurer and the insured the demand

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<sup>326</sup> Glasson, Gemmell & McGill 1991, letter to Lewis, 25th February. Faxed to AFC with covering letter, 26th February. See Appendix 11.

is groundless and they are under no obligation to change the film in any way (see Appendix 12).<sup>327</sup>

In forwarding a copy of Scruby's letter to the AFC, Mark Lewis' commented that Scruby should be told to "put up or shut up". In forwarding a draft of the reply, he claimed that "Scruby enjoys causing unnecessary pointless aggravation and expense to people"<sup>328</sup> and, later the same day, "the mention of the insurers may dilute his obsessiveness because he may realize all the trouble he is causing does not personally affect or cause me distress. On the other hand he may also see the pot of gold, but the pot of gold can become diminished when he must realise his demands/threats are groundless and he has a big firm of suits and wigs prepared to defend it. It's very hard second guessing him."<sup>329</sup> It seems that everyone on the side of the film was for resolving an ethical dilemma by a legalistic process.

Harold Scruby's solicitors responded quickly. On 4th March they sent what was to be their final letter. After detailing the sections of the various acts applying to their client's case, they continued:<sup>330</sup>

Our client was in effect duped into participating in the film upon express representation that the film would be an educational programme for the ABC and on that basis alone he was prepared to appear without recompense. Had he been informed that the film was to be or might become a feature film for entertainment purposes and would be released in theatres in Australia and overseas for commercial gain then he would have demanded, quite rightly and properly, a fee for his participation which included not simply his appearance in the film but the disclosure to your client of his files and a variety of information which in one form or another was used in the film. Our client's assertions are further supported by the "Clearance and Release Deed" dated 31/10/89 (as per copy attached) which the film maker required our client to sign and in which the words ... "fictionalize persons or events including me"... have been deleted.

The factual inaccuracies in the film to which we have referred in our letter of 25th February, 1991 go to establishing some of the embellishments adopted to make the film more entertaining and thus commercially viable and emphasize

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<sup>327</sup> Phillips Fox 1991, draft letter to Glasson, Gemmell and McGill, 28th February. See Appendix 12. An accompanying file note indicates this letter was sent as drafted.

<sup>328</sup> Lewis, M. for Radio Pictures 1991, fax to AFC with attachment, 1st March. See Appendix 12.

<sup>329</sup> Lewis, M. for Radio Pictures 1991, fax to AFC, 1st March. See Appendix 13.

<sup>330</sup> Glasson, Gemmell & McGill 1991, letter to Phillips Fox, 4th March. See Appendix 13.

that the film was not made for educational purposes. Any educational value in the film is merely incidental and is completely overridden by the primary motive to entertain and amuse.

Lynn Gailey summarized the situation in her memo to Cathy Robinson (Chief Executive AFC), dated 7th March 1991. Interestingly, like many of the memos, she incorrectly says: “Mr Scrubie’s [sic] solicitors are now claiming that Mr Scrubie [sic] is entitled to a fee of \$10,000”. A reading of their letter of 25th February indicates that, in their opinion, the lack of a fee as agreed at the time of filming was evidence of Scruby’s belief the film was to be educational rather than commercial entertainment. The sum of \$10,000 was in the context of damages claimed for the alleged deception. She continued:<sup>331</sup>

In our opinion, the position being adopted... is lame and unlikely to bring the matter to an end. We believe that unless the reality of a potential cross claim for damages resulting from a distribution hiccup is brought to Scrubie’s [sic] attention this matter could embroil all concerned in a difficult and potentially costly legal dispute.

According to a later file note, the insurer’s solicitors decided not to reply to Scruby and that all that would be attended to was the payment of Mosman Council’s location fees.<sup>332</sup> One of their two letters in the AFC’s files threatened a counter-claim along the lines suggested by Lynn Gailey, together with a possible defense:<sup>333</sup>

As to those alleged misrepresentations, we point out that Mr Lewis’ style of film making is extremely well known. His work “Cane Toads” achieved the success it did by combining entertaining with documentary, educational material. The two purposes – educational and entertainment – are not mutually exclusive.

It is possible this letter, or a similar one, was sent without the AFC receiving a copy, or its contents may have been communicated verbally to Scruby’s solicitors, or perhaps Scruby decided not to pursue the matter for other reasons. The claim by Mosman Council for location fees was

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<sup>331</sup> Gailey, L. 1991, AFC internal memo, 7th March. See Appendix 13.

<sup>332</sup> Gailey, L. 1991, AFC file note, 18th April. See Appendix 13.

<sup>333</sup> Phillips Fox, 1991, draft and final letter to Glasson, Gemmell & McGill, 5<sup>th</sup> & 6<sup>th</sup> March. See Appendix 13.

also dropped. Harold Scruby remains unhappy with the outcome. Asked about Scruby's treatment, Lewis replied: "Yes, I was a bit naughty with Harold".<sup>334</sup>

### **5.18 Dogs and informed consent**

Predictably, had Harold Scruby been fully informed of the filmmaker's intentions as to markets, commercial aspirations following the *Cane Toads* success, and the nature of the role he was expected to play, he would have been then able to decide on participation. He may then have asked for remuneration for acting, insisted on factual representation or withdrawn entirely from the film prior to signing the release.

Finally, it should be noted that ethical discourse is something that we undertake with others in a shared expedition for mutual understanding. It could be said that aggressive negotiation, partial transparency and spin is a preferred form of discourse in business or politics when convincing someone to accept an agenda or a commercial contract. However in filmmaking, mediation is surely more appropriate when one is engaged in a common goal, with people who are not paid, to make a good film and keep lawyer costs down. An approach that emphasizes ethical reflection as an informed and participatory action renders filmmaking and journalism into an on-going civil and interpersonal process.

Informed consent is essentially a conversation and the moment dialogue is withheld there is risk, and this is when lawyers become involved. This effect is magnified by the absence of

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<sup>334</sup> Lewis, M. 2003, 'In Conversation With Mark Lewis', session, at the *Australian International Documentary Conference 2003*, Byron Bay.



ethical definition or reference points in written and publicly available guidelines like codes of ethics for factual filmmaking.

### **5.19 *Cop it Sweet* - public interest and journalism**

In NSW the conflict between police and indigenous Australians has origins in colonial settlement and this continues to impact on the high levels of indigenous incarceration. In the late 1980s, the proportion of the indigenous population in prisons was higher than for any other ethnic group, the proportion continues to rise. The cultures of the judiciary and particularly the police were reluctant to absorb new attitudes. The racist culture was well established in public opinion, well documented in the courts and reiterated through the news media. In 1989, television journalist and filmmaker Jennie Brockie, supported by the ABC, produced a 'new realism' documentary - *Cop it Sweet*.

Brockie and her crew were able to expose racism and brutality when police officers exercise their discretionary powers. As the police patrolled Redfern, an inner Sydney suburb, the documentary camera filming them seemed almost invisible. Police participants appeared unconcerned as their overtly racist language and attitudes were recorded on video tape. Not surprisingly, the film created a furor and police officers were disciplined. Media analyst, Peter Putnis, described its impact in this way: <sup>335</sup>

The filmmakers are as unobtrusive as possible; we are offered what seems to be direct observation of [the police's] activities. The film was obviously made with the cooperation of the NSW police force... We saw an officer who initially projected himself as a "good guy" who was very conscious of police power and claimed he would not abuse it, proceed to arrest an Aboriginal person on a trivial charge of swearing... The highlight of the program was the juxtaposition of

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<sup>335</sup> Putnis, P. 1992, 'Television journalism and image ethics' in *Australian Journalism Review*, Vol 14 (No 2) July-December, p. 8).

scenes of a policeman swearing at Aborigines with scenes of an Aborigine being locked up for similar behaviour. The hypocrisy was evident to all.

Putnis acknowledged that the film is a professional work made in public interest and with significant social value. His analysis, though, raises a number of questions about informed consent. Each new Redfern police patrol routinely signed a release at the beginning of every day of filming. Putnis asks, as would many other viewers, why would police in such circumstances regularly sign consent forms? The only plausible answer is that they were expecting, and therefore consenting to participate in, a different film. Putnis believes they behaved on film as they did normally, without the camera, perhaps envisaging a film where all the bad bits would be edited out or at least used in good humor. The police seem to have envisaged a documentary about community policing and the on-the-street struggles that police workers endure. They were, then, naive about the documentary filmmaking process and, perhaps, about the intentions of the documentary maker. Having made films with police, this writer has found that they do consent willingly, imagining they will be represented favorably and this trust is based on the preliminary interviews and dialogue in the process of seeking agreement from the police executive.

In July 1992, Jennie Brockie spoke at a public seminar, *Journalism and the Law*, held at the NSW State Library. She spoke about practical constraints on reporting, particularly in relation to *Cop It Sweet* and she summed up the ethical challenges:<sup>336</sup>

How to explain to the local Aboriginal population that we are exploring all their stories about the police past and present, that this film wasn't like that, that they would have to watch us drive up and down Eveleigh Street the well-worn path of many a film crew in the back of a police car, day after day, night after night. But this film wouldn't be like *Cops*, this film would be different. How to capture both the power and the vulnerability of general duties police on patrol. How to convey my own very ambivalent feelings about this whole world of police culture. How to respect people's privacy and still make a film that would have some impact. And above all – how to be as fair as possible to everybody in the film.

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<sup>336</sup> Brockie, J. 1992. *Journalism and the Law* Public Seminar, NSW State Library. Australian Centre for Independent Journalism and The Library Society. Accessed in 2000 at: <http://www.austlii.edu.au/other/media.oid/869.html>. Site no longer active in 2003.

This may explain why the police signed the consent forms. They were probably expecting another film like *Cops*, in which they were treated more sympathetically – filmed from the side of police. Brockie did not explain the film’s true intentions, just persuaded the participants to be themselves:

My approach in making documentaries is to try to encourage people to reveal themselves. And in my experience they often do. Contrary to popular myth, this is not done with a mixture of lies and jiggery-pokery on the part of television journalists and filmmakers like myself. It’s often about very simple things – making people feel relaxed, taking them through the process and it all takes time explaining technology and so on. Time that the news journalists or the daily current affairs journalist often doesn’t have.<sup>337</sup>

With the luxury of time that documentary affords over news and current affairs: did Brockie directly address the central ethical question of whether or not the public benefit to be derived from showing police in this light? She hopefully concluded that the public benefit of the film outweighs the detrimental consequences for some police officers, the possible public detriment of alienating police towards the media in general because the film was not as expected, and lowering the reputation of the police in the eyes of the public. Later, she quotes the then NSW Police Commissioner, Tony Lauer, who said it for her after the film went to air: “It’s about holding up a mirror, even when the reflection isn’t what people want to see or feel comfortable with.” Upon reflection, Lauer felt the film was in the public benefit.

In addition, the participants (the police and the public) were able to control the filmmaker’s access to their images and voices by having the option of knowing when filming took place and being able to stop. This assisted in giving subjects a small say in determining the content of the documentary. Informed consent is ongoing as a conversation and becomes integral to the production process.

It was essential in my view that, from the start, police were fully briefed by the sound reporters how their microphones worked, especially how to turn them on and off. With that knowledge, they had some control... As far as the public was concerned, it was important for us to be visible at all times, not hiding among

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<sup>337</sup> Ibid

bushes, but out in the clear. If anyone objected to being filmed, we simply stopped.<sup>338</sup>

Jennie Brockie seems to be aware of the distinction between journalistic and directorial roles in documentary and that the boundary is naturally blurred when the medium is television.

I see television as an ideal vehicle for investigative journalism. But to me, investigations are not just about tracking down financial deals and rooting out corruption. Vital as that is. Investigative journalism is also about exploring and revealing people's attitudes and behaviours. Especially the attitudes and behaviors of people with power.<sup>339</sup>

She also acknowledged that media laws provide certain freedoms and power to produce journalism and documentary as envisaged.

...although it's argued that the journalist's greatest enemy is often the media law, I have to say I sometimes wonder whether our own profession's timidity and lack of imagination can be just as pervasive an enemy. ...Often the pre-emptive buckle of an editor or reporter when a writ or an injunction is threatened can be just a big a hurdle as the law itself. Our sights as journalists shouldn't be set by lawyers or by (litigious) individuals. Limiting ourselves before we start is in my view one of the most fundamental mistakes we as journalists can make. In 15 years as journalist, I found that despite very restrictive media laws... I still manage to get quite a lot of controversial material to air. This may well be a function of the particular type of work that I do. I am an odd sort of hybrid in media terms.<sup>340</sup>

The case study focus in this instance, has shifted from the adversarial approach of Lewis to one of greater cooperation for Brockie, and so there is a shift in the tone of the ethical discourse arising from *Cop it Sweet*. Whereas 'toughing it out' and argument were the paradigmatic forms of discourse in *The Wonderful World of Dogs*; conversation, understanding, public interest and dialogue emerge as the primary considerations in *Cop it Sweet*.

## 5.20 A matter of style in approach

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<sup>338</sup> Ibid

<sup>339</sup> Ibid

<sup>340</sup> Ibid

Informed consent and ethical practice is an activity that filmmakers and film subjects can engage in together, they can all benefit from each other's insights. In the adversarial model, other people's insights are threats to the director and the hierarchy of production. In the dialogue model, the insights of others enrich the final film in a more pluralistic form.

This was the case in *Delinquent Angel*, though frustrating at times, the dialogue between myself, Perceval and McGregor, coupled with the constant internal dialogue worked for an attempt to find a truth. This is preferable to the secrecy and deception in the adversarial model, where the director identifies and defeats an opponent like Perceval or McGregor.

### 5.21 Informed Consent in *Cunnamulla*

Dennis O'Rourke, the maker of the documentary *The Good Woman of Bangkok*, is a prolific and internationally distinguished Australian filmmaker.<sup>341</sup>

Dennis O'Rourke is no stranger to controversy. *The Good Woman of Bangkok*, his 1991 documentary about his relationship with a Thai bar girl, is almost certainly the most written about Australian documentary of recent years. It created a furore amongst feminists when it was released at the Documentary conference in 1991.<sup>342</sup>

His recent film, *Cunnamulla*<sup>343</sup> attracted media attention for its entertainment value and for a disagreement over representation and informed consent. The feature documentary was selected to

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<sup>341</sup> O'Rourke first went to PNG on fishing boats and worked on oilrigs in the Gulf of Papua. He began working at the ABC in Sydney as a gardener, became a cameraman and went to work for the Department of Information in Port Moresby where one of his most significant trainers in camera work was David Brill (featured in Chapter 4). O'Rourke worked on government documentaries, married Roseanne, a Papuan woman, and had children. He produced the film *Yumi Yet* (1975) about the PNG Independence celebrations. He followed that with *Election* (1977) *Shark Callers of Kontu* (1982) and *Cannibal Tours* (1988) all set in PNG. He also made *Half Life: A Parable for the Nuclear Age* (1985) and *It Couldn't be Fairer* (1984).

<sup>342</sup> Stocks, I. 2001, *The Troubles of Dennis O'Rourke*, Senses of Cinema. **Issue 24, Jan - Feb 2003**  
<http://www.sensesofcinema.com/contents/01/13/orourke.html> [4 March 2003]

<sup>343</sup> The reference to *Cunnamulla* on the distributor's website (Ronin Films), reads: "Written, Produced and Directed by Dennis O'Rourke. Executive Producers for Film Australia: Stefan Moore and Chris Oliver. ABC

screen in a competition at the International Documentary Festival in Amsterdam, it screened at the Valhala Cinema in Sydney and was broadcast nationally on the ABC. *Cunnamulla* also won awards including best documentary from the 2000 Screen Writers Association of Australia.

Two teenage girls, who spoke about their sex lives in *Cunnamulla*, later claimed that the showing of the film caused them humiliation and shame. One of them said that this forced her to leave their hometown and family.

O'Rourke's ethics in using the girls as film characters to provide revelations about the town were brought into question. Many commentators accused O'Rourke of exploitation, if not deception, as the girls were interviewed on the agreement that they were contestants in a Miss Maid competition. O'Rourke is also alleged to have told the father of one of the girls (Kellie-Anne Allardice) that he wished to record her views on the prevalence of racism in the town, a theme evident in the film.

The girls' parents were upset and embarrassed after seeing their daughters talking about sex, saying that O'Rourke had not mentioned anything about the sex story-line in conversations leading up to their consenting. O'Rourke continues to emphatically deny exploiting the young women.

One is reminded of Margaret Mead interviewing young women in Western Samoa in 1925 for a study called *Coming of Age In Samoa* (1928) when they revealed what were supposed to be their deepest secrets. Later interviewers revealed the possibility that the

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Executive Producer: Geoff Barnes. Made by the Film Australia National Interest Program in association with Camerawork Limited.

Cunnamulla. 800 kilometres west of Brisbane. The end of the railway line. In the months leading up to a scorching Christmas in the bush, there's a lot more going on than the annual lizard race. ARTHUR patrols the sunbaked streets in his Flash Cab, the only taxi in town. He's as terse as the company motto – 'no cash, no Flash'. His wife NEREDAH knows everyone's business and tells it all... MARTO, the local DJ, is into heavy metal and body piercing... CARA and KELLIE-ANNE have dropped out of school. They're trying not to get pregnant and longing for the day they can escape to the city... In Cunnamulla, Aboriginal and white Australians live together but apart. Creativity struggles against indifference, eccentricity against conformity. Sometimes sad, often hilarious, *Cunnamulla* is an astonishingly honest portrait of life in an isolated community in outback Queensland."

women had made up the stories because they appeared to gratify Mead's quest for information.

... *Cunnamulla* is an ethnographic study. Its style emphasises the individual interviews and puts the viewer in the role of a detached observer. Meanwhile the dialogue gives meaning to the overall scene. Overall, O'Rourke restrains camera movement in the interests of clarity, so it comes as a surprise when he resorts to pull focus and pans during Cara's discussion with her mum early in the film.<sup>344</sup>

O'Rourke said that the subjects in the film were initially happy with the final cut, only to change their minds when influenced by the mass media's reaction to the film.<sup>345</sup> On December 17, 2001, Brisbane's metropolitan daily newspaper, the *Courier Mail* ran a story headlined: "Family burnt out 2nd time". It tells of one of the girls, Cara Hearn, with her baby and her mother being homeless again when their second house was destroyed by fire. The paper tells how 13-year old Cara is central to the controversial film within her community of outback Queensland. Cara and her family say they had to leave town because of public ridicule resulting from the film.

Now aged 16, and with a baby daughter to care for, Cara is angry that her adolescent intimacies are still up on the screen for all to see. Cara and her 18-year-old cousin Kellie Anne are suing the film's producers under section 52 of the Trade Practices Act, accusing them of misleading and deceptive conduct. They claim the film's director, Dennis O'Rourke deceived them into revealing details about their sex life by telling them he planned to base the film around Cara's involvement in the town's Miss Maid competition and that her discussions about sex would be left out. The girls claim that O'Rourke used to hang around their house and allegedly was filming Cara in her bedroom as she slept. Cara alleges O'Rourke provided inducements...<sup>346</sup>

According to several press reports at the time, the two Aboriginal teenagers said that when O'Rourke approached them, he wanted to interview them about life in Cunnamulla. In Sydney's *Daily Telegraph* on Friday 1st June 2001, in an article entitled "Details of sex life in film made me out as a tart", Janelle Miles added the following:

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<sup>344</sup> Stocks, I. 2001, *The Troubles of Dennis O'Rourke*, Senses of Cinema. **Issue 24, Jan - Feb 2003**  
<http://www.sensesofcinema.com/contents/01/13/orourke.html> [4 March 2003]

<sup>345</sup> O'Rourke, D. 2003, *After the Fact* session at the Australian International Documentary Conference 2003.

<sup>346</sup> Wilson, A. 2001. *The Australian* newspaper, Tuesday, December 18, 2001. p.4

Cara's mother Margaret said she felt betrayed by Mr O'Rourke. She admitted to signing a document giving Mr O'Rourke permission to talk to Cara, but this was only on the basis of the teenager's involvement in the Miss Maid competition.

Ms Hearn and Cara moved from Cunnamulla to Charleville after the movie was (screened) and may move again to escape the notoriety surrounding the film...

This press article suggests that a release was signed before filming, later in this case study it seems that O'Rourke's statements indicate there was no release until after the filming at their private screening. The two girls as participants sought an injunction to restrict the distribution of the film. The implications for informed consent are obvious. The nature of any release form that might have been signed, (before, during or after filming) and the nature of the consent given by the parents of the two participants are particularly relevant to this case.

## **5.22 The Court – seek justice and set precedents**

Cara and her 18-year-old cousin Kellie Anne, through the Aboriginal Legal Service, sought damages and other relief for infringement of section 52 of the Commonwealth Trade Practices Act, 1974. Section 52 in Division 1 of Part V of the Act. Under "Unfair Practices" Section 52 reads:

1) A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

The question that the court was to decide upon, was whether the filming and process being complained of was engaged as "in trade or commerce. After the proceedings Judge Kiefel ordered that:

1. the statement of claim should be struck out, and
2. the applicants pay the respondents' costs on the motion.<sup>347</sup>

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<sup>347</sup> Kiefel, J. Taccara Jayne Hearn and Kellie Anne Allardice v Dennis O'Rourke and Camerawork Pty Ltd. Q90 of 2002. 20 September 2002, Brisbane, in the Federal Court of Australia. Queensland District Registry. Between: Taccara Jayne Hearn, first applicant. Kellie Anne Allardice, second applicant, and: Dennis O'Rourke, first respondent of Camerawork Pty Ltd (acn 002 277 296), Second Respondent. Date of order: 20 September 2002,



The respondents, the filmmaker Dennis O'Rourke and his film company, contended that the "statement of claim should be struck out as the conduct alleged did not take place "in trade or commerce" as s 52 requires".

Judge Kiefel stated that the "facts relevant to a consideration of this question are not in dispute". It was clear that the film director (O'Rourke) and the second respondent, his company, of which O'Rourke as a director, produced films and documentaries for profit.

It is alleged that the first respondent falsely represented to the first applicant and her mother that he wished to document her involvement in a contest called the "Miss Maid Contest". To the second applicant's father the first respondent is alleged to have said that he wished to obtain her views on whether there was racism in the town. These statements were made in the context of a proposed documentary he said would be made about life in Cunnamulla.

. . . It is alleged that they were deceived. The representations were false. The first respondent intended to speak to each of the applicants about the first applicant's sexual activities, as he in fact did. . . The respondents submit that whilst there is a connexion between the conduct alleged in the statement of claim, and the respondent's commercial activities in making and distributing films, this is not sufficient. The phrase " in trade or commerce" in s 52 is restricted in its operation to conduct which is itself an aspect or element of activities or transactions which, of their nature, bear a trading or commercial character.....<sup>348</sup>

In demonstrating to the court that filming an interview is not in " in trade or commerce", counsel for O'Rourke accepted that the "context in which the alleged representations were made could be likened to the creation of a product". They drew an analogy with the construction of a building under contract and argued that the dealings between O'Rourke and each of the subjects in the film (both minors), and their parents, did not bear a trading or commercial character.

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Brisbane. Counsel for the Applicant: Mr. R Perry. Solicitor for the Applicant: Drakopoulos Black. Counsel for the Respondent: Mr. W Sofronoff QC with Mr. D O'Gorman. Solicitor for the Respondent: Pamela Coward & Associates. Date of Hearing: 16 September 2002. Date of Judgment: 20 September 2002

<sup>348</sup> Ibid

Counsel for O'Rourke also argued that film production for the "purpose of securing the subject matter of the film must be seen as an 'aspect or element' of the film-making activities"<sup>349</sup>.

While those activities in the end had a trading or commercial character, at the point of filming, the girls were volunteers and therefore were consenting subjects.

. . . driving a truck with a competitor's name on it so as to mislead a customer, or concealing a defect from a building may constitute conduct "in trade or commerce". Turning to the position of an employee, their Honours observed that a misleading statement by one employer of a company to another might come within the section if it was made "in the course of, or for the purposes of, some trading or commercial dealing between the corporation and the particular employee".<sup>350</sup>

In summary, Section 52 of the Act only prohibits conduct that misleads or deceives, or is likely to mislead or deceive a person in their capacity as a consumer.

The conduct consisted of statements made in order to interview the applicants. The context in which they occurred was the respondents making of a documentary-style film. It was the respondents' business to make films, but the activity undertaken in connexion with the making of the statements did not bear a commercial character and there was no commercial relationship between the applicants and the respondents.<sup>351</sup>

The Judge referred in many instances to a former case, *Concrete Constructions*<sup>352</sup>, which set the precedent under test in the *Cunnamulla* case. After Judge Kiefel's decision, a statement made by O'Rourke about his intended activities in filming could never be made in terms of trade or commerce, but only in terms of filming consenting volunteers.

If, for example, a misleading statement was made by the respondents about the making of the film in order to obtain promotional publicity which might affect potential purchasers or distributors, this might qualify. Critically though, the representations would then bear a commercial character.<sup>353</sup>

On May 2, 2003, the legal position on *Cunnamulla* was reversed when a Federal Court ruled that Cara Hearn and Kellie Anne could pursue a claim in the Federal Court. This, rightly in my

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<sup>349</sup> Ibid

<sup>350</sup> Ibid

<sup>351</sup> Ibid

<sup>352</sup> *Concrete Constructions (NSW) Pty Ltd v Nelson* (1990) 169 CLR 594 Applied. Quoted in Kiefel J. *Taccara Jayne Hearn and Kellie Anne Allardice v Dennis O'rourke and Camerawork Pty Ltd*. Q90 of 2002. 20 September 2002, Brisbane, in the Federal Court of Australia

view, overturns the previous decision and ruling, and now holds that director Dennis O'Rourke and his company, Camerawork Pty Ltd, did in fact engage in conduct that contravened the Trade Practices Act.

In ruling against a bid to have the case struck out, the court ordered that Mr O'Rourke and the company pay the girls' costs and referred the case back to the Federal Court for hearing.<sup>354</sup>

The three Brisbane judges comprising a full court found that securing the interviews for *Cunnamulla*, instead can be central to the trading or commercial activity in which the film company and documentary director were engaged. In their judgement they said:

What they asked the applicants (the girls) to provide was the material (a) that would potentially furnish some of the visual images and stories of the film to be produced and (b) that would potentially give interest and value to the film.<sup>355</sup>

It was this aspect the judges decided brought the case into line with the *Concrete*'s case (above) because the filming could be described as a commercial activity due to the value the girl's scenes offered the film as a trading product.

As mentioned in the *Preamble* above, the implications for journalists from this decision are significant. This may prove to be especially testing for broadcast journalists working in commercial television news, current affairs and independent documentary - as they may have to start applying informed consent before obtaining an interview release. Any journalist or filmmaker deception, or variation from the agreed understanding of the end product, may now have avenues open for legal action by an aggrieved camera subject, through Section 52 of the Trade Practices Act, 1974.

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<sup>353</sup> Kiefel J. *Taccara Jayne Hearn and Kellie Anne Allardice v Dennis O'rourke and Camerawork Pty Ltd*. Q90 of 2002. 20 September 2002, Brisbane, in the Federal Court of Australia.

<sup>354</sup> Jackson, A. 2003, *Teenage girls win appeal over documentary they claim degraded them*, The Age, Melbourne, <http://www.theage.com.au/articles/2003/05/02/1051382095224.html> [Accessed Sept 17, 2003]

<sup>355</sup> Ibid

While O'Rourke argued that the sequences centering on the girls amounted to seven minutes out of ninety, saying the girls' role was overexposed in the media, it is clear that the dramatic value of the film is increased with the girls' scenes, strategically placed in editing. To remove their sequences would greatly affect the film narrative and its commercial viability.

### **5.23 What do we get from all this?**

The implications from this case are obvious. There is an imperative for filmmakers and their government funding institutions to allow a transparent process if they wish to stay out of trouble with the law. Unless a subject as a source should be 'burnt' in public interest, the filming process should be one that is constantly addressing the specific issues of informed consent for each subject in the film.

O'Rourke has always claimed public interest, saying that these girls are in every Australian country town, a secret that townsfolk know. He says that men at the local hotel knowingly refer to these girls as 'those little sluts', but later that night in a drunken state, they may seek out the girls out for sex.<sup>356</sup> This is illegal, as the girls in *Cunnamulla* at the time of filming were under the age to legally consent to sex. With many Indigenous communities enduring crime, substance abuse, incest, malnutrition, violence and poverty, there were alternative characters in *Cunnamulla* who might have told this universal story with a greater public interest.

Considerations of public interest generally relate to journalism, yet O'Rourke stakes his claim on public interest while, in the same public address, defending his artist's role (not as a journalist) in producing a work for aesthetic purposes. While this argument can be sustained, as documentary can do both, it is a spurious line for O'Rourke to also attack journalism:

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<sup>356</sup> O'Rourke, D. 2003, *After the Fact* session at the Australian International Documentary Conference 2003.

I am not a journalist and I don't want to be a journalist. In fact I don't have much time for the notion of impartial journalism because I just think it is a myth. I am an artist, journalists in theory go for analysis. I don't mean to say it pompously when I say I am an artist, but I am an artist, there are good and bad artists.<sup>357</sup>

In critique of this 'artist' as he avoids the definition and inevitable responsibilities of journalism while also claiming its rights, Ian Stocks wrote:

Prurience is a more peculiar issue. It is hard even to pin down what it means. But it's the difference between reality television and a genuine documentary. (...) There is more than some sort of sordid satisfaction in viewing certain documentaries like *Cunnamulla*; voyeurism is transcended. And it is fair to say that some audience members feel that both *Good Woman of Bangkok* and *Cunnamulla* are prurient, are somehow distasteful. And also that other members don't.<sup>358</sup>

Like much of tabloid journalism, screen representations with sensational and salacious material, is known to help sell product like documentary. When consenting to be filmed, hapless children and their parents are unlikely to ever understand the full implications of this.

#### **5.24 Release forms - a legal document summarizing what is agreed**

It would be hoped that in response to the *Cunnamulla* case, the film industry begins a process of self-appraisal in terms of the law and informed consent. After the Federal Court appeal, it is now obvious for informed consent and ethical practice to be deployed from negotiation of filming through to completion. O'Rourke said that he previously had never used releases, but with *Cunnamulla* he sought the signing of the consent form after the girls and their parents had seen the final cut of the film. He argues that this constitutes informed consent.<sup>359</sup> It may be that the release form was signed later but the agreement in a verbal sense, it seems, was made prior to filming. Referring again to the court discourse:

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<sup>357</sup> O'Rourke, D. 2001, in Stocks, I. 2001, *The Troubles of Dennis O'Rourke*, Senses of Cinema. **Issue 24, Jan - Feb 2003** <http://www.sensesofcinema.com/contents/01/13/orourke.html> [4 March 2003]

<sup>358</sup> *Documenter* 'Aunt Agony Column' <http://www.documenter.com.au> in Stocks, I. 2001, *The Troubles of Dennis O'Rourke*, Senses of Cinema. **Issue 24, Jan - Feb 2003** <http://www.sensesofcinema.com/contents/01/13/orourke.html> [Accessed 4 March 2003]

<sup>359</sup> Ibid

The first respondent is alleged to have sought an interview with the applicants alone. He is alleged to have given assurances that he would not speak to them about matters other than those identified. Permission to film the girls and interview them was given by the mother of the first applicant and the father of the second applicant on the basis of these assurances.<sup>360</sup>

It is tragic that the girls continue feel shame after giving so much to the marketability of the film, and to the public interest by O'Rourke's definition. A question at this juncture might be: is there another professional context where one would be able to interview and film with impunity (as it seemed after the first judgment) with intention to broadcast the image, likeness and voice of two minors, when their on camera dialogue centers on their alleged underage sexual activity?

Recording minors without another adult present, as witness to the interview procedure and for the possibility of counseling, is well documented in medical discourse as being likely to trigger psychological reaction in traumatized subjects. It could be assumed that if the girls did what they said they did, for the film, they were already traumatized by the experiences they subsequently recall for O'Rourke's camera.

If this sort of interview practice, and the surrounding conditions inherent in *Cunnamulla*, is prohibited in the military, in teaching, in social research, in medical procedure, in policing, in social work and counseling – then why should filmmakers get away with it. When conducting interviews of this nature, in all these professional contexts (except filmmaking), confidentiality is maintained and protagonists are required to adhere to the law and relevant ethical guidelines in respect to protecting the rights of the child.

## **5.25 Ethically hazardous professions**

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<sup>360</sup> Kiefel J. *Taccara Jayne Hearn and Kellie Anne Allardice v Dennis O'rourke and Camerawork Pty Ltd*. Q90 of 2002. 20 September 2002, Brisbane, in the Federal Court of Australia.

There is no doubt that in the pursuit of information in the public interest, both documentary and journalism are ethically hazardous professions. They are at the top of a range of professions in which practitioners are frequently subjected to ethical risks in the day-to-day machinations of the job. In some professions like policing or politics, risks involve exposure to the temptation of bribes or abuse of power. In documentary in particular, current affairs and features writing, hazards arrive from the appeal to use deception in pursuit of dramatic value or artistic standard in order to increase the product's commercial prospects. Deception though, is ethically unsustainable and is possibly more so in a profession where the entire basis is centered on the production of information as 'documented' truth.

The case studies of this chapter illustrate and acknowledge the need to address first, the issue of this dissertation: that ethical reflection and practice with a simultaneous and related concern to professionalism is both morally and practically sensible, as it reduces legal risk.

This discrepancy between our theoretical commitment to equality and the reality of inequality in everyday work is evident in many cultures. In part, such discrepancies continue through an inability or unwillingness by protagonists to recognize the difference in power at the point of negotiation and dialogue. The actual recognition of an ethical problem as just that - an ethical problem - involves a change in perception about professionalism, ethical standards and informed consent. Cultural perception and professional definition then, is important not only in identifying what has gone wrong, but also in changing the situation so that the problem has less chance of reoccurring. This can be addressed through education in formal and informal ways and through professional and public definition followed by dialogue – the codes of ethics and public debate of an ethical process.

## **Chapter Six: Evolving an Ethical Narrative**

6.1 Introduction	267
6.2 Ethic of responsibility	269
6.3 Background	270
6.4 Citizen-typology - style and political position	271
6.5 Perceval-I Citizen AO	272
6.6 Perceval-II Guerrilla	278
6.7 Perceval III – Reflexive and of cinema vérité	287
6.8 The Thornley Assessment	287
6.9 After Thornley	291
6.10 Matters of style – actuality	294
6.11 Perceval – hero or victim?	298
6.12 The reflexive film - Perceval III revisited	301
6.13 Conclusion: ethical outcomes/aftermath	310



## Chapter Six: Evolving An Ethical Narrative

### 6.1 Introduction

This chapter examines the ‘best possible effort’ on informed consent within the production process of *Delinquent Angel*. This follows a sequence, with the Chapter Five case studies resulting in legal problems when informed consent was not rigorously applied. The first chapter in this sequence sets out briefly my conceptual rationale, research and theoretical position and personal credo for this study. The second chapter discusses truth as a basic starting point in the ongoing dialogue for informed consent, while the third alludes to the early stylistic and ethical alternatives available to my film’s overall production.

Chapter Four reviewed briefly the evolution of camera journalism and documentary filmmaking in Australia; emphasizing the institutional factors that had built, sustained and financed production, presentation and screening of documentary and how this culture is inseparable from television journalism. Chapter Four therefore looked at the elusive inter-relationships between journalism and documentary film production, taking account of my dual roles as journalism educator and film director. Chapter Four examined how industry self-perception in documentary is problematic in terms of ethical considerations. It accounted for journalists at least, having definition and guidelines for reflection on professionalism, while the documentary film industry with its commercial imperatives has less opportunity for ethical reflection.

Chapter five, through case study discourse analysis, articulated and examined the ethical principles, practice and law, emphasizing the concept of informed consent - integral to the two versions of the film, *Delinquent Angel*, and to this written complement.

The objective of this chapter is to synthesize the production elements of *Delinquent Angel*. It will demonstrate how the film was conceived and evolved over time in accordance with my intimate relationship with the subject, my personal philosophy of filmmaking alongside the funding and other production constraints. The chapter is written with informed consent as a constant, being part of a process. This was informed by the ongoing participatory action research where academic discourses were referred to and response was obtained from all film subjects. Film subjects in particular, receiving information on updates and progress were: John Perceval, Ken McGregor and Alice Perceval (they were all sent video and print updates and were part of a dialogue of film design).

This was done because informed consent is a process, not just an ethical and legal imposition on the professional who is obliged to provide it. With the knowledge that both Ken McGregor and John Perceval did not 'suffer fools gladly', there was an imperative to keep them informed or risk losing the opportunity to complete the film. Providing them information while not badgering, kept the process moving forward like a dialogue. For informed consent, information must be provided to enable film subjects to voluntarily decide whether or not to participate.

A fundamental device, informed consent ensures transparency and respect for people and it ensures that their consent is a voluntary act. The procedures used in obtaining informed consent in *Delinquent Angel* were designed to educate participants, as much as possible, in non-patronizing terms about the intended film. Generally, informed consent language should explain a filmed sequence's purpose, duration, style, editing possibilities, alternatives and realistic chances of success. This should all lead to a documentation in the form of the signed 'release agreement'. The agreement should be written with a flexibility and acknowledgement, that observational documentary and journalism filming requires unscripted spontaneity and surprise if it is likely to be successful. These elements must be spoken in language understandable to those being asked to participate. The same agreed upon issues are eventually

articulated in contracts with the broadcaster and the funding body in the relevant industry-specific-language.

The written contract documents the spoken agreements between the film producer and the subjects and it legally binds the basis for consent. The release also serves as everyone's future reference. In *Delinquent Angel* this consent document was revised and updated when new issues were noted, when a new style of film was envisaged or when additional information would improve the consent process, and the contract in a legal sense. This is all part of production, as for a fiction film - with actors, crew, make-up artists and stunt people alike - all needing to understand what is going on.

## **6.2 Ethic of responsibility**

One should not lose sight of a realistically targeted mainstream audience when designing a film that has been government funded. This not only applies to entertainment and commercial values but to a traditional role of documentary and journalism - of informing, of truth, fairness and accuracy and of educating or changing values. Given that the documentary is an argument presented as a story to an audience, the director is then obliged to be acutely aware of the ethical stance that the film builds between that argument and the audience.

Not only are ethical values subjectively held, they are also intra-subjective – they flow over and between boundaries and beyond discrete sites. While ethical arguments like the one presented here and also in *Delinquent Angel*, are as much a part of the subjective 'me' as they are of the process, they are also part of the audience's cultural understandings. Once we acknowledge that a film, and a thesis for that matter, is talking to individuals rather than a 'demographic', then we can acknowledge significant differences among audience response. These differences arise from various experiences held in common with narratives in the film. This opens opportunities for rhetoric on the art of communicating ethically with specific

audiences over specific issues, arguments, points of view and politics – as the case in *Delinquent Angel*.

This acknowledges that ethical practice and informed consent is as related to human rights and individual lives as much as it is to philosophical theories. While it is possible to consider ethical behavior in terms of moral theory, it is impossible to consider it in terms of all the responses in filmed subjects or all the different interpretations that will be made by audiences. This transparency and discussion of the ethics or axiographics of the filmmaker, is possible by relating the ethical stance to the main film story. For filmmakers and camera journalists these are opportunities to speak to the audience with an ethical dialogue that is transparent and yet stylistically embedded in the film text. This adds the filmmaker's moral stand as another story and so enriches and realizes a reflexivity that may have been previously unexploited in Australian documentary.

In its making, *Delinquent Angel* experienced three thematic and structural metamorphoses in response to public policy, story telling and personal factors. This chapter provides the opportunity to document and analyze these changes, and then enact a wider critique of ethics, genre, trends and processes within documentary journalism and film culture. In this context, one can provide a reflexivity that is difficult to maintain in academic writing on documentary when there is no direct contact or experience with the medium.

### **6.3 Background**

*Delinquent Angel* sprang from the complex mix of personal and professional factors outlined in Chapter Two. Paramount was my kinship with Perceval over my development as a professional documentary filmmaker. I was the father of the artist's grandson and my 'real job' was as a journalism educator. As previously mentioned, many of my professional skills useful

for filming Perceval were derived from filming elderly indigenous subjects in minimum camera intervention oral history projects from 1987 to 1989. Given these circumstances, there was certain inevitability that I would carefully make a film redolent of Perceval's art, his quirky personality and his aberrant life-style.

The initial concept gelled in a project identified here as *Perceval-I Citizen AO*. This was followed by a second phase dominated by intensive filming, designated here as *Perceval-II Guerrilla*. A final phase saw the substantial completion of the film by merging processes of ethical reflexivity and synthesized here as *Perceval -III Delinquent Angel*.

These three phases were not sharply differentiated - there was much overlapping at the edges. Each phase had a distinctive approach to documentary filmmaking reflected in three scripts, obviously with common themes, although differing markedly in structure, sub genre and approach to filming. These three conceptions were shaped by institutional determinants, particularly the impact of financial provision and control. This analysis now takes up the convoluted development of the film through these major evolutionary phases.

#### **6.4 Citizen-typology - style and political position**

Filmmakers have a tendency to construct a documentary citizen-typology around preconceptions of their subject. This involves a judgment of the civic status of the subject in terms of conventional standards of citizenship and personal worth. Such a judgment need not dominate the subsequent development of the story. Indeed, it may be completely ignored or subsumed by other factors of genre or compensating assessment. A clear influence on the evolution of *Delinquent Angel* was the iconic stature of Perceval in Australian art and culture (see Chapter Three). This had been acknowledged in the Australian ethos by his award of the prestigious Order of Australia (AO), one of a handful of Australian artists to be so distinguished. As *Delinquent Angel* testifies, it was an award of which Perceval was justly

proud. The film therefore had a cultural, ethical and civic obligation to tell Perceval's story and that of his discrete art history in terms of, and in deference to: Perceval, his immediate friends, the audience and the public sphere as defined by Peter Dahlgren.

We need to render the public sphere as an object of citizen concern, scrutiny and intervention. The defence and expansion of the public sphere always remains a political accomplishment.<sup>361</sup>

The development of the film around Perceval's stature as a thinking Australian citizen had to be also interpreted in the context of his aberrant behavior, in many ways antithetical to acceptable civic standards (Chapter Three). A further complicating factor, as mentioned above, in the presentation of a Perceval persona was my established personal relationship with him.

Throughout the production my preferred film language and style was imposed with dialogue on how the subjects were shot, framed and reconstituted in editing. As the case studies in Chapter Five demonstrated, this can be an arbitrary and unfair process when the subject has no influence on stylistic and editorial decision-making. A subject-citizen type is defined by the way the film is built around the subject, sometimes at the expense of that unpaid subject. How a film represents the subject is largely determined by the ethical values of the filmmaker whose reputation stands to benefit through the film's production.

## **6.5 Perceval-I Citizen AO**

The initial conceptualizing of *Delinquent Angel*, therefore, was extremely conscious of this 'Citizen Perceval' ambience - that the subject was an elderly, frail, bad tempered and yet eminent Australian citizen. The ambiguities in this status had to be calculated, as Perceval's struggles with alcoholism and mental illness were widely known. The struggles of artists,

though, in the grip of the creative frenzy, attract a greater degree of public tolerance and sympathy in the civic mind (public sphere) than would be accorded more conventional configurations of profession and mode of living. This meant that the civic, or commemorative component of a film about Perceval would strike favorable resonances among the likely audience and immediate friends and colleagues. Thus, the first conceptual projections of the film were pitched to a commemorative, citizenship-type approach, perhaps with an elegiac tone given Perceval's advanced years and evident ill health. This implied an intensively produced documentary, tightly scripted and conceived in a largely chronological framework. In short, the first film idea was conceived as a conventional docu-drama that could hide Perceval's personal problems, his slurred speech while celebrating his life.

This traditional format hinged on an articulated production structure requiring actors, a producer, a director, and a production team of at least a cinematographer and sound operator. In essentials, it derived from conventional structures of studio film production. In terms of a documentary product it was constrained spatially by the mode of production - firstly using an orthodox cinematic approach to interviews and actuality and then coupling that with expensive dramatizations or reconstructions based on Perceval's life.

Docu-drama was the model most favored by the funding institutions when the project was first developed in 1994. Thus, the initial blueprint was largely a response to what was currently favored and funded in the film industry. This would also be acceptable to subjects like Perceval and Ken McGregor who were still angry about previous news media misrepresentations. The docu-drama mode reflected what was acceptable in terms of trends, policy and practice by potential broadcasters, particularly the ABC, and what the funding institutions perceived as the way ahead for the next funding rounds.

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<sup>361</sup> Dahlgren, P. 1991, Introduction, in Dahlgren, P. & Sparks, C. eds, *Communication and Citizenship* –

Commissioning agencies adjust their sights and in turn the following cycle, usually a year. Subsequently, this sees filmmakers responding accordingly to the subtle shifts in guidelines and parameters. New forces and personalities within an evolving framework of cultural production often influence these shifts. Thus it is very hard to obtain formal funding for a project lasting longer than this yearly cycle. This is a problem in an art form that can have advantage in developing slowly with long term observational aspects crucial to eventual film and script development.

The adoption of docu-drama using dramatizations and reconstructions, actuality and existing documentary footage of Perceval and friends was reinforced by my judgment that Perceval, a notoriously reclusive man, would find this particular approach tolerable. He was inherently uncomfortable with the camera's gaze, whether still or moving, and he found it difficult to formulate his ideas in fluent speech.

His supreme articulation was achieved through his brush and palette. The script envisaged an expensive film using both amateur and professional actors, with Perceval in frame, observing the dramatized scenes about his life. In short, he would serve the film text as a sort of reflexive art director. It was considered unlikely that the film would elicit new facts about Perceval as a citizen and private individual. Rather, it would present the master painter in 'essay' documentary style within the ambit of the docu-drama sub genre. It would also interpret for film, establish perceptions in print, and provide some filmic and experimental insights into a distinguished period of Australian art history. There had been no film that dealt holistically with Perceval's life, nor of the *Angry Penguin* school and its illustrious membership (see Chapter Three). In the essayist mode it was conceived to develop:



... idiosyncratic and personal styles, suited to their [the essayists] individual tastes and modes of expression. The often complex subjects which they chose to explore would, in a previous era, have been left to the literary essay. Unlike earlier documentaries - which generally aspired to, but failed to find, a wide audience - these films tended towards intellectual élitism.<sup>362</sup>

Perhaps intellectual élitism was a problem in this early *Perceval* script, although I was not aware of it at the time. When the script was first submitted to the Australian Film Commission (AFC) in 1994, its reviewer, Julian Russell, a prominent filmmaker, implied a problem with intellectual elitism. Because of the emphasis on dramatic reconstructions and interviews, Perceval's voice was represented rather than actual, or so Russell suggested.

Perceval's struggle with articulation meant that only those who had spent some time with him understood clearly what he said. There would be few moments where Perceval's speaking on film could sustain meaning without subtitles, unless his spoken sections were amplified to assist viewers to comprehend. It was felt that subtitles for such an eminent citizen would be demeaning and patronizing of him and the audience. An interview with Perceval, according to a journalist from *The Age* newspaper, was akin to a linguistic experience. A docu-drama film that evaded this problem might concentrate successfully on the cultural and historical context, dramatizing through vignettes the essence of Perceval's art and how it was rendered. Such an approach, though, would relinquish much of the quirkish, the quintessential Perceval. Articulation aside, Perceval's expression was invariably pungent, pithy, pointed, sometimes poignant, even powerful, and always occasional and spontaneous.

Perceval's artistic works were representative in their own right of his thought, feeling and incident. So the film script for the docu-drama was infused with the sentiment that his works spoke for him amongst his short verbal outbursts - that could be understood by audiences in a carefully edited context. The artistic works were to convey narratives and historical and social

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<sup>362</sup> Macdonald, K. & Cousins, M. (eds.) 1996, 'Introduction' in *The Essayists*, in *Imagining Reality: The Faber*

messages that would be contextualized by the more expensive dramatized film elements. These dramatized moments in Perceval's career were to be shot in black and white 16 mm news-film with the "camera-look" and style of the period. The film elements were designed to translate as justifiable historic reconstruction according to the conventions of docu-drama. These were to also dissolve into actual photographs of Perceval's childhood, or significant moments in his life and art, his family, and his fellow iconoclasts of the *Angry Penguin* movement of the 1940s.

An important factor in the strength of docu-drama was the prestige of several finely wrought examples of the genre in the early 1990s (see Chapter Four – *Raskols*). In those years, the conventional docu-drama was very much the dominant genre. Its supremacy was reflected in the patterns of financing, with success begetting imitation and a demand for still more docu-dramas.

One film with considerable impact was *Eternity*, a docu-drama that won several prizes - it was shown to large audiences on ABC television, and enjoyed successful art-house seasons in Australia, Canada and the USA. *Eternity* depicted a legendary Sydney identity, a recluse, who over many years chalked the word 'eternity' on the city's footpaths, walls and other vantage points. His elusiveness ensured that he was rarely sighted, never photographed or filmed, and he successfully evaded interviewers. The film, made some fifty years after his death, presented serious challenges in presentation that were surmounted by skilful reconstruction, dramatisation, voice-over and black and white period setting camera-work. In some ways, the reclusive *Eternity* man resembled Perceval in dedication, social alienation and apparent imperviousness. Perceval, though, left an impressive legacy of art, amply documented. The hero of *Eternity* left a single word in impeccable calligraphy, multiplied and so 'published' thousands of times.

*Eternity* was representative of docu-drama in that it was very much producer-driven. This is not to imply that the creativity of the filmmaker in the guise of director is necessarily repressed, it means that production values are so high, that the product of this nature requires big teams to complete. Docu-drama draws on the resources of a production team necessarily guided by a professional producer, and the creative impulse is dependent on the chemistry of the relationship between producer and the director as the filmmaker. The subtle balance of forces between producer, director and production team can have a decisive impact on the success of docu-drama production (Chapter Four – *Raskols*).

While the auteur principle of filmmaking may flourish within the genre, its success is not inevitable. The influence of a thrusting, strong-willed producer who holds executive power may be decisive in overall tone and texture of the finished product, and this may not be precisely what the director or the originator had in mind. Against this must be set the reality that this docu-drama production was the predominant fashionable and successful documentary mode at this time. Further, as emphasized here, access to funding around 1994 (and again currently), was dependent in many ways on a standard producer-oriented model to ensure success. Accordingly, the initial approach for funding assistance, in 1994, from the AFC and the ABC was framed around the participation of an extremely successful docu-drama producer.

The AFC/ABC selection process rejected the first proposal for *Perceval AO*. An important factor was certainly the size of the funding sought, a total of \$320,000 that was budgeted on conventional docu-drama lines with a standard film production unit. At the time the AFC and the ABC were meeting regularly in discussion over ways to use digital video and other strategies to lower production costs per film. Another reason for rejection of *Perceval AO* was the perceived elitism in the script by a principal reviewer (Julian Russell, see above) and this may, it seems, have related to AFC/ABC strategies to lower production costs per film. Clearly, the presence of an eminent camera subject coupled with a prize-winning film producer did not guarantee success.

Although disappointing, it was decided to re-shape the project, taking account of the assessments made and incorporating them in a new approach. The AFC had found sufficient merit in the script and concept to provide a grant of \$20,000 for further development (see below). Clearly, both the limited resources available and the tenor of the AFC's rejection dictated a shift away from the docu-drama approach. In effect, the AFC had given me two choices. The first was to persist with the cumbersome, costly docu-drama process in the hope that it could be revised and developed sufficiently to convince the AFC that the project was worthy of funding. Another possibility was to re-conceptualize the project within the genre of direct cinema. This was briefly defined in Chapter Four, which basically involves a detached 'fly on the wall' camera approach in shaping actuality into documentary, ostensibly without artifice or manipulation. The direct approach, though, did not eliminate the reliance on providing a script or utilizing a standard production team, perhaps in a modified form. The problem with Perceval's cooperation in this mode re-emerged because direct cinema demands that the camera does not affect the scene.

In the circumstances there was no real choice. Logic dictated that where a substantial grant for a film in the dominant mode had been rejected, a modest grant might provide for further development in a more cost effective mode. Unofficially, even verbally, the AFC recommended that the alternative approach should be attempted. Consequently, the docu-drama idea was scrapped and I converted the project to conform along the lines of direct cinema in a movement broadly known as 'guerrilla documentary'.

## **6.6 Perceval-II Guerrilla**

The guerrilla documentary format, popularly bandied around in the mid 1990s, was a rather amorphous concept, variously interpreted by practitioners and interpreters of documentary film. Guerrilla documentary was associated with a minimalist approach to production, oriented

to an individual filmmaker, paring costs to the bone and concentrating production and other formal processes such as finance and law to limited commitments of time and resources. Essentially it postulated a very basic approach to filmmaking, utilizing to the full the flexibility provided by evolving low budget video technology as discussed in the last section of Chapter Four.

In 1995 the new, broadcast quality, miniature DV (digital video) cameras were becoming available. The use of this equipment was antithetical to the carefully sculptured scripting, shooting and editing associated with the intrinsic team approach and producer-driven dynamics of docu-drama. This “do it yourself” guerrilla approach is reflected in the influential *Guerrilla Handbook*, a popular compendium produced regularly in the United Kingdom for small-scale, economic documentary filmmaking.

Guerrilla filmmaking also predicated the assembly of a substantial body of film, essentially the work of one or two filmmakers focused intensively on the persona of one or two subjects. These basic qualities of the genre are associated with the documentary filmmaker regarded as its principal proponent, the Australian-born Mike Rubbo. In an extremely varied career extending over more than 20 years, Rubbo made a significant contribution to documentary theory, even though he did not always conform with his practice. He made films in the US, Australia, Asia, Latin America and, most notably, Canada, as a member of the Film Board of Canada. The Board, established by John Grierson and retaining a commitment to his ethos, was rather uncomfortable with Rubbo’s experimentation, but he accommodated it readily enough.

In Rubbo’s Canadian years, when he worked within a framework of production units and pools, his principal contribution has been epitomized as the ‘Documentary of the Displaced Persona’. In practice, this meant an interventionist role for the filmmaker, intruding into the personal space of subjects and engaging them in discourse, which on occasions became

confrontational. In this style of filmmaking, Rubbo was ready to expose the mechanics and conventions of filmmaking, and to question and sometimes challenge what was happening in making a film – this amounts to self reflexivity.

Rubbo's filmmaking has also been interpreted in terms of his fascination with Dziga Vertov, a pioneer of filmmaking in the early Russian silent cinema of the 1920's. Vertov's classic documentary, *The Man With the Movie Camera*, made in 1929, had been a seminal influence on the development of both documentary and newsreel film. Vertov used a wide range of camera viewpoints, filming opportunities, and dynamic editing to compile an assembly of hundreds of images that was revolutionary in its context. Rubbo's fascination with Vertov's conceptualization of kino-eye infused his filmmaking, particularly in his later years (see below). Vertov's notion of *kinopravda*, literally *cinéma vérité*, became extremely influential as an approach to documentary filmmaking decades after his classic film was made.

Whatever a contemporary filmmaker's attitude might be to Mike Rubbo and the guerrilla approach to filmmaking, the approach had to be considered seriously in the context of this next and second film concept (*Perceval AO-11*). During virtually all of this period (1994-97) Mike Rubbo was head of documentary filmmaking for the ABC. This meant that he had considerable power to support *Perceval AO-11*, even commission it for screening over the ABC network. The funding agreement with the Film Finance Corporation (FFC) provided for an accord by which a film could be submitted to the national broadcasters, the ABC or SBS, and then funded to completion by the FFC after the broadcaster pre-sale. The AFC, through which I continued to be funded, also worked in this way albeit less formally. Inevitably, this meant that with the exception of one unsuccessful ABC TV meeting, I had no direct contact with Rubbo during this phase, though I was always and necessarily aware of Rubbo's presence and preferences in determining the immediate industrial scene in which funding played a critical part.

The important question of the relationship between the filmmaker and subject had to also be reconsidered in the framework of the guerrilla sub genre. The whole process of consultation and bargaining, establishing warmth and trust during the scripting of *Perceval AO-I* had to be maintained and enhanced, otherwise it was unlikely that an extended period of observing Perceval through the camera, in this new mode, could continue. Processes of intervention and discourse could not be consultative or warm during a filming with attributes more associated with Rubbo's provocative film style.

*Perceval AO-I* had established the pressures that any intensive filming might place on the documentary subject: the elderly and fragile Perceval. The research for that project had revealed the scant image and sound records of Perceval's life and work. His reputation for sending away disappointed photojournalists emphasized the necessity of trust for effective filming. A hoped for process of ongoing and intermittent filming sessions depended on minimum intervention around a subject who was both repelled and fascinated by publicity and public manifestation of his image. This rendered impossible any second takes or obvious set-ups for special effect.

This approach, while essential, was at odds in several respects with the guerrilla sub genre. Perceval was only prepared to participate in a kino-eye style and extended filming when it followed this single camera low intervention process. Initially, with Super 8 film and Super VHS, then digital video - my sole operated camera enabled the production of multiple points of view of the subjects. This involved Perceval and others on a more direct level, they would have to endure the camera's closeness. By accepting its gaze Perceval would now have to paint for the camera and he would have to make an effort to speak intelligibly for audiences' understanding.

Often the mischievous Perceval child, evident in his work, would materialize in conjunction with filming the frail-old man. He enjoyed being uncooperative, rude and incomprehensible

during the filming process. On occasions, when he wanted to be understood imperatively, he manifested an astounding clarity. Perceval's health would deteriorate from time to time. In and out of hospital, he would eventually recover. With whatever camera was available he would, as a matter of urgency, be recorded and observed - in living, painting and drawing. This presented ethical dilemmas in that the obtrusiveness of the camera to someone like Perceval might be a stress that delayed his recovery after one of his times in hospital. Another imperative was to avoid the camera viewing and recording him as a suffering alcoholic victim in the Griersonian tradition of expository documentary.

The research grant of \$20,000 from the AFC facilitated the filming of about 100 hours of material. Given the difficulties outlined above, it was by any criteria a satisfying result. In the process, the docu-drama filming commitments, which had been written into the *Perceval AO-I* script, had to be abandoned. These had included visits to scenes of Perceval's boyhood in Western Australia, recreations of wartime Melbourne, and the inclusion of my filming of some of the *Angry Penguin* member's military records, as testified by the War Archives.

It was possible to include in this new guerilla mode of film, any footage that had been acquired in *Perceval AO-I*. This was free of continuity problems, in instances where the camera had observed Perceval returning to areas around Melbourne where he had painted, such as the port community of Williamstown on Port Phillip Bay. As the final film testifies, this early observational footage was still relevant for *Perceval AO-III*. Other filming was done in homes, at the doctor's, in hospital and at art galleries - particularly exhibitions of new work attended by Perceval. Much of the remaining footage depicted Perceval in his working and living environment of a small apartment and studio, and going through the routines of a daily life constrained by frailty, nagging illnesses and plain old age.

He was filmed in a variety of discourse situations, talking about art with younger painters like David Larwill, commenting on newspaper items, answering direct questions, or in my attempts



to draw him out with varying degrees of acquiescence. Filming was always jeopardized by the daunting refrain, “turn that bloody camera off.”

The major innovation, or improvisation, in this program of intensive filming envisaged for this second phase an extended overseas excursion with pronounced homecoming and family reconciliation motifs. For many years Perceval had lived apart from key members of his family. He had separated and was divorced from his wife, Mary, who had remarried the internationally respected Australian painter, Sir Sydney Nolan, a former *Angry Penguin* associate for many years. Nolan and Mary, who had been a member of the culturally prominent Boyd family, lived in England. The end of Perceval’s marriage, as indeed mine with his daughter, caused some alienation with members of the extended clan including the eminent painter and ceramicist, Arthur Boyd, who had worked jointly with him (and me) on ceramic projects.

Perceval started a pottery with Boyd and others after the Second World War. Forty years later I started a pottery with Boyd at the *Bundanon* property, when they purchased it in 1979. Around the time of our planned travel to England, two of Perceval’s daughters, Alice and Tess, lived there while the third daughter (Celia), was soon to return to Wales where she owned a cottage. Perceval’s grandson, Marlow, then aged 13, lived with his mother Alice in Wales. Marlow is my son.

The notion of a homecoming having reconciliatory overtones was attractive to Perceval, and indeed me, for family and filmic reasons. Both of us were perhaps sensing that the opportunities for such an occasion were diminishing fast with Perceval’s advancing age and chronic ailments. Perceval also wanted to see the Great Wall of China and the wild animals of Africa en route to the United Kingdom and return. Such an odyssey presented tantalizing opportunities for me as a filmmaker, as well as the prospect of a reunion with my son, Marlow, who I had not seen since he was a baby.

Although the logistics of moving an invalid artist around China, the UK and Southern Africa were formidable, the trip was organized. As *Delinquent Angel* illustrates, the party comprised of four people: Perceval, his manager and closest friend, Ken McGregor, a young university student who was Perceval's friend and acting nurse, and myself. The trip absorbed six weeks in the English summer of 1996, effectively constituting the final phase of the extensive filming process that marked *Perceval AO-II*.

As a venture in homecoming and family reconciliation, the journey had its limitations. It did provide some memorable footage of Perceval inter-relating with his daughter, Alice, and grandson, including fine sequences of Perceval sketching with them (see *Delinquent Angel* version one). Another of his drawings beautifully satirized his old colleague, Sir Sidney Nolan who, with Perceval's former wife Mary, had declined to see him on most of their innumerable long-term stays in Melbourne. Again, the now widowed Lady Mary Nolan, declined to see her first husband, John Perceval and her former 'son-in-law' on our 1996 reunion trip to Wales.

A film commission assessor, Jeni Thornley, reviewed the project after submission for final funding in 1999 after a rough cut had been drafted. Thornley described the rough cut she reviewed, which included the Wales family sketch footage, as "beautiful" and the emotional centre of the film. (See below). The Wales family reunion also provided a muted sub-text in the filmmaker's reunion with his son, an emotional filmic event subsequently incorporated into the final film on Thornley's recommendation.

This Perceval odyssey and homecoming in mid-1996 marked the end of the extended filming process that was the main rationale for the guerrilla phase of the film's development. By late 1996, a rough-cut and script had been cobbled from the economically gathered one hundred hours of filmed material. This initial version was presented to an audience for the first time in October that year at a media conference on *Culture and Citizenship*, organized by the Communications and Cultural Studies Key Centre, Griffith University, Brisbane, Queensland.

At this time the working title, *Perceval AO-II – Guerrilla*, succumbed to what was to become the film's final title: *Delinquent Angel*. Many years before Perceval had created a notable ceramic object of an angel that years later in 1994 had been included in an international ceramics exhibition called *Delinquent Angel*. His small sculpture was the centre piece of the exhibition. Its title was a reference to both Perceval's art and his fecklessness. It was a terse, evocative title that Perceval liked, and so it became the film's tablet and inscription, signifying the end of *Perceval AO-II-Guerrilla* and transition to *Perceval AO-III-Delinquent Angel*. The new title was lodged with the AFC for the record in 1996.

In its 'guerrilla' phase the film conception had developed a critical mass, and inculcated into the whole process an ethos of responsibility. Having some resemblance to oral history, the raw film material documenting Perceval's recent life had burgeoned, including the extensive overseas filming outlined above. This process had been funded from three sources, most importantly the original research grant from the AFC, then by me, and finally the University of Wollongong, paying me an academic salary throughout the production. There was also a growing commitment to Perceval himself, and his manager Ken McGregor, who had worked tirelessly in keeping the old master in the right mood for both painting and filming. The expanding dimensions of the shoot assured the creation of an outstanding cultural record of a hitherto unrecorded Australian master painter. In turn this record implied a significant emphasis on representing both his artistic techniques and personal foibles.

An ethical responsibility had emerged to finish the film, thus justifying the acceptance of the observational filming agenda along lines proposed by Nichols:

An ethic of responsibility, channelled primarily through empathy rather than intervention, legitimates the process of continued filming. Like the interventional gaze, the humane one gives the definite impression that continued filming is not

as important as the personal response. That both occur at once is what gives the text a strong emotional charge.<sup>363</sup>

This notion of ethical responsibility expressed through empathy rather than intervention, in a process of continuous filming, captured neatly the direction that *Delinquent Angel* had been taking during the *guerrilla* phase. This process had been anchored in an intensifying symbiosis between Perceval and me, both with a familial linkage and a professional empathy between the filmmaker and camera subject. This had been evident in the re-scripting that shaped the first cut shown at the Brisbane conference. Most importantly, this had brought me as filmmaker into the film. As a narrating presence the filmmaker's voice-over complemented the sequences of Perceval at work and as an unseen interlocutor interviewing the subject. The kernel of the film, the family re-union in Wales, very much involved both the subject and the filmmaker as characters in the film.

This involvement of the filmmaker was calculated as an interposition, not as an intervention. Certainly, it had an element of intrusion and so dramatic value, but it had to be done with discretion. At no time had I envisaged myself as a principal, even a participant in the unfurling of the film. Indeed, the only direct image of me in the final film was a still photograph identifiable only by implication. I wrote the script and provided the voice-over, which was largely plain yet factional in tone with occasional emotive overtones and elegiac resonances. This subdued emergence of the writer, as the filmmaker was consistent with conventions of reflexive documentary filmmaking, while not overwhelming either the subject or the film.

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<sup>363</sup> Nichols, B. 1991, *Representing reality. - Issues and Concepts in Documentary*. Indiana University Press, Indianapolis p. 87.

## 6.7 Perceval III – Reflexive and of cinema vérité

This distinct movement to greater reflexivity in conception and construction emerged emphatically in the formal development of *Delinquent Angel* and marking the end of the guerrilla nuances of *Perceval AO-II*. Pointing to a revised articulation of style and approach, the definition of *Perceval AO-III* was given substance in a period of re-negotiation and re-assessment with the sponsoring body. As noted above, the ABC under Rubbo had not taken up the project. With the successful work-shopping of the rough cut in Brisbane, there was revised interest from the ABC. Paul Clarke, a producer of the ABC *Arts Today* program was encouraging:

I must say you have incredible footage of Mr Perceval, and while the doco is still in the rough stages I can see your vision for the project.<sup>364</sup>

The prospects seemed favorable for eventual airing on an arts program on either the ABC or the SBS. In this context I applied, in early 1999, for another \$53,600 to complete the film. This application included VHS footage in ‘rough assembly form’; correspondence indicating the ABC’s interest; a revised treatment reflecting the ‘new directions’; and a synopsis I had submitted to the ABC. The synopsis structured the film in three sections, identified as *Still Searching*, *Friends* and *Travel* - all with the recurring plea of “turn that bloody camera off.”

## 6.8 The Thornley Assessment

The AFC’s assessment by Jeni Thornley (Appendix 2) provided a probing critique of ‘a very rough cut’ while acknowledging that (in the absence of a detailed script) looking at the footage was the best way to get a sense of the film. Thornley concluded there was a film in the material and that it could be shaped into a penetrating *vérité* portrait. This would require creative

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<sup>364</sup> Clarke, P. 1999. Letter to the filmmaker from a producer of ABC TV *Arts Today*.

thought given to form, structure and content, and the subsequent engagement of an experienced editor. In Thornley's judgment it would never be a 'conventional' documentary portrait of the artist "and for it to develop its own special quality we shouldn't expect that of it." According to Thornley, there was a meandering, elusive quality to the filmmaker's approach that 'uncannily' captured something of Perceval's spirit as "a difficult, testy, gifted artist."

His intense need for privacy and his rejection of media intrusion into his life feels like a paradox as Blackall's camera takes us deeper into a studied close-up of Perceval in his frailty. Yet frustratingly the film also keeps us 'in the dark' about his personal life and history. This paradox is heightened because neither Perceval or Blackall disclose the kind of personal information we might need in order to get our bearings with the material and to develop some kind of emotional connection and understanding of both the artist and the filmmaker. . . . Perhaps Blackall intentionally wanted to keep us in a kind of 'no man's land' of uncertainty, but it becomes an uncomfortable place.<sup>365</sup>

With insight, Thornley categorized the rough cut as an unfolding 'road movie' in which some of the jigsaw pieces were missing, notably the filmmaker's personal engagement, which she found awkward and obscure. She praised the "beautiful footage" of Perceval's daughter, Alice, and the filmmaker's son Marlow (Perceval's grandson) drawing with Perceval. Thornley, however, was questioning whether these sequences had been used to the best advantage:

These moments, including the communal drawing sequence with 'Paps' Perceval, are the emotional centre of the film, yet they, too, seem to provoke questions that are never really answered . . . well, perhaps they never can be . . . but I do think the filmmaker needs to bring these questions to consciousness and clarify . . . where the film is going and what his relationship is to the material.<sup>366</sup>

Thornley interpreted that as filmmaker I should be making a *vérité* film, locating the audience directly in the midst of Perceval's life. In a memorable passage, she described the condition of his life as palpable:

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<sup>365</sup> Thornley, J. 1999, AFC Assessment of *Delinquent Angel*, Appendix 2.

<sup>366</sup> *Ibid*

. . . from the very particular vocal sound Perceval makes while painting, to the music he loves to paint with, to the patient and tender care by his carer – Ken, to the domestic details involved in his care. There is also a strong and clearly developed feeling of the artist at work, and of the life blood that painting is to him. . . . Perceval, the creative ‘angel’ relentlessly giving birth to himself in the constancy and passion of his art. When the film loses this thread it seems to lose itself.<sup>367</sup>

This judgment was apposite to the judgment of Perceval’s odyssey, excluding the family reunion sequences. Having identified the rough cut’s ‘road movie’ element, Thornley found the Chinese footage relevant because it portrayed Perceval working with images of what he sees. However, she was firmly disapproving of the South African material that closed the ‘very rough assembly’ cut, perceiving it as gratuitous and unfocussed. Pertinently, Thornley concluded that it didn’t feel “complete or finished” to place the narrative about failed expectations on the African footage. She suggested instead that exploring the connection between Perceval’s art and his personal life opened the way for a completion giving the audience “food for thought”.

On the practical level, Thornley counseled me to step out of the material and take a firm hand with it, letting go a lot of extraneous footage. *Delinquent Angel* was to be a fifty five minute film, a standard length for the one-hour television broadcast documentary presentation - it was also proposed that outside the broadcast markets, it may have a place on the festival and art-house circuits. It was the preferred length for an SBS broadcast, while the ABC Arts Program leaned more to thirty minutes of a current affairs style.

There was still the issue that Perceval needed to be sub-titled because his pronunciation was usually impossible to understand. Both narration and structure needed close attention, pointing to the importance of an intuitive, creative and vigorous editor. Music would be an asset in structuring, although it raised complex and expensive issues for a tightly budgeted product. A

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<sup>367</sup> *Ibid*

full script and treatment were drafted, based on Thornley's assessment of the footage. The draft explored structure, narration, and legal and ethical issues. Although not a conventional documentary, *Delinquent Angel's* human, edgy, incomplete and uneven quality was also its strength: "This is different. It refuses like its subject, to give us what it wants."

Although pointed in its criticisms and lacking in acknowledgement of ethical concerns, Thornley's assessment was supportive and constructive. In pecuniary terms, it was instrumental in securing further assistance from the AFC for completion of the film. Conceptually, it added much to the structure of the film, particularly the final phases, which dropped the Chinese and South African travel footage, adopting an upbeat resolution consistent with Perceval's life-view. Much of the original footage in the rough-cut assembly was retained, as was the intrinsic structure and narrative approach. Specific suggestions about length, personal voice-over, sub-titling and music were adopted with significant benefit. Perhaps most importantly, the emphasis on editing technique, tone and subtlety were extremely influential in the allusive, elegiac tapestry of the completed film.

In conclusion, Thornley raised perpetually perplexing issues of categorizing documentary films, by querying my knowledge of *cinéma vérité's* nature and history, although she did not offer any definition of the genre. She suggested I might review some of the classic titles and contemplate how the *vérité* filmmakers resolved some of the artistic and aesthetic issues of form and content, disclosure and completion, notions of privacy and ethics, and how to work with structure, narration and music. Films she proposed included Wim Wenders' *vérité* documentary, *Ozu Tokyo-Ga*, Pennebaker's *Don't Look Back*, and any of the *vérité* films by the Maysles Brothers, Leacock, Drew and Wiseman – all of which in a strict sense might be said to be examples of Direct Cinema rather than *cinéma vérité*.

Outside the films themselves, there were few available and exacting discourses, which defined and concurred in a way that might yield definition and script direction following Jeni



Thornley's assessment. There were many discourses available in providing definition from a non academic domain, but they were uncritical, vague and almost of a public relations vein:

Pennebaker was one of a team of film-makers (including Richard Leacock and Albert Mayels) who, in the early 1960s, devised the portable, hand-held camera equipment that formed the basis for the *cinéma vérité* movement. The documentary revolution was as much an ideological as a technical one; the *vérité* films discarded preachy narration in favour of watchful fly-on-the-wall neutrality and championed non judgemental observation as the purest form of documentation. While the definition of a documentary has grown ever more mutable . . . the abiding influence of the *vérité* school is undeniable.<sup>368</sup>

I found that watching films of *vérité* was productive, it informed the editing script by infusing and distilling elements of the genre, until eventually many of the original ideas in the rough cut were ratified. This was then developed and combined with a more transparent, or honest, narrator's voice with an especially personal, if not intimate and brooding, appeal.

## 6.9 After Thornley

*Delinquent Angel* now entered a reflective, post-production stage. The enormous amount of filmed material had been logged, transcribed and relevant pieces inserted in the experimental edit script. The editor tried experimental edits with different combinations. Variation of pace, theme and rhythm helped determine how the raw segments might best come to life in sequence.

The first approach sought to construct Perceval as out-of-sorts with the camera process, at odds with everyone, especially with me as filmmaker. This left an unconvincing, flat and patronizing film text.

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<sup>368</sup> Lim, D. 1997, *A marriage made in vérité* Arts Section, 'Independent on Sunday' newspaper, 23 November 1997, p. 23.

Working with something closer to the reality was the better editing path, along the lines of this: Perceval and I were on the same side, having been through the mill of family breakdown within the same grand clan, but tension between us was inevitable.

To establish Perceval's personal history and artistic life, a diversity of techniques were used: black-and-white Super 8 film was made to look like archive material; material recorded on S-VHS in 1994 and 1995 was cut so that the audience would also view it also as being archival and so excuse the lower quality; audio only material was available on DAT; while the remainder of the footage was in the top-of-the-range quality with Digital Betacam video, which I leased on a daily basis within the first AFC research grant.

Most of Perceval's paintings and drawings were digitally scanned from large format transparencies that had been previously prepared for books. This gave a filmic quality superior to other formats of the time. By eliminating extraneous material, the edit confirmed that the story direction of family breakdown was rendered more poignant in the culmination of the family re-union in Wales.

The edit and its depiction of Wales referred to my *Diary* notes from early July 1996:

John's pilgrimage to see daughters and grandchildren in Wales. Might give stimulating array of international locations for his drawing and my filming. He no longer works around Melbourne. Travel may stimulate painting. He hates the camera, maybe this will change in travel. Alice [Perceval] telephoned June '96 before our leaving, unhappy that her holiday with the children (one of them mine), on the south coast in Ireland, would have to be delayed to accommodate our arrival. Her sister Tess [Perceval] is to have John for a week or so. Companion-nurse, Ken the art manager and filmmaker son-in-law as one: as some cowering party before the Boyds. Tensions of world travel and anticipation of seeing family in Wales have filmic potential. It has been eleven lonely years since seeing Marlow.<sup>369</sup>

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<sup>369</sup> Blackall, D. *Diary* notes from early July 1996.

At the time (1996), potential audiences for *Delinquent Angel* would have most likely viewed significant art films about Australian painters, in particular the *Angry Penguin* group, of which Perceval was the last living member. There had been numerous films in a traditional documentary style on Arthur Boyd, Sidney Nolan, Albert Tucker, and one on Joy Hester. Preconceptions derived from these would affect how audiences would read a character like Perceval on film. Working with the editor, I thought about what indicators would assist in placing him and family in context. Feature film characters like Jack Nicholson's Melvin, the eccentric, obsessive and highly acclaimed writer in *As Good as it Gets*, topical at the time, assisted in my thinking about how to make accessible, the eccentric Perceval. The *Delinquent Angel* story lay immersed in the footage and it had to be substantiated in ten weeks editing at *Island Films* in Sydney's Glebe, starting August 1999.

The academic writer, Susan Dermody, provided useful discourse on the necessary brooding that helps a certain kind of film writing, which *Delinquent Angel* required:

Rather than comply with the usual demands of scholarship I want to remain sketchy and open -"brooding" is the word that keeps coming to mind at the moment. An interestingly feminine term for thought. Perhaps at the end of brooding - a very inward kind of process-something emerges into the world. But if so, the thing is likely to get up on its wobbly legs and run off in any direction... And soon start hatching out its own new schemes.<sup>370</sup>

Developing film story through experimental editing involves repeatedly re-sequencing the raw segments and placing them against many other elements, like narration and music, until a more poignant narrative emerges. This is a process in keeping with the guerrilla documentary initiative, and for years has been the *modus operandi* of *cinéma vérité* and observational documentary.

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<sup>370</sup> Dermody, S. 1995, 'The Subjective Voice in Documentary, The Pressure of the Unconscious upon the Image' in Devereaux, L & Hillman, R. (eds.) *Fields of Vision, Essays in Film Studies, Visual Anthropology, and Photography*. University of California Press, p. 292.

## 6.10 Matters of Style – Actuality

*Chasing Buddha* is a *vérité* film about a Buddhist, post-lesbian, feminist, kick boxing monk who worked with inmates on death row in the USA. *Chasing Buddha* was made at much the same time as *Delinquent Angel* and was highly competitive with it in two major award nominations. *Chasing Buddha* provides an interesting genre comparison: it was rougher in its finished texture, with lower-quality, hand-held color Super 8 footage, book-ending each section. It was edited with continuity problems, perhaps deliberately, and there were abrupt cuts in the middle of camera moves. This roughness did not prevent it from being a thoroughly evocative work, achieving success in film festivals, SBS broadcast and art-house exposure.

Both films were examples of *vérité*, although *Chasing Buddha* leaned perhaps to the more focused definition of the genre. As observational cinema, its young director was encouraged to make the film as a nephew of the subject. Like my relationship with Perceval, this gave the director special access, and yet this ‘special’ family connection also caused distress to subject and filmmaker alike. As briefly examined in Chapter Four, this sort of *vérité* (protagonist, interactive and observational) camera-work emerged with portable 16mm film cameras in the 1960s. Academic Brian Winston was always available for a thoroughly learned reference to assist me in defining a *vérité* response to the Thornley assessment:

At the time there were two terms, both French, available to describe film-making with new equipment: *cinéma direct* and *cinéma vérité*. Both were preferred to the nascent English usage, in professional circles, of the word ‘candid’ as part of some phrase. ‘Candid’ did not become a term of art for this technology. The French expressions did.<sup>371</sup>

Arguably, today’s Australian audience’s acceptance of the coarser camera style of digital-video grew out of a loose blend of the rock-video-clip and surfing films, as part of the Super 8 culture of the 1970s and early 80s. This has coupled with the *cinéma vérité* influence from

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<sup>371</sup> Winston, B. 1995. *Claiming the Real - the documentary film revisited*. British Film Institute, London, p. 148.

overseas and a few popular current affairs programs like ABC TV *Four Corners*. As Chapter Four illustrated, these were loose and renegade lines of inheritance, rather than of a specific lineage from international direct cinema traditions of the 1960s.

Throughout the mid 1990s, and the period of this study, the identifiably shaky, hand-held style of DV gradually became evident as a language available to contemporary modes of film denoting realism. The DV-sourced Hollywood feature *Timecode* used the medium to bring a cynical realism, by welding different scenes into a quadrant divided screen. The Danish Dogma genre, exemplified by Lars Von Truer's *The Idiots*, was also of a form at the time that acknowledged reality in an amateurish looking and 'witnessed' footage.

Searching for definition and ideas on Thornley's definition of *cinéma vérité*, I found Winston arguing that there is an unfortunate vagueness around its definition. He says that the French terms, *cinéma direct* and *cinéma vérité*, were used indiscriminately from the beginnings of *cinéma vérité*. Final confusion compounded in the USA and the UK where direct cinéma was translated with associated meaning from *cinéma direct* but *cinéma vérité* was not of its kind. Winston's clarity allows the Canadians some sophistication in definition, perhaps, as they are bilingual:

Although the Americans at the time preferred the term 'cinéma vérité', here I will use 'direct cinéma' to describe their work. Direct cinéma was available and used occasionally by them, so I am being entirely historical. The term 'cinéma vérité' can be reserved to describe the French applications of the technology that produced a very different style of film.<sup>372</sup>

This confusion lingers today in the mix of even more terms like 'guerrilla' and 'reflexive' documentaries. The American academic, Bill Nichols, often refers to the reflexive

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<sup>372</sup> Ibid

documentary,<sup>373</sup> a genre of film that questions the conventions of the industry itself. Such reflexive films are designed to question institutionalised practice and filmmakers themselves - their methods, mistakes, conflicts and sometimes, ethical dilemmas.

With terms like *verite* little defined, a vagueness is sustained over the use of the two French terms: *cinéma direct* and *cinéma vérité*. This causes everyone difficulties, from assessors like Jeni Thornley in describing a film that she sees lurking in the material and script of *Delinquent Angel*, to me in responding to her suggestions in the final script and edit preparation. Again turning to Winston for clarity:

The French *cinéma vérité*, practitioners (as I am calling them, in contradistinction to their North American direct cinema colleagues) took on the objectivity problem directly and tried to solve it by putting themselves into their films. Jean Rouch and Edgar Morin sought something more limited but, as they hoped, rather more incontrovertible than the truth claims of direct cinema.<sup>374</sup>

Both *Delinquent Angel* and *Chasing Buddha* had references to *cinéma vérité* and to the road movie genre. At the front of the film, the audience is given an identifiable and transparent way to the genre. This suggests truthfulness and a camera driven investigation of the kind Jenny Brockie said she used when she directed *Cop it Sweet*. Both the filmmakers of *Delinquent Angel* and *Chasing Buddha* made it clear in voiceover at the beginning of the film, that they had special family connections, giving unusually close and reflexive access.

Unlike *cinéma vérité*, the direct cinema film is likely to have the camera motive hidden, the director avoiding exposure of connections like family. Rather, direct cinema works at being the objective uninvolved bystander. The reflexive film arose from Soviet documentaries in the

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<sup>373</sup> Nichols, B. 1991, *Representing reality. - Issues and Concepts in Documentary*. Indiana University Press, Indianapolis. p, 99.

<sup>374</sup> Winston, B. 1995, *Claiming The Real - the documentary film revisited*. British Film Institute, London, p. 164.

1920s, and from this tradition the French practice grew; where ‘the cinéma vérité artist espoused that of provocateur’.<sup>375</sup>

There was a precedent for such provocations. The direct cinéma people could look back to the realist documentary, while cinéma vérité’s proponents, as this term clearly indicated, could call up a more attenuated but equally venerable tradition. Reflexive documentary (that is, a filmmaking practice which on the screen reveals rather than hides itself) arose out of Soviet revolutionary experimentation in the 1920s.<sup>376</sup>

Similarly, the wider screen and more portable Panavision 16mm film camera, released in 1960, pushed documentary and, ultimately, feature film, to new possibilities. Subjects had never encountered such high levels of closeness and obtrusiveness. Unit B at the National Film Board (NFB) of Canada produced *Lonely Boy* (1962), a film about the popular singer Paul Anka. The unit was central in the development of *cinéma vérité* in its Candid Eye series. The French unit of the NFB also followed a *cinéma vérité* tradition after Rouch. *Lonely Boy* amalgamated many talents associated with Unit B: Tom Daley - executive producer; Kathleen Shannon - sound editor; John Spotton and Guy L Cote – editors; Roman Kroitor and Wolfe Koenig - directors. Ken Dancyger further defines the form

*Lonely Boy* exhibits all of the characteristics of cinema-verite: for example, too much background noise in the autograph sequence and a jittery hand-held camera in the backstage sequence where Anka is quickly changing before a performance. In the latter, Anka acknowledges the presence of the camera when he tells a news photographer to ignore the filmmakers. All of this - the noise level, the wobbly camera, the acknowledgment that a film is being made - can be viewed as technical shortcomings or as amateurish lapses, or they can work for the film to create a sense of candour, insight, honesty, and lack of manipulation: the agenda for cinema-verite.<sup>377</sup>

Commentators and filmmakers who later attempted to redefine the 1990s ‘guerrilla documentaries’ and even DV television verite, have relied on simple indicators like this grainy,

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<sup>375</sup> Barnouw, E. 1974, in Winston, B. 1995, *Claiming the Real - the documentary film revisited*. British Film Institute, London, p. 164.

<sup>376</sup> Winston, B. 1995, *Claiming the Real - the documentary film revisited*. British Film Institute, London, p. 164.

<sup>377</sup> Dancyger, K. 1993, *The Technique of Film and Video Editing*. Focal Press, Newton, p. 127.

hand-held and provocative camera style to provide a fashionable and accessible identifier to the genre.

### **6.11 Perceval – Hero or Victim?**

Winston argues that the Griersonian documentary, and its legacy, uses the film subject in ways that create a citizen-victim, and that this continues today in both documentary and journalism. At the high point of the Grierson influence, between the mid-1930s and the mid-1950s, the mode emphasized routinely produced documentary that dwelt on social victimization. It tended to seek currency through a sort of voyeurism at the victim's expense for other peoples' enlightenment and entertainment. For Griersonian documentary filmmakers the genre sometimes brought financial rewards but more usually professional acclaim, sometimes at the subjects' expense.

However, it is possible that today the victim-subject could become politically empowered after screening. It was evident from the shooting of *Delinquent Angel*, and by way of his lifestyle and reputation, that Perceval could easily be represented as victim. This could emerge through deliberate editing or through error and omission. Despite this, I hoped for Perceval's story to emerge with a positive and heroic representation, avoiding a fashionable mode of mockery and conflict, gratuitously built between the filmmaker and subject and so justifying the film as 'reflexive'.

I sought a story that had Perceval as hero and victor, despite the tragedy and pathos of his life. To achieve this, the editing and story construction had to reveal reflexivity to the subject that was warm and positive. The film had to be both interactive with Perceval and responsive to him and his personal space, not an expository (lecturing) work, nor an exposé as if he had been victim to psychological abuse, which he had. It had to avoid a narration about him and his



work that spoke through a ‘father-know-all’ voice of authority. Rather, it was to be more like the subject himself: questioning; contradictory; ambiguous; paradoxical.

Around this time of planning the film, Nichols had shown the blurred boundaries existing between allegedly scientifically accounted reality (news, reportage) and the filmic, fictional and represented reality. For documentaries, realities oscillate between fact and fiction, between actual and constructed, reference and sense.

What emerges in film editing, when the director and editor are engaging partly or wholly with the ethical *cinéma vérité* mode, as the case for *Delinquent Angel*, is a ‘voice’ in the film that addresses the inner voice of the viewer. This works at releasing the documentary text from a strictly referential function to where we are reading the image and sound track from the perspective of the unconscious.

*Delinquent Angel* was reworked to accommodate this level of reflexivity. It was to show that Perceval had in fact lived a heroic life, but he had been through extreme pain and attained an ability to see moments of pleasure as valuable, occasional and stripped of superficiality.

As there are too many aspiring in too small a market, only an elite few documentary filmmakers enjoy regular success: receiving public funding to continue the seemingly endless cavalcade of films about the tragic, the primitive, the quirky and the eccentric. From the most prestigiously funded documentary maker to the local news stringer, all seem to be waiting to package a story on life’s tragedies, of people who are least likely to litigate, the ‘little battlers’ camera ready to also become the media’s victims.

Winston's account of Griersonian victim documentary clarified the ethical problems associated with the risk of John Perceval also becoming a Griersonian victim. This referencing of Winston's work, and related literature, was essential to the process.

...by the late thirties the now familiar parade of those of the disadvantaged whose deviance was sufficiently interesting to attract and hold our attention had been established . . . Each successive generation of socially concerned film-makers since the war has found, on both sides of the Atlantic, in housing and education, labour and nutrition, health and welfare an unflagging source of material.<sup>378</sup>

Gross provides another perspective to the Winston position. While he acknowledges that the filmmaker's career usually benefits from the film, and that the victims' situation rarely improves, he argues for the exceptions. Through the making and broadcast of non-mainstream films, Gross suggests that the subjects and their culture may in fact benefit with empowerment (Indigenous cultures, refugees, disadvantaged groups). There is also the consideration of *Film Culture*, the idea of the film itself as a cultural artefact, a social and artistic record of history in the public benefit and interest.

On the face of it, many of the new communication technologies appear to have the potential to counter the centralising tendencies of the "traditional" mass media. The introduction of low-cost video equipment and the richness of cable space create possibilities for individual and local input... to counter the centralisation and massification of communication media. . . . We can already see minorities using film and video as vehicles for intra-group communication . . . but the size and diversity of their audiences remain limited. They are increasingly able to speak, but most of their fellow citizens aren't listening.<sup>379</sup>

Perceval as the main subject in *Delinquent Angel* provides a vantage point from which the film can discuss his struggle, and the psychological dimension of his art, history, social-behavior, family and the continuing interpretation and re-invention in his work. If as filmmaker, I serve as another vantage point that is openly acknowledged and identified with, then reflexivity is

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<sup>378</sup> Winston, B. 1988, 'The Tradition of the Victim in Griersonian Documentary'. in Gross, L., Katz, S. & Ruby, J. (eds.), *Image Ethics - The Moral Rights of Subjects in Photographs, Film, and Television*. Oxford University Press, New York, p. 34.

<sup>379</sup> Gross, L. 1988, 'The Ethics of (Mis)representation', in Gross, L., Katz, S. and Ruby, J. (eds.), *Image Ethics - The Moral Rights of Subjects in Photographs, Film, and Television*, Oxford University Press, New York, pp. 192, 193.

provided. Another perspective and set of discursive formations is provided and so, as we found in editing, the story becomes stronger. New meaning arrives from this and the reflexive properties provide an opportunity to criticize, reflect and make transparent the very mode in which the film was constructed. This referring back and questioning, from different perspectives, is the reflexivity as applied to *Delinquent Angel*.

## 6.12 The Reflexive Film - Perceval III revisited

The reflexive dimension for *Delinquent Angel*, aimed at making the filmmaker's intentions and ideology visible, was to ask questions about itself. It was to provide a critique of the methodologies by which the work itself was put together. Susan Dermody described this reflexive film planning as a state of receptiveness very close to the viewing mode that some not so strict documentaries induce in the audience: "If you're brooding, you're suspending thought. You're looking in and through yourself, through experiences, history, ideas and processes."<sup>380</sup> She notes that writing is a brooding process (see above). Brooding doesn't quite let the issue resolve; it is a suspended thinking toward, often eluding the active will. By which Dermody meant that it was painful to begin while the process was riddled with insecurity and procrastination:

Scholarly writing seems to me to be considerably less demanding of this difficult kind of unconditional patience. As any kind of writing that is "commissioned", to some extent from the outside world. The muscular ego rises to the occasion, takes up the task, produces something good enough in the relevant genre.

. . . But a writing process that is entirely uncommissioned, undemanded by the world, or the workplace, adding nothing obviously useful to the Current Account figures - that requires all the self-collapsed posture, doubt and forced inactivity of the unverifiable, inward process of brooding.<sup>381</sup>

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<sup>380</sup> Dermody, S. 1995, 'The Subjective Voice in Documentary The Pressure of the Unconscious upon the Image'. in Devereaux, L. & Hillman, R. (eds.) *Fields of Vision, Essays in Film Studies, Visual Anthropology, and Photography*. University of California Press, p. 293.

<sup>381</sup> Ibid

This discussion on textual development was reassuring to the production of *Delinquent Angel*. Discourses like these provided a context for an ethical and methodological framework in the meandering and experimental film writing and editing. This was particularly focused in the ten week budgeted edit period; but remained deliberately, meandering and experimental so the 'quirky' tone would be maintained amongst the sophistication of the final cut. Ten weeks funded digital non-linear editing was an Australian standard for a one-hour documentary. Screenings and references were made to other films deemed *cinéma-vérité*. The final definition remained blurred, *cinéma-vérité* didn't strictly describe films like *Delinquent Angel* and like most texts, it had elements of many genres.

Direct cinema and *cinéma-vérité* depend on high filming ratios like *Delinquent Angel*. These days non-linear editing enables a relatively easy negotiation of many hours of material. This is non-linear digital editing's greatest strength, despite the regular computer crashes and hours seeking telephone support to London for "Heavy Works" advice on software and hardware configurations. It became evident that *Delinquent Angel* was not *cinéma-vérité* or direct cinema. It was not like the work of Frederick Wiseman, but according to Winston, it reflected a third style, a cross between *cinéma-vérité* and direct cinema, known simply as *vérité*.

Vérité is an ersatz style developed by television on both sides of the Atlantic, a bastard form which reduces the rigour of direct cinema practice to an easy amalgam of handheld available-light synch shooting and older elements. Vérité films (and tapes) contain direct-cinema-style material, but can also use commentary, interviews, graphics, reconstruction and the rest of the realist documentary repertoire. As a consequence, shooting periods and ratios are reduced to levels close to traditional norms. Thus it is that the current dominant documentary style is not direct cinema itself, but rather a derivative of it.<sup>382</sup>

*Delinquent Angel* certainly fits, in part, these characteristics, though there are elements from other genres. *Delinquent Angel* as part *cinéma-vérité*, is definitely 'a bastard form'. It employed a multi-stage and refined script, highly produced sections, digital scanning of large-

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<sup>382</sup> Winston, B. 1995, *Claiming the Real - the documentary film revisited*. British Film Institute, London, p. 210.

film-format high-quality transparencies (of Perceval's works), cinematographers and lights, while the highest possible quality video (digital-Betacam) was used to shoot paintings, exhibition sequences and interviews (albeit in a spontaneous "front-up" style).

However, unlike a typical vérité film, the non-linear editing of this material worked in response to and with a methodical and exhaustive scripting process, while also drawing on the experimental 'brooding' and unscripted process when required. This developed the film's voice, and in this case, the right tone in the filmmaker's voice, crucial to the film's subjectivity.

The occasion arrived for the final studio recording of my voice track. Studio technicians with preconceptions on excellence in delivery, had me sit up straight and perform in a typical way, as accepted in voice training. Wasting money on this occasion, I had lost the original tone as captured in the experimental takes. Finally, it was better to record myself, informally, without studio staff, in the morning when I nursed a slight hangover. This provided that 'troubled' and introspective mode of delivery, both essential and evident in the final film.

Unlike this voice recording, a scholarly writing and resultant voice reading either maintains a rhetoric that keeps the self absent, or at bay, or brings it in as yet another post-modern rhetorical strategy using reflexivity as a convention. But the meandering, non-commissioned and unknown processes of writing can effectively script a speaking voice that allows the self to be as completely present and personal, while avoiding cliché or stultifying closeness.

Reflexive documentary writing and editing can result in rendering the self as palpable rather than as simply the father voice of authority – like that of the usual journalist piece to camera. When a non-authoritative and tender voice is present, more can be exposed and less is in need of being defended. The voice text in *Delinquent Angel* therefore was designed through

systematic editing, re-writing and re-voicing in order to render a film more revealing of the writer.

I continued to be aware of film examples, with discrete *vérité* elements. In keeping with Jeni Thornley's AFC assessment recommendations, well-known *vérité* films were viewed again to consolidate the ideas of the genre. *Sherman's March* (1986) was one of these films, and it was viewed with irritation. This informed the *Delinquent Angel* editing process to the extent of pledging to avoid the *Sherman's March* mode of storytelling. The filmmaker of *Sherman's March*, Ross McElwee, turned the camera on himself rather than on his funded documentary subject, the Northern Civil War General, William Tecumseh Sherman - perhaps the single most hated Union officer in the history of the South. McElwee seems to avoid depicting the general's history, his film's originally funded purpose, and applies a *vérité* that explores his many ill-fated relationships with women. McElwee as the most tragic of seducers, uses the camera and the prestige of his funded filmmaking as a package to attract women, so providing the film a narrative on which to run.

Of a selection of Australian documentaries on artists, Don Featherstone's film on the Australian painter Brett Whiteley, *Difficult Pleasure*, provides another example where *vérité* appeared.<sup>383</sup> The film included a number of scenes where Whiteley argued with the director (Don Featherstone) about a particular direction and line of questioning while filming. Whiteley seemed to be chastising the crew, irritated by the director's line of questioning on Vincent Van Gogh's influence and relevance. Arguing that he didn't want to discuss the matter, Whiteley intimated that they had in fact agreed on avoiding this topic, before filming, and that the camera was now intruding for the sake of manufacturing his displeasure. As with John

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<sup>383</sup> Featherstone, D. 1989, *Difficult Pleasure - a Portrait of Brett Whiteley*. Documentary, Australian Film Institute, Sydney.

Perceval before the camera, these moments can become valuable sequences in their own right, providing that their inclusion has informed consent as part of the agreement process.

A *vérité* example identified for the final cut was the moment when Perceval was irritated with my questioning in the car over the “Social Condition” in his paintings, and particularly his earlier work. The uncomfortable moment suggests that Perceval didn’t like speaking about himself and the work, indicating that he would prefer his work simply spoke for itself. At this moment, Perceval shows discomfort, if not anger, dismissing my approach as politely as he is capable, by turning the moment into the absurd: “some fool said; that beauty is better than brains”.

As long as the ethical issues are so resolved, when there is intrusion, these sequences although embarrassing reveal something about the painter/filmmaker relationship. These moments work at strengthening the subjective experience through strong individual representations of human folly. This encourages controversy and pathos through deliberately promoting reflexivity and ambivalence - as Nichols suggests:

If the historical world is a meeting place for the processes of social exchange and representation in the interactive mode, the representation of the historical world becomes, itself, the topic of cinematic meditation in the reflexive mode. Rather than hearing the filmmaker engage solely in an interactive (participatory, conversational, or interrogative) fashion with other social actors, we now see or hear the filmmaker also engage in a metacommentary, speaking to us less about the historical world itself, as in the expository and poetic or interactive and artistic modes, than about the process of representation itself. Whereas the great preponderance of documentary production concerns itself with talking about the historical world, the reflexive mode addresses the question of *how* we talk about the historical world. . . . Reflexive texts are self-conscious not only about form and style, as poetic ones are, but also about strategy, structure, conventions, expectations and effects.<sup>384</sup>

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<sup>384</sup> Nichols, B. 1991, *Representing reality. - Issues and Concepts in Documentary*. Indiana University Press, Indianapolis, p. 56.

These are issues that can never be accurately measured or resolved in ethical terms. There is, however, a relationship between audiences' cultural expectations and conventional film literacy. What is read as subjective or biased to one group of viewers at one point in time can be a universal truth to another, at a different time. These differences are ideological and stylistic and are reflected in evolving film and television culture:

To speak of the camera's gaze is in that one phrase, to mingle two distinct operations: the literal, mechanical operation of a device to reproduce images and the metaphorical, human process of gazing upon the world. As a machine the camera produces an indexical record of what falls within its visual field. As an anthropomorphic extension of the human sensorium the camera reveals not only the world but its operator's preoccupations, subjectivity and values. The photographic (and aural) record provides an imprint of its user's ethical, political, and ideological stance as well as an imprint of the visible surface of things. . . . This notion is usually subsumed under the discussion of style. Of primary significance is the idea that style is not simply a systemic utilisation of techniques devoid of meaning but itself a bearer of meaning.<sup>385</sup>

Winston's uncompromising position on definition, style and matters to which Nichols refers above, is expressed, with some flippancy, in a chapter heading to one of Winston's books: *This Objective-Subjective Stuff Is a Lot of Bullshit*. He continues:

The objections Godard and others raised (over direct cinema) were grounded in a sense that the Griersonian baby was being thrown out with the direct cinema bath water. . . . In the face of such objections, direct cinema practitioners and those who reported on them quickly learned to refine their rhetoric, in effect adding a second (and contradictory) strand to it – one that sought to deny the scientific standing of the apparatus altogether.

They soon discovered that the techniques of direct cinema, especially 'the tremendous effort of being there', could encompass the idea of the film-maker's personality, and in ways that did not compromise the 'raw material' claim.<sup>386</sup>

Winston asserts that there is a lack of real commitment to the rhetoric of direct cinema and reflexivity. Claims that the "phoney-baloney" issue of objectivity was reduced in the reflexivity and subjectivity approach, through making clear the film's "constructedness", is as

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<sup>385</sup> Ibid, p. 79.

<sup>386</sup> Winston, B. 1995, *Claiming the Real - the documentary film revisited*. British Film Institute, London, pp. 159 - 160.



Winston suggests, an excuse for a sloppy and overly precious filmmaking. In Winston's world, one could imagine a director's precious, reflexive, trendy and *vérité* laden rhetoric on reflexivity, having to radically change when there was some nasty defamation action, or an injunction slapped on the film at release. Producers may also backtrack on their preconceived position on their film's reflexive and theoretical underpinnings after its most public savaging in a string of bad reviews over their lack of consideration of ethics.

To Winston the reflexive filmmaking approach is theoretically problematic. He is suspicious of the motivation behind the idea of being there, the reflexive notion of experiencing the raw oral history in its recording. He denounces that the American documentary filmmaker, Al Maysles (Alfred and David Maysles [brothers] *Salesman* 1969), who argued that diary-like or oral history film material was sometimes too precious in its raw and unedited state to allow editing to proceed. Maysles asserted that the narrative and actuality values in the raw material is so significant that to cut it into film is to squeeze out accuracy and so impose new meanings through the subjectivity of the edit. Winston might make the same criticism of Fred Wiseman, famous for direct cinema in films like *Hospital* (1969), who, in perhaps an unguarded moment, acknowledges that he has preconceived themes that actuality is made to 'fit'.

I have no way of determining what is or is not representative in any sequence. It's enough for me that it occurred while I was present and that it fits into the themes I find in the material.<sup>387</sup>

Wiseman continues, and note, his defensive response may be in reaction to probing from writers like Winston, who are suspicious of the motivation of "being there":

I am not interested in ideological film-making, whether of the right or left. I remember being criticized by some on the left when I made *Hospital*. They knew from their ideological positions that white doctors and nurses exploited poor blacks and Hispanics. Therefore a film like *Hospital* which showed many white doctors and nurses (as well as black and Hispanic doctors and nurses) working hard, long hours to help their patients was ideologically offensive. Film ideologues are not interested in the discovery and surprise aspect of documentary filmmaking, or in trusting their own

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<sup>387</sup> Wiseman, F. 1994, 'Dox: Documentary Quarterly, no. 1 in Macdonald, K. & Cousins, M. (eds.) 1996, *The Essayists*, in *Imagining Reality: The Faber Book of Documentary*. Faber and Faber, London, p. 282.

or anyone else's independent judgement, but want documentary film-makers to confirm their own ideological, abstract views which have little or no connection with experience. Some documentary film-makers urged on in their self-generated political fantasies by academics and other ideologues, by film barons and bureaucrats, and by all those who form the parasitic platoons fluttering around film-makers, believe documentaries must educate, expose, inform, reform and effect change in a resistant and otherwise unenlightened world. Documentaries are thought to have the same relation to social change as penicillin to syphilis. . . . Documentaries like plays, novels, poems – are fictional in form and have no measurable social unity.<sup>388</sup>

Appearing less structured than other modes of documentary, the direct cinema approach, like *vérité*, often brings an intimacy with audiences which can verge on the embarrassing. Informed with the knowledge the subjects are “real” and not actors, direct cinema can also make connections with audiences in ways that are not possible in other forms of filmmaking.

Frederick: What happens is if they're (film subjects) involved in a real event, like a weekly Tuesday night staff meeting, they're behaving by and large the way they behave at any staff meeting. Because that's what they know. The fact that I happen to be there that Tuesday, I don't think affects their behavior that much. As the thing goes on they get absorbed in the particular issues of that meeting.

Interviewer: Tell me some juicy stories about things that happened while filming? Dramatic moments.

Frederick: I can't think of anything that would fit that category. It's an arena of gossip.

Interviewer: What do you think documentary filmmaking is about?

Frederick: Whatever gossip I have is in the film.<sup>389</sup>

Further contradictions as quoted by the distinguished direct cinema director, Al Maysles, suggest that if the raw film material is “not tampered with” and is scientifically recorded, then it cannot also be described as being subjective or “fictional in form”, or “diary-like”, or reflecting the kind of truth that occurs in literature.

We can see two kinds of truth here. One is the raw material, which is the footage, the kind of truth that you get in literature in the diary form - it's immediate, no one has tampered with it. Then there's another kind of truth that comes in extracting and juxtaposing the raw material into a more meaningful and coherent

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<sup>388</sup> Ibid

<sup>389</sup> Wiseman, F. 1999, interview @ <http://www.popped.com/articles98/cinémavérité/véritéwiseman.html>. [Accessed October 8, 2001]

storytelling form, which finally can be said to be more than just raw data. (Levin, 1971, p.227)<sup>390</sup>

With these contradictions, international tirades and confusion over definition of direct, *vérité* and reflexive; a film that is made in response to definition as set down by funding bodies and broadcaster policy, requires of the filmmaker, a careful and defining negotiation. This filmmaker's pitching and re-scripting throughout production, inevitably renders the actuality, the raw footage, into a constructed reality amidst a smoke screen of double talk, contracts, legalities and aspirations. Little wonder that informed consent and ethical imperatives risk being left out.

...our hero springs free of the chains of objectivity and escapes to a post-modernist world of open textuality and critical acclaim. And takes the entire direct cinema movement with him.<sup>391</sup>

These mostly subjective films, then, are claimed as objective evidence of the subjective experience of the filmmaker. The problem with this assertion is that the filmmaker cannot possibly make the recording so sensitive and accurate that the audience can in an informed way act as judge of the original event. The result, Winston argues, is that in . . .

. . . this rhetorical strand, 'objectivity is bullshit', [as it] still in effect makes the same implicit cultural appeal to photography's scientific heritage as does the other strand of the direct cinema practitioners' "window on what's happening" rhetoric. It is the filmmaker's subjectivity that is being objectively recorded. Direct cinema is still evidence of something - the filmmaker's 'witness'.<sup>392</sup>

Winston also attacks the philosophical and ideological notions used to justify making these kinds of films. To him, films that play down the scientific nature of the camera while also claiming high levels of reflexivity, intelligence and sensibility are bringing on absolute myth.

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<sup>390</sup> Mayles, A. in Levin, R. 1971, in Winston, B. 1995 *Claiming the Real - the documentary film revisited*. British Film Institute, London, p. 160.

<sup>391</sup> Winston, B. 1995 *Claiming the Real - the documentary film revisited*. British Film Institute, London, p. 161.

<sup>392</sup> Ibid, p. 162.

The anti-objectivity rhetoric turns out to be a smokescreen. It functions, as did Grierson's radical rhetoric, to divert attention from the basic thrust being taken in the films. The failure to escape from the prison-house of objectivity can therefore be most vividly seen on the screen. It is the films themselves that reinforce a continued and unavoidable claim on scientism; that in effect, give the lie to the anti-objectivity rhetoric of the film-makers.<sup>393</sup>

As discussed in previous chapters, cameras do in fact have levels of subjective intervention by simply being on the scene and because directors and camera operators make ideological choices in framing, in camera movement, in response to the scene. Obtrusiveness, for instance, may affect events and throw out any appearance of objectivity. *Salesman* (1969) on the other hand, achieved a subjective intervention of an intimacy verging on cringe and embarrassment. This can be a flaw, yet with *Delinquent Angel* these characteristics were kept under control and so became the film's strong points. Indeed, some raw footage not included in the final film was extremely compromising and embarrassing as the camera caught Perceval trying to act, trying to be cute, in ways he thought would compliment what he had seen his contemporary, Arthur Boyd, doing in a film screened on the ABC the previous evening. These moments were considered in the editing process, but eventually it was decided that they were just that – tragically embarrassing.

### **6.13 Conclusion: ethical outcomes/aftermath**

As a genre, *cinéma vérité* and now the fashionable TV *vérité* are perceived as being much less structured than other forms; requiring a distinctively open mind-set from camera, directors and editors. Although this is debatable, directors and editors in *vérité* are assumed to work almost instinctively without a script and more than usually close to the personal space of the subjects. *Delinquent Angel* debunked this assumption in that a best possible script was necessary for the funding application and essential for the subjects and others in visualizing a finished film.

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<sup>393</sup> Ibid, p. 163.

The development of the 'guerrilla' form in Australia in the mid 1990s, then on to fashionable TV *vérité*, was most likely an AFC and ABC marketing exercise under the guise of a hip social experiment. Alternatively though, and more bleakly, it may have simply been an exercise of economic rationalism, sexily packed with reference to Vertov and observational cinema for market credibility and authority. Despite the reasons, the main issue remains: are the new levels of closeness and voyeurism justifiable in factual television? Are these new camera perspectives ethical, legal and free of the risk of damaging subjects?

This has been especially an issue with real TV, a genre that promised to replace documentary. The documentary response was to embrace some of the techniques of real TV, increasing the chances for commercial viability and competitiveness, but also for new levels of voyeurism.

Once it seemed easy to define the documentary but the contemporary definition is continually expanding with debates about where reality TV and manipulated stories fit. Some suggest that the definition is less a question of form than of intent. "We have tended to have far too simple a view of capturing reality - the question isn't to do with the processes leading to the production but the extent to which the result speaks to the underlying truth of the human condition,"<sup>394</sup>

Documentary filmmakers of Indigenous culture have long questioned the authenticity of cultural data as gathered through the lens. The camera, after all, has been imposing a colonialist perspective on Indigenous culture since the glass plate stills camera was first used to document anthropological subjects. With little acknowledgement of this in many Australian mainstream films, like *Cunnamulla* or *Kim, Harley and the Kids*, audiences continue within a predetermined contract of exploitation, becoming both exploited and exploitative. Nichols:

Not all ethnographic films turn observation to fetishism along with knowledge, but many do. The strength of this tendency prompted David MacDougal to argue that:

[the ethnographic film maker] reaffirms the colonial origins of anthropology. It was once the European who decided what was worth knowing about "primitive" peoples and what they in turn should be

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<sup>394</sup> Winston, B. 2003, Abstract to his Keynote Address, Australian International Documentary Conference 2003, Byron Bay.

taught. The shadow of that attitude falls across the observational film, giving it distinctly Western parochialism. The traditions of science and narrative art combine in this instance to dehumanise the study of man. It is a form in which the observer and observed exist in separate worlds, and it produces films that are monologues.<sup>395</sup>

It is difficult to pursue this point much further since there are virtually no ethnographic films that confront this indictment head on. Only a few film makers come to mind: Jean Rouch for one, the film-making team of Judith and David MacDougall for another, and the team of David MacDougall and James Blue, who made *Kenya Boran*,<sup>396</sup> and even in these cases, problems abound.<sup>397</sup>

The pleasure derived from being a spectator of the new and problematic texts like real TV, may well have moved away from colonialism towards simply, a kind of narcissism of a salacious tone, the sub-text of which says: 'I wouldn't be in it but I get great pleasure from the safety of my lounge in seeing someone else doing it'.

*Delinquent Angel* sought and determined the story from the perspective of the filmmaker, and this proved also to be the best filmic and ethical response for John Perceval and Ken McGregor. While this *vérité* presence of the filmmaker within the film was originally in response to policy from the AFC and the ABC, it proved to be most democratic - allowing as much as possible the different frames of reference: of the filmmaker, of John Perceval, Ken McGregor, Alice Perceval and even of Marlow.

A director might try to plot these forces of meaning objectively throughout the editing process, or even after screening the final cut, but it is arguable that one can only fully understand the

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<sup>395</sup> MacDougall, D. 1981, "Beyond Observational Cinema," in *Principles of Visual Anthropology*, in Hockings, P (ed.) (The Hague: Mouton, 1975) pp. 118-19, in Nichols, B. *Ideology and the Image. Social Representation in the Cinema and Other Media. Documentary, Criticism, and the Ethnographic Film*. Indiana University Press. Bloomington, p.266.

<sup>396</sup> Jean Rouch's films include: *Les Maitres Fous* (1953), *Jaguar* (1953), *Moi un Noir* (1957), *La Pyramide Humaine* (1959), *Chronicle of a Summer* (1960), *The Lion Hunters* (1965), *Tourou and Bitti* (1971), *Cocorico, Monsieur Poulet* (1974), *Babtou* (1976).

David and Judith MacDougall's films include: *Indians and Chiefs* (1973), *Under the Men's Tree* (1974), *Kenya Boran* (1974), made by David MacDougall and James Blue, *Good-bye, Old Man* (1977), *The Wedding Camels* (1978), *Lorang's Way* (1978), *To Get that Country* (1978), *Takeover* (1979).

<sup>397</sup> Nichols, B. 1981, *Ideology and the Image. Social Representation in the Cinema and Other Media. Documentary, Criticism, and the Ethnographic Film*. Indiana University Press. Bloomington, p. 266.

final meanings after many screenings and subsequent reactions. For the process of experientially and experimentally producing a film through an exhaustive editing cannot predict audience response until long after the editor has ‘locked off’ the final cut. Even then, some final meanings in *Delinquent Angel* remained unnoticed until we had watched the film in the State Theatre amidst an audience of 3,000 at the Sydney International Film Festival.

Following the first screened film, *Chasing Buddha*, John Perceval’s prophetic opening tirade about “onward Christian soldiers” was universally hilarious to that State Theatre audience - saying he would turn “Buddhist” rather than be part of “free trade and war”.

For a highly scripted filmmaker like Mark Lewis in the making of *The Wonderful World of Dogs*; the outcome was designed and known before production started. That case study reinforced the notion that a film exposes as much about the writer as it does the social actors in the film. Unlike *The Wonderful World of Dogs*, and in spite of having a script, *Delinquent Angel* was experiential and the outcome undetermined, but it too said a great deal about the writer as social actor – one who was in the thick of it and undecided, rather than coolly observing and designing from the outside.

## **Chapter Seven: Ethical Outcomes/Aftermath**

7.1 A theoretical approach for building an informed consent process	315
7.2 Orientation	316
7.3 The grounded theory expanded	318
7.4 Save on the inevitable legal costs	321
7.5 Formulating style within an ethos of informed consent	323
7.6 <i>Delinquent Angel</i> case study revisited	326
7.7 Consent releases - <i>Delinquent Angel</i> and other examples	329
7.8 The defamation releases	334
7.9 The story telling nature of non-fiction	336
7.10 Please release me	338
7.11 Encountering the legal terrain	340
7.12 Reality used to be a comrade of mine	342
7.13 Reshaping industry practice in terms of ethical theory	346
7.14 Conclusion - a pluralistic approach to ethical discourse	351



## Chapter Seven: Ethical Outcomes/Aftermath

### 7.1 A theoretical approach for building an informed consent process

The grounded theory developed within both *Delinquent Angel* and this PhD, is best summarized through the assertion that: ethical behaviour, as determined through guidelines in journalism codes and related discourse, is the first best step to avoid litigation in factual filmmaking. This grounded theory approach, as testified and expanded upon in previous chapters, provided tools for mediating between the film subjects and the filmmaker. The tools are useful to ensure that film subjects are not treated poorly. The tools also work at reducing the risk of subjects feeling seduced, dropped and abandoned after the film's public screening.

The tools were aligned as this PhD asserts: when ethical standards are met in filmmaking, or in television journalism, it is more likely that costly legal problems will be minimized. These costs are not only in terms of monetary cost, but may be measured in psychological and social costs. No film is more important than a film subject's mental or social wellbeing.

However these tools as ethical codes allow exceptions: where the subjects of the filming are so morally and criminally culpable that they no longer should enjoy the protection afforded to other citizens, then a journalistic or film based subterfuge should be undertaken in the demonstrated and overwhelming public interest. This should only occur when that public interest can be clearly demonstrated, as one would in preparing a defamation defence.

This argument has a central context on the nature of the consent that participating subjects provide for documentary, journalism or academic research. Put simply, a respect for the

participating subject and their rights is reason enough to behave ethically in any of these contexts. Added to this, filmmaking should always reduce the potential for legal action, as this is a producer's responsibility, especially when they're funded by way of a public authority.

These grounded theory derived ethical tools and recommendations should now be made accessible to non-fiction film industries generally: for television journalists, real TV and documentary filmmakers, funding authorities and broadcasters. Once thoroughly deployed, the recommendations could form a basis for all sorts of social interactions and trade. The guidelines, however, are particularly useful and specific when informed consent is a critical part to successful, ethical and legal non-fiction filmmaking.

## **7.2 Orientation**

The last chapter provided the context of process in *Delinquent Angel* and this assisted in developing a theory of informed consent, making available a number of strategies for avoiding the legal ramifications, as depicted in the case studies of Chapter Five. It is therefore clear that informed consent, as a transparent dialogue, should first describe the expected outcomes that subjects may reasonably expect as a result of their part in the film. This should always apply, except when deceitful filming is necessary and can be demonstrated as critical to the public interest or benefit. Only then should informed consent as a process, allow deception or subterfuge, or even the mildest lack of transparency.

Chapter Five also established that a film's informed consent and ethical processes may be guided by ethical codes found in journalism. With no publicly available ethical guidelines for documentary, and an apparent culture of denial in respect to informed consent, it is time to put these issues up for discussion with the view of finally infusing an ethic of responsibility into the Australian documentary film industry.

This chapter, as the coda to the PhD, finalizes the grounded theory: that ethical practice reduces legal and social risks, and costs, while also increasing public confidence in the form. This theoretical development is based more on verification of theory rather than discovery in a strict sense. For me, the actual realization of a theory of best practice through informed consent in filmmaking occurred in the late 1980s when I was working as a sole camera operator recording Aboriginal oral history, language and song in two distinct language areas of NSW. As qualitative research processes, that oral history work and this PhD study are both defined within a positivist paradigm, “where qualitative researchers attempted to do good positivist research with less rigorous methods and procedures”.<sup>398</sup>

Although many qualitative researchers in the postpositivist tradition use statistical measures, methods, and documents as a way of locating a group of subjects within a larger population, they seldom report their findings in terms of the kinds of complex statistical measures or methods to which quantitative researchers are drawn. . . . Much of applied research is also atheoretical.<sup>399</sup>

Grounded theory applied in areas like education, management and film production - sees the power that is usually invested in the manager, the observer, the ‘scientist’; being transferred more equitably to other members of the system, who hold positions of less privilege. From here it is contended that the ‘observer’ might begin to see more.

Similarly, the assumed disinterest of the observer is rejected, along with the passivity of the practitioner (or operative).<sup>400</sup>

This emancipated attitude within a qualitative research method, has come as a result of the epistemological disarray, says Hamilton,<sup>401</sup> of the 1970s and the return of Kant’s concern with truth as an absolute for individual and social emancipation. Consequently, there has been a re-

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<sup>398</sup> Denzin, N. & Lincoln, Y. (eds) 1998, Introduction, *The Landscape of Qualitative research – Theories and Issues*, Sage, London, p. 9.

<sup>399</sup> Ibid.

<sup>400</sup> Hamilton, D. 1998, *Traditions, Preferences, and Postures in Applied Qualitative Research* in Denzin, N. & Lincoln, Y. (eds) 1998, *The Landscape of Qualitative Research – Theories and Issues*, Sage Publications, Calif, p.125.

<sup>401</sup> Ibid.

examination and questioning of the notion of observer and the observed, the dichotomy relating also to the act of filming in journalism and documentary.

### **7.3 The grounded theory expanded**

Recently, I provided a voice-over for an important Film Australia documentary, *Land of the Morning Star*. The film's director, Mark Worth (see Chapter Four) had requested our voice-work. There were four voice parts for recording that day and we had assumed that the film's producer would be responsible, as usually the case, for production details: like discussing and providing release forms for our consent and signing. Another filmmaker was present for a separate voice section. A third voice subject obtained through me, would be the only one to be remunerated for particularly specialized voice-work. The studio was prepared. We inquired of the producer when our releases could be signed. The reply was that releases were overly legalistic and not helpful in documentary like that of Film Australia, and so were not provided.

As voice subjects, we were volunteering our time and copyright, yet there had been no process to explain the extent and nature of our forthcoming consent. A few weeks after that recording the releases arrived, perhaps Film Australia had sought legal advice. This fairly typical attitude is based on film and radio conventions years old. The understanding is that consent is 'given' through the subject simply turning up and allowing the process of recording to continue without any protest.

While the experienced producer on this Film Australia occasion seemed to have a perception of an increasingly litigious world, there also seemed to be no acknowledgement of how easy it would be for us (as voice subjects with no signed release) to cause the film inconvenience and further expense by simply revoking our copyright.

If payment is made to accommodate any expenses for a subjects' participation (as it was in respect to my friend's specialist voice work, above), it must not be coercive in the amount paid. The Chapter Five case study, *Cunnamulla*, in its representation of two teenage girls; demonstrates that filmed, or even quoted subjects, should be told the context and extent to which their personally identifiable private information will be used, and when and how it is intended to be held in confidence.

Case studies throughout this dissertation, particularly those of Chapter Five, show how serious are the issues surrounding the responsible handling of subjects. The researching and the making of *Delinquent Angel*, was testimony for the particular care that filmmakers must provide for the fragile, the powerless or the anonymous source, who may have been assured at recording that their identity will remain hidden.

If, for instance, filming is likely to cause injury (physical, psychological, social, financial, or otherwise) and the risk is more than minimal; an explanation should be given before consent is agreed upon and this should be summarized in the release agreement that parties are about to sign. The informed consent process should show, in the event of injury, whatever voluntary compensation and treatment will be provided, and how this is covered in some reliable backup such as insurance.

Cara Hearn's experiences after the screening of *Cunnamulla* were not so much of the nature of physical injury; rather, as she argues, her damage was psychological, social and financial. It is a common misinterpretation that injury is simply what is noticeable in a physical sense.

An informed-consent process, as enshrined in a documentary film code of ethics and arising from a journalism context like the MEAA Recommended Revised Code, could include additional articles made to the needs of the film subject. These might include articles that

prohibit clauses written into a release, waiving the legal rights of subjects in respect to action they might take against a film. This was a problem for Harold Scruby in *The Wonderful World of Dogs* and as this chapter later reveals, this waiving of legal rights became an issue with one subject in *Delinquent Angel*.

The wording in a release is designed to give the film producer assurances that they can rely on the subject's filmed segments as final – providing there is no deception, or the film is not substantially changed from the original idea as put to the filmed subject. With this legally bound, the film can rightfully proceed with editing. This gives the producer considerable power, largely because the consenting camera subject rarely understands all the fine points.

The waiving of rights to a legal claim, however, is not final, even when a release is signed and especially when deception on the part of the filmmaker can be demonstrated. Further, an equitable process of informed consent would provide the subjects with free and independent legal advice before signing. It would also summarize the film's intent and have counselling available to the subject, should it be required, after the film's broadcast and video release.

The consent forms used in *Delinquent Angel* had clauses where subjects waived the right to make a claim on the filmmaker. After viewing the final cut, Alice Perceval may have sought legal advice before her final revocation. For me, the producer, her psychological health was given priority and so the potential legal question in the waiver was not tested through any 'toughing it out'. By removing her copyright, image, likeness, sons and voice from the second version of the film, the ethical decision pre-empted and removed the likelihood of legal action.

Over the time of this research, Australian film practitioners repeatedly argued that aspiring to such an ideal of consultative involvement for subjects, waives, in effect, any chance of being able to make the film with editorial independence and creativity. While this may be the case,

an independent producer under government funding contractual obligations, indemnifies other parties like the broadcaster, and the investor, and so the filmmaker is legally vulnerable, if proven negligent in some way over the treatment of the stories of the filmed subjects. Working for a salary with Film Australia or within a television broadcast network in making films or current affairs does not oblige the producer/filmmaker to such obligations and legal pressures.

#### **7.4 Save on the inevitable legal costs**

For the release forms, consent language should be carefully selected so that the release identifies all parties likely to benefit from the film, including the director, producer, and institution (broadcaster, film company, investors and/or funding body). The main parties, usually as large conglomerates and of the state, should be able to demonstrate they are voluntarily providing the subject, under reasonable circumstances, compensation where necessary, beyond any immediate emergency therapeutic intervention. This should include counselling in response to trauma or psychological injury, as triggered by filming.

This cover should be given in the spirit of duty of care that an employer is obliged to provide an employee. Despite the standard release form using the words to the effect: ‘the producer’s right to exploit the material’, subjects facing the camera should not be given the impression that they are being exploited. They should be assured that their agreement includes options for recourse.

As the practice with university and medical research when using human or animal subjects, filmmakers should be obliged to provide certain information as assurance to the protection of the subjects they intend to film. This should contain advice about independent and legally qualified professionals, briefed to answer questions for the film subjects about the contract, the

film, their rights as social actor, and any deleterious effects, reasonably envisaged after the film's release.

This should be provided for within the film's budget (within reason) and must be stated and addressed in the consent process, then the subsequent release, which serves as documentation of the informed consent and agreement. By eliminating potential conflicts of interest, or the appearance of any lack of transparency, renders the process towards a final and legally binding agreement, summarized and cemented in the final release agreement and protecting all parties.

Harold Scruby in *The Wonderful World of Dogs* might have been relieved of his worry and legal expense, had he fully understood the process applying to his role. Invariably, questions about the film are best answered by the filmmaker and once these issues are addressed with transparency, there is an increased chance of the subject's happy and continued involvement, leading to agreement that is contractually bound.

For university research, these questions, obligations and release documents are addressed to an ethics committee. Broadcasters and government funding bodies alike must develop ethics committees and processes commensurate with those in medical and university research.

When the results of filmmaking have unforeseen and unfortunate impact on peoples' lives, there should be an insurance process available to the subject. This could work as the Errors and Omissions Film Insurance, which covers unforeseen legal action in areas of copyright and defamation. Incidentally, Errors and Omissions Film Insurance, or indemnity, is contractually obliged of independent filmmakers by broadcasters and government funding bodies alike. Filmmakers should be contractually bound to provide a reasonable understanding to subjects on what is voluntary participation and what constitutes the right to withdraw. Like medical research, filmmaking must apply no penalty as a result of someone not participating.



It is critical for the filmmaker's rights, in ensuring the film's completion, that consent is only revoked when the subject can demonstrate that they are at real and unavoidable risk as a result of the film. The film and the filmmaker's rights, have a right of reply to this through the law of breach of contract, or perhaps nuisance.

### **7.5 Formulating style within an ethos of informed consent**

As mentioned above, my early filmmaking (1987-90) and any theory emanating from this practice encouraging an informed consent process, took shape in low intervention works, in oral-history contexts, made for and within Aboriginal communities and their respective organizations. This led to an invitation to write and direct documentaries and current affairs stories with the *First in Line* Indigenous program of SBS television (1988-89). In 1990 *First in Line* was dissolved and many of its staff were incorporated within the mainstream SBS local-production documentary unit.

Within two years, local-production or 'in-house' documentary was also disbanded with the advent of SBS Independent, a film production entity in its own right. It commissioned works through an outsourcing arrangement. This outsourcing led to higher quality films, enabled through realistic budgets for soundtrack and editing periods commensurate with industry practice.

It is to these early films, their subjects and their contexts of production that began the formulation of this ethical film theory - one that encourages an open informed consent process that seeks permission and consent at various stages of production.

This consultative style assures the camera subjects' feelings towards filming and so brings confidence and a positivism to their stories as represented in the resultant film. The journalist/director, where possible, makes agreements with subjects and so demonstrates that they as professionals are obliged to honour these agreements – so stimulating trust.

Philosophically, this style can flow into scriptwriting and camera, thus avoiding the 'voice of authority', in the traditional 'father voice' of the power elite. The style avoids authoritative voice-overs or walk-ins and there are no absurd reversals, supposedly proving the interviewer was actually with, and relating to, the subject. If this kind of voice is used, as it was in *Delinquent Angel*, it could well serve as a voice of emotion, of involvement and attachment, rather than detachment.

Film style transcends how consent is obtained and how the filmmaker wields power over camera subjects. This power disparity is inevitable with the filmmaker's superior understanding of the representational processes in film, and is expanded in the following text.

I cannot give consent unless I am truly informed, and... being truly informed requires that I know at least as much about the process of making photographs and films (or doing research) as the people doing the work. Otherwise, I may think that I am protecting myself (or that there is nothing to protect myself against) when these people actually have tricks up their sleeves I can't even begin to imagine. Image-makers can use selective editing, framing, lighting and the rest of the familiar catalogue to produce a result in whose making I wouldn't have cooperated had I known what was coming.<sup>402</sup>

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<sup>402</sup> Becker, H. 1988, 'Forward: Images, ethics and Organisations' in Gross, Katz and Ruby (eds) *Image Ethics – The Moral Rights of Subjects in Photographs, Film and Television*. Oxford University Press. New York, p. 13.

It is difficult, however, for television journalists, and especially filmmakers, to envisage exactly how the story, its style and its ultimate representation will unfold. No one can be expected to know exactly how the material will be used in the final cut. A production process with the informed consent style embedded with transparency, should continue to enjoy a positive and consenting relationship with camera subjects, except where deception is necessary for the public interest. In the event of subterfuge in the public interest, discussion and approval would have been sought from a body that works as an ethics committee. This situation was evident in *Cop it Sweet*, with an overriding public interest provision and, presumably, discussion with and approval from the ABC's legal department and executive producers.

These checks and balances provide a backup and a forum for the journalist/filmmaker in situations where telling subjects less than the whole truth can be justified, as the deceit is in overwhelming public interest. For those of us who care about truth, ethics in this context has a role to set benchmarks, especially when the decision of a journalist, or filmmaker, involves deception, then what follows can be made as accountable and transparent as possible through constant reference to an accepted code and an ethics committee, or the equivalent.

Informed consent is not realistic though, in a world where documentary, and television journalism for that matter, are not as they appear. John Grierson, the founding father of the documentary ethos of the English-speaking world, was deeply influenced by the idealist philosophy he found at Glasgow University after World War One. His aestheticism provides for the documentary tradition to quietly shape and contextualize material in terms of 'art' while allowing some trendy low levels of engagement. This is a smokescreen as Winston has argued.

The question is now further complicated by whether or not certain sub-genres of documentary, or even real TV, should be called something else. This question should also be scrutinized by film ethics-committees and executive producers, at the application and funding process,

establishing for camera subjects like Harold Scruby, the form of documentary for which they are being asked to participate. Any film definition or genre provisos arising from the process should be included in the subsequent release forms and related documentation.

This question should be considered again at editing, especially when the filmic image in the final cut fails to retain any truthful resemblance to the agreed script, or treatment. This should be understood in terms of the proposed claim on reality, as reflected in the script and conveyed on an ongoing basis to camera subjects. This claim on reality, after all, is where the documentary's whole definition is invested. If a truthful representation was not the case, then film subjects should be informed about any 'drift' from the real event, or original idea. When a subject is asked to sign in consent, they should be informed of the projected reality, to which their copyright will contribute; so developing a process that is consensual and consultative.

There are two essential legal relationships which in effect create the frame for everyday ethics. First is the relationship of the filmmaker to the participants in the film. This turns upon the concept of consent. Second is the relationship of the filmmaker to the film or tape, which turns upon copyright.<sup>403</sup>

Culturally, filmmakers have difficulty admitting to this inevitable, ideological and representational 'drift' in allegiance; from the original contract with the camera subjects through to the commercial, legal, technical and artistic responsibilities of the final product.

## **7.6 *Delinquent Angel* case study revisited**

If a journalist or director was able to accurately and realistically envisage, and then divulge the final intentions for the filmed material, on realization, the 'reasonable' camera subject might

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<sup>403</sup> Winston, B. 1995, *Claiming the Real: Documentary Film Revisited*. British Film Institute, London, p. 220.

withdraw. This was the case with respect to John Perceval's daughter, Alice (and her two sons), included in Version One of *Delinquent Angel*. In response to her correspondence and final letter of revocation (see Appendix 14) all three subjects were removed to enable the legal and ethical SBS TV broadcast of Version Two. This consultative process was done in a manner that is analogous to medical research and surgical procedures.

Final consent on the part of Alice and her family was difficult to orchestrate from the other side of the world. Initially, there were telephone discussions about my intended vision of the film. Alice was sent a 1996 early rough cut, which the family mislaid in house renovations. At this time there could be no way of anticipating the extent of the *vérité* involvement, as later suggested by the AFC and the assessor, Jeni Thornley. At the early stage of 1996 there had been no suggestion of the extent to which we would be weaving our personal lives into the film, in making the story more poignant. On the strength of the Thornley assessment (also posted to Alice) and on her viewing a now voiced version of the 1996 rough cut, by August 1999 Alice signed a deed of release covering herself and her two sons – for copyright, image likeness and voice (see Appendix 14).

This signed consent was sought three years after the 1996 Wales filming and at the supply of and her subsequent viewing of the second compilation of the rough cut. At this point, more was known about the direction of the film - the cut with my draft voice-over informing the audience of the "former family connections" and thus my unusual access to Perceval and his family. It was also known at this time, that the film was being funded and would go into post-production late in 1999. The rough cut was reflected in a script, which went to the AFC as part of the application. Consent for Alice (and her two sons, Marlow and Thomas) was therefore as 'informed' as possible. She knew more about the plan in 1999 than at the time of her initial

consent, given in 1996 at the time of filming. The consent was obtained through a deed (without consideration) signed by Alice, and witnessed by her husband, Ivan.

The revised version of the film, as posted with voice-over, mentioned our son (Marlow) and our former de-facto marriage. Also posted was Jeni Thornley's AFC assessment, which suggested the story structure based on family involvement through Alice's and the filmmaker's relationship. Alice confirmed by telephone that both the revised rough cut and the assessment by Thornley were "constructive". She was happy with the tone of both and that she had contributed to the only significant film on her aging father.

By early 2000, in seeking further contractual agreements for all participants, I sought Alice's informed consent for the third and final time. This involved a revised contract. The film's lawyers of Stevenson-Court had rightly, in a thorough and cautious process, suggested I seek more substantial releases before they (lawyers) could provide clearance, necessary for the now fine-cut film to proceed to its launch and broadcast. Through the lawyers' insistence on this one more layer of clearance, there was now just one option: show Alice the finished film and negotiate her signing of a final and more binding release. This was particularly relevant to an aspect of her copyright, overlooked by me before the lawyers' scrutiny, of her contributing to the drawing with her father and Marlow.

This again raises the two important questions posed in the introduction of this dissertation about the filming of subjects: when is consent truly informed? And what is the appropriate time for a film subject's signing? In Alice's case, informed consent had to be after her agreeing to the final cut, and this related also to her sons and her artistic copyright – a most critical aspect of release in legal terms. Ideally, the release needed to summarize and document the

negotiation process that lead to her agreement, and that might include a clause acknowledging a viewing and approval of the fine cut.

Within the bounds of the budget and the AFC policy, allowing Alice a role in the editing was impossible. Further, as determined by filmmaking culture, the editor would not have stood for it, nor should they. Though, with more time prior to editing, in sending VHS rough cut tapes to Wales for viewing and suggestions, it might have been possible to work for a better outcome with Alice. Editorial intervention, to the extent that Alice was indicating, is not provided for within the current parameters of film post-production, including the budgets and time frames.

Four months after completion, in March 2000, *Delinquent Angel* still awaited legal clearance for release and had been selected for three film festivals (Sydney, Berlin and Melbourne). Without Alice's agreement, indeed with her letter of revocation, the only option was to start re-editing in removing Alice and her sons, crucial it seemed to the overall structure. Her letter revoking her consent arrived in the week following the film's first public screening in the 2000 Sydney Film Festival Dendy Awards.

### **7.7 Consent Releases - *Delinquent Angel* and other examples**

Throughout the production of *Delinquent Angel*, the main subject John Perceval signed four releases, each layer of release with increasing complexity. Alice Perceval was approached twice for written consent, and she signed once. Each new wave of release (consent form) had increased in legalistic exactness, being more up-to-date in legal condition. These wrought

safety, and reduced risk by ensuring a total release from the subject. We sought to have releases worded to show maximum informed consent. A clause with the words, “after having seen the final cut of the film, I agree to .....”, was used in this final wave of release (Appendix 14). Understandably each release version became more intimidating for the person signing and some subjects may have sought legal advice.

John Perceval signed the first agreement at the beginning of filming in 1994. Prior to that, he, McGregor and Foster had signed a letter of intent, which they drafted, saying they agreed to start on the film - then entitled *John Perceval AO*. The signing was overshadowed by the reality of funding being sought for production. Later, it was resolved that the AFC funded ‘research filming’ would allow a more relaxed approach to what amounted to filming moments in the final six years of Perceval’s life. A second release consenting to a continued commitment to the film was sought and obtained from these protagonists. The third release form was signed as the newly titled and re-defined *Delinquent Angel* was being prepared for post-production. Perceval’s fourth signing was executed without objection after he had experienced years with me, discussing ideas about how the material might best go together. This fourth signature occurred when he viewed the final cut in 2000. The release had wording that acknowledged an understanding that after having seen the film, he was happy with its contents and he was competent to have made that judgment (Appendix 14). A fifth release was signed, as an addition to the fourth, which consented to the film’s changes into Version Two after the unfortunate but necessary removal of Alice and sons.

The lawyers acting for the film, and independently of the AFC, agreed that this is informed consent. Although risky in respect to a subject’s intervention in the final cut or worse, revocation, the informed consent process assists in avoiding defamation, or at least provides



more chance of imputations being defended. In defense of the defamation the informed consent release document would be among the first items presented.

The format contained in the first releases, used in the early stages of *Perceval* and later *Delinquent Angel*, and signed by Alice, were provided by the AFC solicitors in 1991 for the social justice documentary *Can it Hurt Less?* These Releases were drawn up to cover a filming process involving minors, a contentious area for filming, particularly when some may have been connected with crime. In 1992, at broadcast, the agreements were adequate for all territories in respect to that documentary. While these releases did not include the provision of consideration, which is a pre-condition to the formation of a contract, they were seen as adequate by the AFC in the context of 1991-2, and again at the start of negotiating the post-production funding in 1999.

*Can it Hurt Less?* also employed an informed consent process, provided before signing by police, juvenile offenders and their families, lawyers, academics and a group of Aboriginal actors in dramatized scenes in the Sydney suburb of Redfern involving a police paddy wagon. All the main social actors were afforded the courtesy of an informed consent process through being able to respond to a VHS rough cut, a script and dialogue over the elements to be post produced for the film. The police in Nowra (south coast of NSW) approved the rough cut to the extent that they used it in screenings to local community representatives. These public relations forums within a civic advocacy, initiated primarily by Chief Inspector John Crick of Nowra Police, involved the local magistrates, youth workers, psychologists, lawyers and Aboriginal community representatives in an effort to start a community-based consultative process for dealing with young offenders. The community-based policing, where possible,

excluded the courts and so the potential for young people to incur debilitating and permanent criminal records.

Much has changed in terms of the legal seriousness in the process since 1992. The 1992 AFC drafted releases did not include strong permission to exploit the film non-theatrically, as required under the *Delinquent Angel* PIA (Production Investment Agreement) in the AFC 1999 contract. The AFC approved these 1992 drafted releases in writing, at the time of the *Delinquent Angel* 1999 post-production funding, yet my lawyers deemed them insufficient. Under test in court, this might constitute a waiver of the AFC's rights to indemnity from me, the 'producer', as obliged through our Production Investment Agreement (PIA), as I had met all the requirements at the point of application.

Finally, the Releases as drafted in 1992, did not include specific warranties confirming ownership from those providing copyright works (paintings, drawings and other works) for use in the film. Thus, there was no choice but to obtain further releases (Appendix 14) from the relevant persons, listed as follows: John Perceval, Ken McGregor, Alice Perceval, Marlow Perceval (Blackall), Thomas Perceval, Robyn Rosenfeldt (John's University student friend/nurse), Anne and Franklin Rosenfeldt (Robyn's Parents), David Boyd, people at exhibitions and of Robert Dickerson, whose paintings were visible in David Boyd's interview.

All these releases fell into the following categories (see Appendix 14):

- (a) Releases from any person appearing in or whose voice was used in the film [#1];
- (b) Release from any person appearing in the film and providing copyright-protected works owned by them for use in the film: Release [#2]. In using this Release [#2], there was a

requirement to insert an appropriate description of the Selected Material (artworks) in paragraph (ii) of the Release; and

- (c) Clearance [Letter Agreement] from any person (like the painter Robert Dickerson) not appearing in the film, but providing copyright-protected works owned by them for use in the film. I was able to amend the Letter Agreement to apply to other types of copyright-protected works (e.g. drawings and photographs). Signed copies of the Letter Agreement were obtained from owners of paintings, which appeared in the film, at locations like the Sydney based *Mary Place Art Gallery*.

Further releases were required of a number of people:

- John Perceval and Ken McGregor as principal characters portrayed in the film and who had created and/or provided a large number copyright-protected works reproduced in the film. I was advised to obtain further Releases signed by them, particularly to contract their consent to the inclusion of certain utterances made by Ken about John's living habits as Ken scrubbed and cleaned John's apartment. Copies of these are provided in Appendix 14.
- Tessa and Cassie McGregor, daughters of Ken and Merran McGregor: their releases were to be signed for and on their behalf by their parents. This had an ethical and legal focus on Cassie McGregor. I was required to seek her parents' informed consent over the inclusion of the brief moment in the film where Cassie is sitting on the toilet.
- Alice Perceval and Marlow Perceval: further releases were required from Alice and Marlow in relation to their copyright-protected works reproduced in the Film, including; paintings, drawings and photographs in Alice's kitchen. At the time of filming this was thought to be 'incidental' by me and the AFC. This related especially to the jointly executed Tri-wonty-gontalope drawing done with John, which was wrongly seen by me, as John's copyright, as he signed the work.

- Doctor Ray Petersen, John's doctor, was referred to in a way (see John's comments at the end credits) that may be taken as injurious to Doctor Petersen's reputation as a medical professional. John, humorously referring to his drinking and hangovers, says with subtitled words: "My doctor, Ray Petersen, came to see me yesterday. I said, 'I woke up this morning feeling awful, feeling crook'. He said, 'I can't help that'. Then he said, 'when I die, I'll be as famous as Van Gogh'. That's extraordinary, do you think that's true?" Although a 'reasonable' person as a viewer would be aware of Perceval's tendency to have hangovers, the doctor may be able to draw the imputation that he would be seen as professionally incompetent by being unable to cure Perceval's alcoholism. The doctor signed a release that cleared this statement, saying that he was happy to do so, especially when provided the opportunity of informed consent. Doctor Petersen was also present (by coincidence) at some filming sessions and so was consulted over the potential for any stress on John through my filming.

## 7.8 The Defamation Releases

It was felt that the following lines of dialogue in the first version of the film could have carried defamatory imputations:

1. comments made by Ken McGregor as he cleaned the apartment in relation to John Perceval's personal hygiene;
2. comments made by John Perceval in relation to his doctor at the end of the film.

The concerns about the brief shot of Cassie McGregor sitting on the toilet were also discussed with Ken and Cassie's mother, Merran. We examined issues around the public perception of Cassie, years after the film's release, especially in her teenage years. This was also discussed with Cassie, and her sister Tessa. Ken and Merran McGregor were then able to sign a specific

release stating that they had seen the final version of the film. This can be concluded as being informed consent with the process duly implied in the release. The relevant releases for Ken McGregor, John Perceval, the doctor and Cassie McGregor clearly acknowledge that they have seen the final version of the film and that they accepted its contents. These releases are set out in Appendix 14.

The law, however, should not be the means by which we ensure ethical practice. Such a model would be cumbersome in enforcement, costly in lawyers' fees and would ensure censorship and the end of freedom of speech. Taking an informed consent path with *Delinquent Angel* imbued the process with a voluntary ethic of responsibility. This ethical pragmatism meant that realistically, there could be no formal request for a (signed) release from Alice Perceval until the post-production funding was close to being secured. It seemed futile to intrude before that time, without definite indication that the film was going ahead and how. Once the Thornley assessment was made and funding recommended, I was able to give Alice a clearer indication of the direction the editing would take.

As previously outlined, the Thornley assessment provided all the subjects, including Alice, with independent definition for the final film. Thus, Alice was posted the 1999 editing script, Thornley's assessment and the VHS 'rough cut' with its simplified use of the Wales actuality (compared to the final emotionally complex film). The Thornley report insisted that if the film was completed, this new and involved family approach to the story was the best opportunity in which to take the audience along on John's pilgrimage to Wales. Despite describing the Thornley assessment by telephone as "constructive" and subsequently signing the 1992 drafted releases (in August 1999), by 2000 after seeing the final, Alice was suggesting that she was 'tricked' into signing. She saw the 'final cut' differently to the 'rough cut'. This was especially

the case in respect to the Wales kitchen scene. The superb story telling by editor Melanie Sandford (coincidentally Alice's childhood friend in London), according to Alice, was not apparent in the spirit of the rough cut, which she liked. For Alice, the kitchen scenes in the final cut were presented with a negative spin, implying she jealously coveted her father's drawing and their moments together (Appendix 14).

As we visitors to Wales all felt that the welcoming might have been more inclusive, the voice-over stated: "what I filmed is what we got". Understandably, Alice found this objectionable. The film was edited with a philosophy of reclaiming fatherhood, of the filmmaker connecting with his son in terms of paternal history, and of the old painter connecting with daughter and grandchildren. The way in which the material was edited and the way in which Alice appeared in the footage was difficult for her to accept and negotiate in the context of her story. Consequently, she would not sign the second set of releases, which Hamish Watson of Stevenson-Court had so carefully drafted (Appendix 14). Despite my efforts in maintaining informed consent I was now accused of using deception. Alice was suggesting that her psychological wellbeing was at risk if Version One of *Delinquent Angel* was fully released. Subsequently, and painfully for the editor and the director, Alice's revocation was honored.

## **7.9 The story telling nature of non-fiction**

It has been established that despite the camera's implied truthful, unproblematic and disinterested position, the whole process of non-fiction filmmaking is actually just telling stories through technically and professionally accepted processes. Unsettling was the realization that dramatic shaping, in both the filming and editing, was as endemic in

*Delinquent Angel* as it can be in other forms that rely on actuality: news, current affairs, interviews, press releases and political speeches. But to satisfy Alice's desire and realistically involve her in the editing process would mean bringing her to Australia and teaching her enough filmmaking so that she would contribute positively. This idealistic level of participation, in the context of *Delinquent Angel* and most films, is of course impossible. Unless a subject or agent is paid as consultant for participating in a grueling editing process and for the learning required - it is unrealistic to expect their involvement at such a level. It is also unrealistic to expect the editor to work with such an involvement at a level where they would effectively have to be of three professions: mediator, teacher and editor.

Entrusting the process to me, the significant clauses in Alice's first (signed) release read thus:

1. Copyright is hereby given to the Producer for such use and adapting in the program as the Producer may at his discretion decide.
3. I also authorize the Producer to use my portrait, picture and features for publication and related promotion of the program and expressly waive any rights or claims I may have against the Producer and his company.

I hereby consent to the foregoing authorization and waiver. (Appendix 14)

Alice might not have thought much at the time of signing her first release in 1999 about how the narrative of films like *Delinquent Angel* takes the viewer through a dramatic movement, from conflict to resolution, and that she had legally waived any rights or claims she may have against me as Producer. While the audience sees the story's transformation and argument as transparent, obvious, intelligible and natural, truthfully and professionally wrought, Alice saw the film simply as deception. This shaping of narrative for dramatic effect from the point of camera to that of editing, as being true to the real, is simply another story and is ultimately fictional in form. To this extent within the form of documentary – I deceived Alice. The failure

then, of raw footage to hold the 'real' gives credence to regarding even the most factual documentaries and television news stories as being 'fictional' in form.

Alice could not have realized the extent that the story would evolve in complexity from the rough cut. Her basic trust in me as director, and in the documentary form claiming the real, inevitably lead to her signing with a different perception of what the finished film would comprise. Despite the film being a 'truthful' account, from a father's point of view, of a cohesive group making the pilgrimage to Wales - to Alice the facts as presented become separated and irrelevant to the main meanings that she thought would be built into the film. Alice could not separate from this self-conscious view and was distressed to the point that it might affect her mental health. Naturally, she was unable to fully conceive how a reality is created through documentary filmmaking. Her ideologically feminist and Boyd family perspective could not sit comfortably with a film narrative that involved the masculine argument – one of the two estranged fathers from the 'other' side of family.

#### **7.10 Please release me**

The whole process worked against Alice's lay knowledge of film, not because of a deliberately misleading mode of filmmaking, but because the meanings concealed in the raw footage became a site for further construction in editing, producing new meanings and truths, unclear at both the filming and rough cut stages. With a truly informed consent process and more time and money, this could have been considered and analysed, before and during editing. Consideration could have been given to the disparity between Alice's interests compared to the intentions of the producers. But in 1999 there was no time, nor the flexibility in terms of the budgetary and film industry considerations, to allow this level of complete informed consent.



Such an approach would be seen as foolish, unprofessional, and possibly in breach of the PIA and of its commercial confidentiality.

Instead, the filming of John Perceval and his family was as synonymous with sensitivity as possible, within the cultural and technical constraints of documentary making. Sensitivity was knowing when a filmic event would happen, knowing what to film and what to leave out as too private, knowing how to frame and knowing how to move the camera in response to events without offending. Here, ethical considerations related to a natural reaction in filming with an ongoing negotiation that develops with experience. This correlates with notions of privacy, where the resultant “film situates itself within the ambivalent space between detached recording and humane response”<sup>404</sup>

In the editing suite however, the film’s construction is removed from the locality of filming, away from the subjects and the impact of the actual event. The construction is removed from the immediacy of the filmed consent - acknowledged through a nod, body language and not protesting over continued filming. The informed consent process, though exhaustive in its meticulousness of explaining why things were done, failed in respect to its obligation to Alice. Given more time it could still have brought all parties to positive resolution, though this is entirely academic and could only have been possible through more budgetary and industry commitment and more time for what is espoused here, particularly in the editing phase.

The failure of a system to allow consultation to Alice in the editing stage, followed by her release being written in the first person (‘I hereby consent to the foregoing authorization and waiver’), could have been intimidating through it being suggestive of significant finality and of

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<sup>404</sup> Nichols, B. 1991, *Representing reality - Issues and Concepts in Documentary*. Indiana University Press, Indianapolis, p. 87.

a legalistically jargonised context. Inevitably and understandably, this left Alice thinking that I was trying to establish coercive power over her by legal contract.

In best practice the signed release providing consent should be, in the first instance, carefully designed by lawyers in consultation with the director and producer, and even the subject, for the protection of all parties and in favour of the film's viability. Excessive use of jargon and legalese is inappropriate. The document should be viewed by all as primarily an orientation tool, not as a legal device that reduces risk or binds parties in absolute finality. This way, both the release and the informed consent process will be less intimidating and outcomes are more likely to be favourable, without the need for deception or subsequently, lawyers.

Such an informing process, leading to the release signature (of primary subjects), should describe the overall process that will be encountered – from the early 'research' filming to the final marketing. The subsequent contract release should summarize this, along with the primary definition and representational ideas behind the film, its style and how experimental it might be. The script (or treatment) could be attached to this document and referred to in the release. This is quite reasonable, given that production agreements with investors refer to the script, so describing and agreeing upon the film as a legal entity. This contracting process can inform the subjects of any reasonably foreseeable harm, embarrassment, shame or inconvenience. They can then understand what they are giving away in signing over their image, likeness, voice, copyright and this should be reflected in the wording of the release.

### **7.11 Encountering the legal terrain**

It is fair to say that *Delinquent Angel* lost sight of the process of informed consent somewhere during the very intense and all demanding editing and legal processes. Thus the final cut was unpalatable for Alice Perceval, pointing out that had she been involved in the editing she might

have provided new and quirky information about her father. This process, however, would have been unacceptable to those involved in the editing and to the funding body in the context of its standard production agreement. The 'locking down' of the edit in legal secrecy is essentially an industry tradition and a practicality - subverted and avoided only through making a film at home, within a community, without pre-sales, funding contracts, expensive cutting suites and hired editors.

By July 2000, after Alice's revocation, new legal obligations and work loads in re-editing loomed large. There was simply no option but to re-edit the film in terms of her wishes - removing her image and voice from the film. Her story would stay, as it was interwoven with mine into what would be defensible as 'fair comment'. This was decided in discussion with the AFC and lawyer Hamish Watson. By E-mail and prior to her formal letter of revocation, Alice wrote skilfully in acknowledgement of the state of my health, early 2000:

I am very relieved that you are sympathetic to my feelings regarding your film. I understand this film is important to you and I don't want to deliberately jeopardize it's release. I am particularly aware of your state of health at the moment and recognise that your life should be as stress free as possible. Although your film is important it is not as important as your health and mental well-being as I am sure the heart attack brought profoundly to your attention. But I too need to be respected in this process. My state of mind is equally important - as is my physical and emotional health. No matter how small a part I play in the film, my feelings should be taken into account especially as I have been fully co-operative and encouraging of your creative venture so far. It would be wrong if I was to suffer for your art!

. . . For Marlow's sake it is imperative that we are mutually respectful in our dealings with one another in the future.<sup>405</sup>

At the time of receiving the final and formal letter of revocation, the film was a week away from participating in the Melbourne International Film Festival and it had been selected for showcasing Australian and New Zealand Films in Berlin. *Delinquent Angel* was withdrawn from both events. In late 2000 it was re-edited, removing all the images and copyright of Alice,

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<sup>405</sup> Perceval, A. E-mail letter. Wed, 3 May 2000.

of her second son Thomas, and of Marlow. Anything requiring their consent: locality in the cottage, paintings, drawings, photographs, music, voice and image - were removed and, in most instances, replaced with generic drawings by John Perceval.

The Version-Two edit, and the rebuilding of the soundtrack, was executed and funded through the sale of screening rights to SBS TV. My ethical response was ultimately commensurate with the commercially accountable and low risk legal response. The only other options were too bleak to contemplate: being unethical in going ahead and risking legal action, or shelving the film for all time.

#### **7.12 Reality used to be a comrade of mine**

I've established perhaps many times over in this thesis that real characters and their stories in documentary, news and current affairs, and especially 'Reality TV' - are shaped, honed and constructed from script to edited end product. Despite this, the forms are still represented and marketed as reality. Coupled with this 'traditional' form of deception is an increasing pressure for profit, assisted by increasingly aggressive and seamless public relations and advertising. All this, innocently and naturally arriving in the market place when the whole genre is seriously implicated for its historical lack of accuracy - a deception evolving over time, as discussed, with the evolution of the camera.

Now with new virulent forms emerging with the Internet and real TV, there are more and more complex ethical questions to be resolved. With each new deployment of technology, questions become as problematic as the urgency for addressing them. Filmmakers and journalists are as much part of the problem as they are part of the solution.

Failure to make ethical documentary, Winston and Nichols would argue, comes from failed and compromised representational strategies. If Fourth Estate intended documentary (and television journalism for that matter) is to be rendered ethically sound, different sorts of understandings, definitions and contracts between the filmmaker, the subject(s) and the audience(s) need to be established. This should be a relationship based on a transparent and professionally defining code of ethical practice. This should also start to allow documentary and television journalism to be viewed without its footage perpetuating the delusion that what we see on-screen is always ‘naturally’ captured actuality.

As we saw in Chapter Four, this allusion has come about through audiences being told and re-told over the last one hundred years, that the represented filmic image is final and truthful. If the readings made by audiences are continuously controlled by the filmmakers’ representational strategies then the myth is likely to be perpetuated. Thus, the energy for change should be applied to educational processes, informing potential filmmakers and camera subjects alike (both of whom must be aware of their rights and obligations), how each filming process could potentially represent and shape reality and how ethical tools might be applied.

Chapter Four also established that there is a family link between documentary and journalism, therefore a place to start in re-education, is to oblige filmmakers in their applications for government funding, to address the relevant principals of the Journalist Media-Entertainment and Arts-Alliance Code of Ethics (Appendix 15). Better still, the Revised Recommended Code, as discussed in Chapter One, could be adopted by government film funding bodies – as this code has written provision for informed consent – a particularly critical issue after the legal problems arising from the documentary, *Cunnamulla*. This application of the MEAA Code might be applied in the same way as the government film agency requirement of a ‘standard script layout’, or a standard budget spreadsheet as part of the standard film funding

application, as determined by the AFC website. This would begin to ethically define each film project and so provide a basis for the subsequent informed consent negotiation. Such a thorough addressing of the principles in an accepted code could be referred to in the event of defending a defamatory imputation, or an unexpected breach of Section 52 of the Trade Practices Act.

Any exploration or application of the recommendations from this study might also refer to other professional codes, found, for instance, in medical research, psychology or sociology. These may be useful in drafting a separate code for Australian documentary film and camera based, current-affairs journalism. This is especially relevant when it can be argued that some research in psychology, or sociology, may have a similar potential to that of a documentary, for inflicting trauma on the subjects of the study.

When *Big Brother* first placed 12 complete strangers in a room with no outside contact, the subsequent screening gave producers the urge to hail the show as a social experiment. If it was, indeed a ‘social’ or ‘psychological’ experiment it should then be compelled to adhere to certain legal and ethical considerations commensurate to legally binding standards in social science research.

It has been well established in science that the *informed* consent of human subjects involved in experiments requires that it be obtained freely and without coercion, that the procedure and its effects or potential effects be fully understood by the subject, and that the subject be competent to give consent. The most exhaustive protocols along these lines were developed out of the Nuremberg trials of those Nazis who conducted scientific experiments on concentration camp inmates.<sup>406</sup>

Film bodies might refer to discourse clearly defined in sources like the American Sociological Association Code of Ethics, where in section 12.05, in respect to the use of deception, we read:

(a) Sociologists do not use deceptive techniques (1) unless they have determined that their use will not be harmful to research participants; is justified by the study's prospective scientific, educational, or applied value; and that equally effective

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<sup>406</sup> Winston, B. 1995, *Claiming the Real: Documentary Film Revisited*, British Film Institute, London, p. 220.

alternative procedures that do not use deception are not feasible, and (2) unless they have obtained the approval of institutional review boards or, in the absence of such boards, with another authoritative body with expertise on the ethics of research.

(b) Sociologists never deceive research participants about significant aspects of the research that would affect their willingness to participate, such as physical risks, discomfort, or unpleasant emotional experiences.

(c) When deception is an integral feature of the design and conduct of research, sociologists attempt to correct any misconception that research participants may have no later than at the conclusion of the research.

(d) On rare occasions, sociologists may need to conceal their identity in order to undertake research that could not practicably be carried out were they to be known as researchers.<sup>407</sup>

Protagonists from the Australian non-fiction film industry might prefer, instead, to design a code that adds to these sociologists' standards (above) rather than referring to the MEAA Journalist Code. It is quite feasible that in deploying the clauses from the section above (Sociologists Code), in similar circumstances camera journalists and documentary makers might be permitted to undertake deceptive 'research' filming if it involves no more than minimal risk for the participants. For scripted, funded and pre-planned documentary projects, approval and the manner in which to proceed, could be granted from the funding or broadcast institution's internal ethics committee. Alternatively, a government funded yet independent body with some legal authority, like an ethics committee in a university, could facilitate this. The body could draw its expertise from research, law, film and journalism ethics, and rely upon a wide range of community backgrounds.

In considering Milgram's experiment, as discussed in Chapter Two, these committees might routinely ask of film projects: what features of this film journalism are likely to create situational pressures on subjects to the extent that a filmmaker, is at risk of becoming a bully or torturer? Firstly in Milgram's experiment, there was the assurance that the electric shocks were not harmful, despite the voltage scale and the actor subject appearing to be under increasing levels of stress. The parallel in journalism and film is the assurance that the use of deception or

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<sup>407</sup> *The American Sociological Association Code of Ethics*. (Approved by ASA Membership in spring of 1997) <http://www.asanet.org/members/ecostand2.html#12> [Accessed 17 March 2003]

certain camera or editing techniques will not be harmful to the subject. Mark Lewis and Dennis O'Rourke (Chapter Five) must have concluded that any deception would not be harmful. Yet some of the subjects in their films said they were harmed, and everyone knows that deception is potentially dangerous.

Repeated deception in journalism and documentary leads to a decrease in trust on the part of the public and when there is a lot of deception the whole industry becomes suspect. Dennis O'Rourke must have reassured himself that these risks were worth taking. Indeed, he maintains that deception was justified in terms of the public interest and knowledge. At the documentary festival in 2003 he said his aim was to inform the public and so reduce overall harm and risk to future generations of teenage girls in Australia. Like a journalist (though he said he is not a journalist), he worked to uncover truth, providing information that ought to be in the public domain. *Cunnamulla* revealed a truth that is generally hidden by unscrupulous townsfolk throughout the country, according to O'Rourke. This 'truth' he says is the knowledge that men and teenage boys are having illegal sex with minors and thus sexually abusing children, like those depicted in his film. But the girls in his film don't see it that way and now their appeal in the Federal Court may permanently alter the manner in which film actuality for commercial purposes is acquired. As Chapter Five discussed, it may now be that the law will oblige filmmakers to apply informed consent, rather than it being as it should: of a voluntary nature.

### **7.13 Reshaping industry practice in terms of ethical theory**

This thesis has referred to a culture of emulation in both journalism and documentary. This mentoring is a primary means by which young professionals learn what is accepted as common practice. While this informal process is evident in other professions, it is particularly strong in journalism and filmmaking where practitioners execute a great deal of production without any formal training from universities and other tertiary institutions.



When a story goes wrong for camera journalism, and at worst there is exposure on ABC's *Media Watch*, the public perception of malpractice doesn't have the ramifications it might for corrupt police, nurses, accountants, teachers and tax evading lawyers. This is likely to be the case because journalists in Australia, and newspaper journalists in particular, remain at the bottom of the public's perception in terms of ethics and professionalism.<sup>408</sup> Health professionals continue to top the list of professions because the Australian citizens surveyed, perceive that health professionals have high levels of ethics and honesty. Professions with the highest standards of ethics and honesty, according to Morgan, were all health related, nursing (94%, up 4% from last survey) being rated highest for the tenth consecutive year.

Coupled with this low public perception, and that emulation as a learning process often takes precedence over formal training, is the tendency for film and journalism to encourage and prioritise commercial agendas and film aesthetics over ethical practice. These values are, in the most part, what will form the basis of most informal training and emulation for young people in both film and journalism. These professionals, as Levy<sup>409</sup> puts it, are 'enculturated' into the use of deception and other commercial practices, in a gradual and experiential manner.

The filming methods as employed in *Cunnamulla* being discussed at an international and prestigious conference on film at Byron Bay, or the production values permeating young people when they work on the set of *Survivor* or *Big Brother* – all have the potential to 'enculturate'. This means that young filmmakers, or camera journalists, begin to adopt the habitual use of deception or unethical practice through emulation. This is exasperated, in documentary and journalism, when employment prospects are limited and many young people are desperate to succeed in a freelance and contracted environment. Inevitably, aspiring

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<sup>408</sup> Morgan, G. 2004, *Health professionals continue to be considered most ethical and honest*, Roy Morgan Research: <http://www.roymorgan.com/news/polls/2004/3701/> [Accessed 9/1/04]

<sup>409</sup> Levy, L. 2002, *Good Character: Too Little, Too Late*, paper presented at the Inaugural International Media Ethics Conference, 3 – 4 July, Old Parliament House, Canberra.

filmmakers and camera journalists may find their way into the industry through aggressive networking and nepotism. This risks leaving young aspirants no option but to behave as obedient, desperate to succeed and likely to lose sight of any learned ethical considerations in such a competitive environment.

Once some degree of success is secured in funding or contracting, a young professional may be at risk of feeling that their newly learnt deceptive, aggressive and competitive methods were rewarded, and so their behaviour becomes normalized, 'enculturated'. At this early point in their career, they might also feel unable to refuse the requests of their mentors, producers and investors; who may be asking them to produce exploitative and sensational material. A young professional might also be ineffectual in judging the merits, or otherwise, of the deception they are asked by their employers to enact. Coupled to this is the reality that executives don't want to know about a young worker's deception, they just want results. By the time the young media worker is in a position to take responsibility for their work as producers, directors and journalists in their own right - to initiate funding applications and shoot the material themselves - they have been thoroughly socialized and naturalized into a culture of casual and habitual deceit. As Levy says, "the situational pressures which characterize journalism, at least as it is structured today, are therefore likely to overwhelm the resources of character, no matter how good our education, no matter how virtuous our students".<sup>410</sup>

If young reporters or filmmakers leave university and then enter a workplace in which deceptive techniques are perceived as a standard - they are more likely to notice, even complain - when they can make reference to an educational context where simulations and ethical dilemmas were first experienced. Hopefully, with education they could decide that it would be wrong to simply surrender to market forces by accepting deception as a norm. Dennis O'Rourke may never have had the context in which he might ponder complex ethical

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<sup>410</sup> Ibid

dilemmas, as university journalism students today. We have an imperative therefore, to continue doing what this participatory action research has worked to do: presenting ethical scenarios and dilemmas to students and discussing these in respect to ethical codes, informed consent and the law.

The situationist ethicists would say that we should refrain from entering into situations in which we will be put to the test – especially in the case of the young professional with no experience. But this is unrealistic, especially when the non-mainstream sole operated stories are the ones most likely to sell for young freelancers who are trying to get published and make a living. When journalistic subterfuge is perceived as necessary for the public interest in the role of the Fourth Estate, an ethics code should be simultaneously focussed upon, with dialogue, by the young practitioner and the network executive producer alike.<sup>411</sup>

As morally dangerous professions, journalism and documentary will always have situations when deception is a necessary tool for investigation in the public interest or benefit. As this PhD has established, one must first assess a plan for necessary subterfuge (especially for young professionals), by way of a committee of experienced practitioners, responsible for conferring the go ahead for the project (as the case for university based research). This precedent and model is, as we have seen, well set in medical research.

Measures should also be put in place to ensure that all journalists and filmmakers, especially the young and uninitiated, do not come under pressure to use deception unless it can be put to the test as being absolutely necessary. With codes of ethics and specific guidelines available to all professionals before go they out on a project, the public might begin to see the growth of a

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<sup>411</sup> Proposing as Levy does, that legitimately based reality filmmaking and journalism were defined for funding and critical purposes by the notion of the Fourth Estate, then most non-fiction filming would have to be classified as something other than journalism or documentary. A Fourth Estate model provides acknowledgement of the public right to know and so helps define permission for behavior that would otherwise be ethically suspect.

systematic awareness and a transparency in respect to ethical practice. Simultaneously, we should oblige educators, mentors, funding bodies and executive producers to refer to agreed guidelines and work with the uninitiated, especially when there are ethical risks.

Another solution, as Levy suggests, is for the MEAA (Media Entertainment Arts Alliance) to add a clause to the code of ethics, barring journalists (and filmmakers) from such techniques during their first years of employment. For the documentary film industry this is not possible, until first the industry accepts that its obligations to the film subject are identical to those in journalism, and that these obligations are easily found and defined by existing codes of practice in journalism.

Dennis O'Rourke as a seasoned master with thirty years filming, internationally renowned, is perhaps beyond going to study ethics in university classes. But he could superbly debate these matters in university classes with those starting out. This measure would ensure that beginners would not have to face ethical dilemmas, inexperienced and when they are most impressionable. At least these young professionals would be given some skills and guidance so that their ability to foresee the risk and understand the need to justify subterfuge, only with careful consideration before, and not after, they have committed the subterfuge.

The film and journalism industries might also consider structuring the awards system to acknowledge ethical practice. There could be awards for ethical and transparent excellence in film and journalism, with a sub genre (as mentioned previously) established in the broader context of reflexive and ethical documentary journalism.

Filmmakers must be required to rigorously justify themselves before they are eligible for the investment of public funds. Given that we cannot rely on the law, rights, codes, character or virtue alone to reduce deception, we should encourage and structure the industry to decrease

the pressure to employ deception. To achieve this we need to educate everyone to be aware of its existence. This should be coupled with informed consent processes, as once informed, subjects are better equipped to notice, expose and oppose deception.

If these suggestions, and the many others which creative professionals will no doubt invent, were implemented, deception would become less commonplace, less routine in journalism.<sup>412</sup>

With powerful and voyeuristic influences like real TV, it surely is time to start to acknowledge and make clear that the image on the screen is actually the product of a set of commercial, legal, political, technical and ethical choices in production. If this ‘coming-out process’ could then start to address with transparency, the issues of ethics and informed consent in representation, then documentary and current affairs journalism might begin to allow the public to contribute to the otherwise secret discourse that produces non-fiction screen texts.

#### **7.14 Conclusion - a pluralistic approach to ethical discourse**

A common misconception is that sustainable ethical discourse is largely the domain of theory. Rather, ethical discourse must have a place in world public debate, and it must be applied in a pluralistic process where all involved have continuous dialogue and contribution. At this time, when world public opinion is critical and state corporate deception is commonplace, the industries of documentary and camera journalism, and the relevant educational bodies, must revise and expand the cultural conception of ethical filmmaking. The power of the video image as propaganda is paramount to the power elite - camera ethics can be deployed as a tool on guard, to re-invigorate the veracity of non-fiction video on behalf of the Fourth Estate.

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<sup>412</sup> Levy, L. 2002, *Good Character: Too Little, Too Late*, paper presented at the Inaugural International Media Ethics Conference, 3 – 4 July, Old Parliament House, Canberra, P. 11.

Revision of professional codes is common across the professions, and as a consultative dialogue this is done (nearly enough) in journalism.<sup>413</sup> There is nothing like this being done in documentary. As the case in formulating the MEAA Revised Code, dialogue and argument are critical in formulating ethical discourse. A multiplicity of people must be involved in defining and locating the problems along with any theoretical approach to strategies. Productive and all involving argument, with an ethical template, coupled with endless community dialogue will better serve a developing strategy of implementation. This approach, as defined by grounded theory and initiated by way of participatory action research, must have a realistic degree of pluralism, which ensures there is a fairer representation of discourse to bring on a range of perspectives.

All the participating groups: journalists, documentary makers, the viewing community, lawyers, ethicists, camera subjects, educationists, students, film funding executives – should each be involved in learning to actually see the perspectives of the other. This action should be more evident in conferences, university courses and focused industry seminars - focused entirely on ethics. Instead, film conferences are usually focused on ‘sexy’ and unattainable issues like new technologies or how to successfully market ideas. These attract a wide range of highly competitive delegates, often with connections to powerful commercial interests. Young filmmakers spend time at these conferences publicly networking and pitching, embarrassing themselves with Machiavellian panache rather than discussing the more humanist, altruistic and theoretical issues around professional filmmaking imbued with ethics and informed consent. These issues therefore must be marketed in their own right, making ethical dialogue and action the desirable option.

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<sup>413</sup> MEAA, 1997, Review of the code, *Ethics in Journalism*, Report of the Ethics Review Committee, Media Entertainment and Arts Alliance, Australian Journalists’ Association, P. 9.

Education plays a crucial role for this pluralistic involvement, for engagement and argument. Education provides simulation and exposure to existing ethical discourse. Young filmmakers and journalists can begin to understand the parameters of ethical dilemma in practical ways, beyond theory. Through ethical reflection, mentoring and internships with ethical dialogue, students can be part of a process of interacting with industry, then returning to and informing educational bodies. Such a model of 'feedback' provides experiences that are directed towards being able to scrutinize the motives and desires of journalism and the video camera, as opposed to simply studying the subject before the lens. Seeing these production aspects in terms of ethics brings an understanding that with more flexibility provided to film and current affairs budgets, more room can be made for informed consent and engaging community involvement.

Ethical discussion and philosophy are essentially conversations - emphasizing the way in which reflection can be shared, is dynamic and can be measured through empathy. This approach provides for an ethical, on-going and interpersonal process, which finds solutions through dialogue and pluralism. This provides for a range of perspectives and so concedes that there can be a variety of ethical positions - allowing many ways of discussing and understanding those positions - critical for the process of implementing ethical guidelines and processes in film journalism and documentary.

## **Appendices.**

### **Appendix 1.**

Letter from Caroline Verge of the AFC - FOI release made in public interest.

### **Appendix 2.**

Review written by Jeni Thornley for the proposal for final funding with the AFC.

### **Appendix 3.**

Opinion by Mark Lynch – defamation lawyer.

### **Appendix 4.**

A] Fax from Mark Lewis, to Sainsbury, Australian Film Commission 1990, 10th August.

B] Letters from Mark Lewis, Harold Scruby and Peter Saisbury, Film Development, AFC. Mark Lewis sent copies of these four letters, with a covering letter, to the AFC on 10th August 1990.

### **Appendix 5.**

A] Letter from Lewis, M. for Radio Pictures 1990, letter to AFC, 6th August.

B] Sainsbury, P. Australian Film Commission 1990, memo to Cathy Robinson, 10th August and Sainsbury's reply to Lewis, same date.

C] Murray, S. 1990, annotation dated 22nd August on AFC internal memo to Cathy Robinson (above), 10 August.

### **Appendix 6.**

Glasson, Gemmell & McGill 1990, letter to Mark Lewis, 27th August. Faxed to AFC with covering letter, 28th August.

### **Appendix 7.**

A] Fax from Lewis, M. for Radio Pictures 1990, to AFC, 28th August.

B] Lewis, M. for Radio Pictures, 1989, Correspondence and 'Clearance and Release Deed'. A copy of this deed was included in the material obtained from the AFC but is the only such deed included. It was faxed to the AFC from Mark Lewis on 28th August 1990. Signed by Harold Scruby, 31st October 1989. Scruby crossed out the following words: "(The producer may) fictionalize persons or events including me".

C] Fax to Harold Scruby from Lewis, M. for Radio Pictures n.d.. A copy was faxed to the AFC on 28th August 1990

### **Appendix 8.**

Lewis, M. for Radio Pictures 1990, fax to AFC, 29th August.

### **Appendix 9.**

A] Lewis, M. for Radio Pictures 1990, fax to AFC, 31st August.

B] Lewis, M. for Radio Pictures 1990, fax to AFC, 6th September.

### **Appendix 10.**

A] Gailey, L. 1990, AFC internal memo, 18th September.

B] Sainsbury, P 1990, AFC note to file, 26th September. The material obtained under FOI included Sainsbury's notes, the notes made by a witness, a first draft and the final draft which is quoted here in full.

### **Appendix 11.**

Glasson, Gemmell & McGill 1991, letter to Lewis, 25th February. Faxed to AFC with covering letter, 26<sup>th</sup> February.

### **Appendix 12.**

A] Phillips Fox 1991, draft letter to Glasson, Gemmell and McGill, 28th February. An accompanying file note indicates this letter was sent as drafted.

A] Lewis, M. for Radio Pictures 1991, fax to AFC with attachment, 1st March.

### **Appendix 13.**

A] Lewis, M. for Radio Pictures 1991, fax to AFC, 1st March.

B] Glasson, Gemmell & McGill 1991, letter to Phillips Fox, 4th March.



C] Gailey, L. 1991, AFC internal memo, 7th March.

D] Gailey, L. 1991, AFC file note, 18th April.

E] Phillips Fox 1991, draft and final letter to Glasson, Gemmell & McGill, 5<sup>th</sup> & 6<sup>th</sup> March. See appendix 13.

**Appendix 14.**

A] Releases - versions from 1992 and 2000 and correspondence of revocation from Alice Perceval.

**Appendix 15.**

Media Entertainment Arts Alliance Code of Ethics.

Recommended revised MEAA - Code of Ethics.

**Appendix 16.**

Available on the *Media Entertainment Arts Alliance* website, Occupational Risk Management in the Australian Film and Television Industry - Draft Film & Television Safety Code – National Safety Guidelines – Second Published Draft – 8 November 2002.

[26/11/02 via <http://www.alliance.org.au/>]

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## **Appendix 14.**

A] Releases - versions from 1992 and 2000 and correspondence of revocation from Alice Perceval.

## **Appendix 15.**

Media Entertainment Arts Alliance Code of Ethics.

Media Entertainment Arts Alliance

AJA CODE OF ETHICS at <http://www.alliance.org.au/>

Respect for truth and the public's right to information are fundamental principles of journalism. Journalists describe society to itself. They convey information, ideas and opinions, a privileged role. They search, disclose, record, question, entertain, suggest and remember. They inform citizens and animate democracy. They give a practical form to freedom of expression. Many journalists work in private enterprise, but all have these public responsibilities. They scrutinise power, but also exercise it, and should be accountable. Accountability engenders trust. Without trust, journalists do not fulfil their public responsibilities. MEAA members engaged in journalism commit themselves to

- \* Honesty
- \* Fairness
- \* Independence
- \* Respect for the rights of others

1. Report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts. Do not suppress relevant available facts, or give distorting emphasis. Do your utmost to give a fair opportunity for reply.

2. Do not place unnecessary emphasis on personal characteristics, including race, ethnicity, nationality, gender, age, sexual orientation, family relationships, religious belief, or physical or intellectual disability.

3. Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source's motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances.



4. Do not allow personal interest, or any belief, commitment, payment, gift or benefit, to undermine your accuracy, fairness or independence.
5. Disclose conflicts of interest that affect, or could be seen to affect, the accuracy, fairness or independence of your journalism. Do not improperly use a journalistic position for personal gain.
6. Do not allow advertising or other commercial considerations to undermine accuracy, fairness or independence.
7. Do your utmost to ensure disclosure of any direct or indirect payment made for interviews, pictures, information or stories.
8. Use fair, responsible and honest means to obtain material. Identify yourself and your employer before obtaining any interview for publication or broadcast. Never exploit a person's vulnerability or ignorance of media practice.
9. Present pictures and sound which are true and accurate. Any manipulation likely to mislead should be disclosed.
10. Do not plagiarise.
11. Respect private grief and personal privacy. Journalists have the right to resist compulsion to intrude.
12. Do your utmost to achieve fair correction of errors.

#### Guidance Clause

*Basic values often need interpretation and sometimes come into conflict. Ethical journalism requires conscientious decision-making in context. Only substantial advancement of the public interest or risk of substantial harm to people allows any standard to be overridden.*

**Recommended revised MEAA - Code of Ethics (most suited to application to camera journalism).**

Journalists describe society to itself. They seek truth.

They convey information, ideas and opinions, a privileged role.

They search, disclose, record, question, entertain, suggest and remember.

They inform citizens and animate democracy.

They give a practical form to freedom of expression.

Many journalists work in private enterprise, but all have these public responsibilities.

They scrutinise power, but also exercise it, and should be accountable.

Accountability engenders trust. Without trust, journalists do not fulfil their public responsibilities.

**MEAA members engaged in journalism commit themselves to:**

- \* honesty
- \* fairness
- \* independence
- \* respect for the rights of others

**In consultation with colleagues, they will apply the following standards:**

1. Report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts. Do not suppress relevant available facts, nor give distorting emphasis.
2. Make efforts to give the subject of any damaging report an opportunity to comment, preferably in that same report.
3. Urge the fair correction of errors.
4. Use fair and honest means to obtain material. Avoid misrepresentation and use of concealed equipment or surveillance devices.
5. Pictures and sound should be true and accurate. Any manipulation likely to mislead should be disclosed.
6. Plagiarism is stealing. Always attribute fairly.
7. Only quote directly what is actually said or written. Otherwise paraphrase. Meaning and context should be accurately reflected.
8. Disclose any direct or indirect payment made for interviews, pictures or information.
9. Do not allow personal beliefs or commitments to undermine accuracy, fairness and independence. Where relevant, disclose.

10. Do not allow any payment, gift or other advantage to undermine accuracy, fairness and independence. Where relevant, disclose.
11. Do not improperly use a journalistic position for personal gain.
12. Guard against advertising or commercial considerations improperly influencing journalism. Where it occurs, disclose.
13. Accept the right to privacy of every person. Public figures' privacy may be reduced by their public role. Relatives and friends of those in the public eye retain their own right to privacy.
14. At times of grief or trauma, always act with sensitivity and discretion. Never harass. Never exploit a person's vulnerability or ignorance of media practice. Interview only with informed consent.
15. Do not place unnecessary emphasis on personal characteristics including race, ethnicity, nationality, gender, age, sexual orientation, family relationships, religious belief or physical or mental disability.
16. Never knowingly endanger the life or safety of a person without informed consent.
17. Exercise particular care for the welfare of children in reports involving them.
18. Respect every person's right to a fair trial.
19. Aim to attribute as precisely as possible all information to its source. When a source seeks anonymity, do not agree without first considering the source's motive and any alternative attributable sources. Keep confidences given in good faith.
20. Educate yourself about ethics and help to enforce this code.

### **Guidance clause**

Basic values often need interpretation and sometimes can come into conflict. Ethics requires conscientious decision-making in context. Only substantial considerations of public interest or substantial harm to people allows any standard to be overridden.

## **Appendix 16.**

Available on the *Media Entertainment Arts Alliance* site, Occupational Risk Management in the Australian Film and Television Industry - Draft Film & Television Safety Code – National Safety Guidelines – Second Published Draft – 8 November 2002. Page 95.

[26/11/02 via <http://www.alliance.org.au/>]