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**Knowledge as a Discursive Organizer of Film Representation
within the Documentary *Presumed Guilty* (2011)**

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“The image is not the duplicate of the thing.
It is a complex set of relations
between the visible and the invisible...”
(Rancière 2009: p. 93).

1. Abstract

While documentary films differ from fictional cinema in their referentiality, they are also structured from discursive practices – patriarchal, feminist, nationalist, just to name a few examples--, which shape the filmic representation of actual events. These discourses are frequently structured from the filmmakers’ position of knowledge over the portrayed events. In this sense, knowledge should not be understood solely as the possession of information about a topic, but the professional expertise that authorizes a documentary representation and that is legitimized as well by an institutional apparatus (for instance, a scientific discipline, a genre). In this regard, the speaking subjects that hold this knowledge within a discursive practice are positioned in a power situation –in terms of credibility and influence-- over the individuals who do not share this knowledge. For this matter, power and knowledge are closely related when it comes to discourse and representation.

In particular, this work seeks to analyze, from a Foucauldian perspective, two intertwined discourses –a legal and a narrative one-- in the Mexican documentary *Presumed Guilty* (2011). Both discourses are derived from the double role of the producers as the protagonist’s counselors and the documentary filmmakers. Therefore, each discourse is structured from a different source of knowledge and authority to address the same topic, namely, the demonstration of the defendant’s innocence.

Finally, this study intends to review the ethical derivations of filmic representations which are constructed by individuals who are personally and professionally involved in the events.

Keywords: documentary, discourse, representation, power-knowledge, legal/narrative discourses, witnessing, documentary ethics

2. Introduction

While documentary films differ from fictional cinema in their referentiality, they are also structured from discursive practices – patriarchal, feminist, nationalist, just to name a few examples--, which shape the filmic representation of actual events. These discourses are frequently structured from the filmmakers' position of knowledge over the portrayed events. In this regard, the subjects that hold this knowledge within a discursive practice are positioned in a power situation –in terms of credibility and influence-- over the individuals who do not share this knowledge. Therefore, the situation may turn complicated when a documentary is created by individuals who not only have a deep knowledge or expertise about the topic they filmed, but also personal interests around it. In this case, the documentary's complexity becomes more prominent, since discourse and representation may become completely intertwined, making ethical interrogations inevitable.

Presunto Culpable (Presumed Guilty, 2011) seems to be exactly in this situation. The documentary constitutes an interesting case due to the effects it has had upon those involved in the film, as well as the legal judgments rendered by different judges of the Mexican legal system after the film screening. *Presumed Guilty*, directed by Roberto Hernández and Geoffrey Smith, narrates the case of Antonio Zúñiga, a Mexican young man, accused of first degree homicide and sentenced to twenty years in prison. The documentary seeks to follow his legal process and appeal. The film denounces the errors and inconsistencies of the Mexican criminal system and the suffering inflicted to him during his so called unfair arrest, trial and conviction.

Presumed Guilty has received several awards, including the Emmy for best investigative journalism (2011), the Audience Award and best international feature documentary in Los Angeles Film Festival (2010), and the Amnesty International Award in the Copenhagen International Documentary Film Festival (2009). It has also been exhibited in the Toronto International Film Festival (2009) and the *Ambulante* Festival in Stockholm (2010) among other American and European countries. On television, it has been broadcasted in different countries, such as Mexico by Televisa network (2011), and Sweden by Sveriges Television (2010).

On the other hand, Roberto Hernández and Layda Negrete, the filmmakers, have faced so far nineteen lawsuits on the grounds of moral damage carried out against two

witnesses featured in the documentary. In March 2011, the exhibition and distribution of the film were banned by a court order which intended to protect a witness filmed in the documentary. After several weeks, a higher court overturned the warrant based on the right of freedom of expression granted by the Mexican Constitution. Criticism has also emerged within academia and the lawyers' guild. For instance, Bernardo Bátiz, a jurist, writer, professor and intellectual, as well as general procurator in Mexico City from 2000 to 2006, questioned the motives behind the film. Particularly, Bátiz criticizes the editing of the film, its numerous omissions and contradictions, as well as the filmmakers' portrayal of the judges, magistrates and witnesses. In Bátiz opinion, these choices resulted in a derision of the legal system in Mexico. According to Hernández, though, these criticisms represent merely a censoring attempt and the proof that his documentary exposes, in fact, the corruption within the legal system.

But the case goes beyond legal matters, as it involves ethical considerations as well. Roberto Hernández and Layda Negrete literally represent their client inside the courtroom as counselors and outside as filmmakers, which raises an ethical interrogation about their reliability. Their position as counselors not only evidence a professional interest in the case, but also a privileged position of power over the involved parties and the audience.

Moreover, the fact that a higher court admitted the film as evidence in the appeal shows the influence that a media text may have far beyond raising awareness. In this regard, Tamar Ashuri and Amit Pinchevski's insight serves as a starting point in the particular case of this documentary: "(i)n sum, mediated events may be viewed as interventions in the field of witnessing, a field through which reality is discoursed, meanings are produced, and audiences are called upon to pay heed and pass judgment" (Frosh et al. 2009; p.155).

3. Aim of the Study

This paper aims to identify and analyze two intertwined discourses within the documentary *Presumed Guilty*, developed from the double role of the producers as counselors and filmmakers. The first one is a legal discourse, authorized by their juridical knowledge; the second is a narrative discourse, supported by the documentary genre.

A second goal would be to identify the influence of knowledge (legal and filmic) as a source of authority and power within the documentary.

Finally, this study seeks to describe the ethical interrogations that may arise from the representation of legal procedures in documentaries filmed by interested parties.

4. Research Questions

1. Which elements within the legal discourse of the film –testimonies, eyewitnesses and evidence — seek to demonstrate Antonio Zúñiga’s innocence and expose the irregularities committed throughout the criminal process of the accused?
2. Which elements within the narrative discourse of the film –testimonies, emotional resources, temporality and voice over-- contribute to create sympathy to Antonio Zúñiga and provide the emotional side of the story?

As can be noted the first two questions show a parallel structure, as the two discourses within the film are woven together.

3. How does the legal and filmic knowledge of the producers authorize the legal and narrative discourses within the film?

This question intends to highlight the connection between power-knowledge and authority within a documentary representation.

4. Which ethical considerations arise from the double role of the producers, as counselors and filmmakers, in terms of power?

This last interrogation seeks to describe the ethical derivations of this double involvement that benefit the power position of the filmmakers.

5. Previous Studies

Several studies about representation have approached media texts from a discursive perspective analysis. The notions of *discourse* and *representation* are fundamental in this thesis, both in their theoretical and analytical aspects. The following studies explore, from different disciplines, the operation of discourse within media representations. While not all of them are quoted or addressed directly in the following parts of this text, their inclusion is relevant as a background.

Among media studies, Stuart Hall's *Representation: Cultural Representations and Signifying Practices* (2013), constitutes a relevant and decentralized study on media representation. In this book, the question of power has a great relevance as long as media representations are built from the point of view of a dominant group. For example, the portrayal of different cultures and ethnicities tends to the objectification of their individuals, who are usually depicted either oversexualized, dangerous or childlike.

Hall also distinguishes between the theoretical approaches to representation, namely, the *reflective*, *intentional* and *constructionist* perspectives. In the first one, there is an assumption about the transparency of language and its capacity to reflect reality like a mirror. The second considers the author's intentions as the ones that give meaning to representation. "The third approach recognizes this public, social character of language. It acknowledges that neither things in themselves nor the individual users of language can fix meaning in language. Things don't mean: we *construct* meaning, using representational systems –concepts and signs" (Hall 2013; p. 25). This *constructionist approach* has been studied from the semiotic (Saussure) and discursive (Foucault) analysis. In this regard, Hall's text highlights important concepts, theories and analytical methods that are crucial for this study.

Another relevant study is Norman Fairclough's *Media Discourse* (1995), in which the author discusses the analytical approaches to media discourses illustrating with different texts. According to Fairclough, discourses shall be understood as "...constructions or significations of some domain of social practice from a particular perspective" (1995; p. 94). In this sense, Fairclough's text contributed to find the connection between discourse and genre, particularly documentary genre. Regarding representation, the author also addresses the difference between *story* and *presentation*. The former is the series of events that happen chronologically, the latter is the way in which the story is organized as a text in media discourses.

From a cultural studies perspective, Sara Ahmed's *The Cultural Politics of Emotions* (2004) approaches media discourses as social practices that shape the audience's emotions through the repetition of certain visual and textual codes. For instance, Ahmed discloses the use of a nationalist discourse within a poster of the National British Front, whose intention is to compare the phenomenon of immigration with the attack of foreign

agents to the human body (the body understood here as the nation): "...the soft national body is a feminized body, which is 'penetrated' or 'invaded' by others" (Ahmed 2004: p. 2). Other emotions such as fear, shame and love are also constructed through language and within a cultural practice.

Laura Mulvey's foundational article "Visual Pleasure and Narrative Cinema" (1975) analyses film representation from a psychoanalytical perspective. According to Mulvey, male fantasies are reenacted constantly in mainstream cinema. In this sense, the patriarchal discourse is reinforced through the images of vulnerable and unstable women who are controlled by male command. As a complex system of representation, cinema has the power to develop an identification process between the film hero and the viewer. The image, however, does not reflect the real version of the viewer, but an idealized one. Thus, the male gaze becomes the axis of a filmic imagery that portrays women as passive bearers of masculine phantasies.

From a historicist perspective, Hayden White's text *The Content of the Form: Narrative Discourse and Historical Representation* (1987) has been very enlightening inasmuch it identifies "...the cultural function of narrativizing discourse in general" (White 1987; p. 4). According to White, narrative should not be understood merely as a literary genre which organizes storytelling, but rather as an everyday practice that allows humankind to signify and provide moral value to any series of events that otherwise would be chaotic. Thus, narrative has a social role, not only as a chronological organization of chaotic facts, but as an interpretation of them, developed from a position of moral authority: "...narrativizing discourse serves the purpose of moralizing judgments" (1987; p. 24). Moral authority, thus, is closely related to legitimacy. This particular point is very important for this study since it intends to analyze the author's authority within representation and to question the ethical implications of the power-knowledge unbalance between the filmmakers and the persons portrayed in a documentary. Also, White's ideas coincide with the connection explained by Foucault between the *speaking subjects* and *power-knowledge* (both will be explained in further sections). For this purpose, White's *Tropics of Discourse* (1978) helped to find the connections between his reflections and Foucault's theory.

Finally, Brian Winston's *Lies, Damn Lies and Documentaries* (2000) represented a valuable source of information about documentary genre and ethics. Winston makes a

comparison between journalism and documentary, noting their similarities and differences. Among the latter is the informative urgency of journalism as opposed to the permanence of documentary, both as an informative and aesthetic product. He also discusses controversial issues arising from the documentary practice, for instance, the boundaries between the filmmakers' freedom of expression and the rights of the people filmed in the documentary. In this regard, it is important to note that the author problematizes the subject of the filmmakers' responsibilities without reaching to definitive conclusions.

6. Theoretical Framework

The first challenge of this study is to contextualize key concepts such as knowledge and power within a documentary representation. Knowledge is a crucial term, as it is the legal expertise of the filmmakers which authorizes their opinions and places them in a position of power over the participants and the audience. Michel Foucault's *The Archaeology of Knowledge* (1969) and *The Discourse on Language* (1972) are the starting point as both delve into the power-knowledge relation within a given discourse. Foucault's insight on the dynamics of the speaking subject's authority and the object of the speech is also extremely relevant.

In the second place, this study has benefited from a documentary-related literature that not only delves on its conventions and ethical issues, but questions the reliability of witnessing within media representations. In this regard, the following texts will be connected with those of Foucault as specific theoretical references about documentary discourse. These texts also discuss the uneven power relations between documentary participants and filmmakers, making it possible to find a strong connection with Foucault's theory. Thus, it can be said that Foucault's notions will be used as the starting point of the analysis while the following texts will provide specific theoretical elements on documentary.

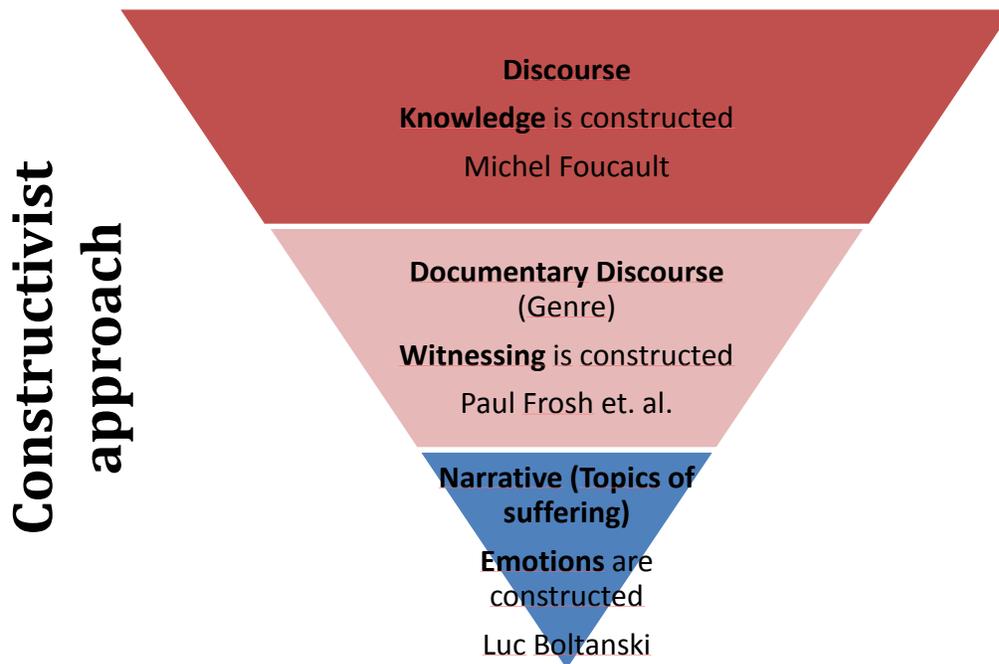
Paul Frosh and Amit Pinchevski's *Media Witnessing: Testimony in the Age of Mass Communication* (2009), which includes the seminal work of John Durham Peters' "Witnessing", has contributed as an approach to the complexity of reliability and mediated witnessing in documentaries. Specifically, Peter's typology of witnessing helped to clarify

the intricate role of the audience as an indirect witness, totally dependent on mediation and technology to generate a viewpoint on a particular topic.

Finally, Luc Boltanski's work *Distant Suffering: Morality, Media and Politics* (2004) has been extremely helpful to delve into the structure of those texts which address human suffering. He proposes a typology, called the topics of suffering, which directs the audience's emotional responses towards different aspects of the representation of suffering, namely, the perpetrator, the victim or the suffering experience itself. Boltanski's text also addresses the ethical discussion about representing suffering from a privileged position. The following sections intend to review and discuss these concepts within *Presumed Guilty's* narrative.

In this regard, it is relevant to note that these three studies share a constructivist approach as a departure point. That is, they claim that representation is a construction, not a reflection, of reality. In this regard, this study was organized departing from Foucault's complex and broad theory about discourse, to more specific theories of witnessing and narrative within documentary. Before discussing in detail specific notions and examples it may be clarifying to show graphically the theoretical organization of this study (figure 6).

Figure 6. Theoretical Model



6.1. The Power-Knowledge Relation within Discourse

In works such as *The Archaeology of Knowledge* (1969) and *The Discourse on Language* (1971) Michel Foucault delves into the relation between knowledge and discourse. Knowledge is not a sign –natural or instituted- that has to be found and deciphered in order to learn its secrets, as believed in the seventeenth century, for instance. Neither is a thing that exists outside of speech, as only human practices can give meaning to the objects of the world. According to Foucault things do not exist *per se*, they are constructed through discourse, and the ones who construct it have a privileged position over the others.

“Knowledge is that of which one can speak in a discursive practice...” (Foucault 1972: p. 182). This means that knowledge exists only within human practices, for it is a human construction, not an exact description of the world. It also informs about the power relations of its producers. No matter if it is constructed within everyday practices or more structured forms, knowledge reveals the standpoints and hierarchical relations of its producers. Therefore its domain extends beyond the scientific spectrum, “it can also be found in fiction, reflection, narrative accounts, institutional regulations, and political decisions” (1972; pp. 183-4).

But, this knowledge cannot be produced –that is, created and authorized-- out of a complex system of shared codes, operation rules and cultural practices, that is, discourse. “Indeed, it is in discourse that power and knowledge are joined together” (Foucault 1978; p. 100), explains Foucault in the first volume of his text *The History of Sexuality*. In this regard, the term power-knowledge is used constantly by the author to stress this connection. Nonetheless, Foucault notes that discourses are not domination tools or, conversely, means to destabilize power. “Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it” (Foucault 1978; p. 101). In this sense, it is possible to say that discourse goes beyond individuals and intentionality, for it reveals a whole system of organized knowledge.

“The term discourse can be defined as the group of statements that belong to a single system of formation; thus I shall be able to speak of clinical discourse, economic discourse, the discourse of natural history, psychiatric discourse” (1972; pp.107-8). According to the author, discourse actually creates things in our consciousness. For

instance, the notion of madness, perversion or criminality did not exist before their corresponding discourses created them within the human consciousness or practice. In works such as *Madness and Civilization* (1961), *The Birth of the Clinic* (1963) and *Discipline and Punish: The Birth of the Prison* (1975), the author exemplifies the ways in which discourse define, classify and control their studies objects by regulating their social operation (defining hierarchies, powers and practices among its members). The psychiatric discourse, for instance, with its definitions of “madness” and “sanity”, and the practice of diagnose and commitment of these mad individuals into psychiatric hospitals. The legal discourse does the same by stating who is “criminal” and who is “innocent” (sometimes through technicalities that are admitted as valid within its practice). It also operates by the institutionalization of prisons to control the bodies and minds of these criminals, and thereby controlling the society in general through the existence of punishment and imprisonment. In a similar way, the film discourse points out the differences between “fiction” or “non-fiction” films attributing different values and conventions to each one.

According to Foucault, thus, discourse should not be understood merely as a set of words, sentences or formulations, but rather as a complex system of meaningful enunciations that is governed by rules and hierarches. Moreover, each enunciation reveals the power relations within its discipline, as well as the society and the institutions behind. For instance, the term “criminal” does not stand for its textual definition, but for the society that allowed this notion to be authorized and systematized. That is why its complexity cannot be grasped by an “exhaustive description of 'language' (*langage*), or of 'what was said'” (1972; p.108). Thus, the study of the linguistic, grammar and even contextual rules of a given set of statements represents a limited form of study. For instance, if one studies the documentary film discourse, its analysis should not be concerned exclusively on its verbal or audiovisual language, but also in the system that produced and empowered it. Foucault considers more revealing the study of the conditions, rules and practices that allow the creation of a particular discourse, as well as the domain of objects included in it, that is, its discursive formation.

In his *Archaeology of Knowledge* (1972), the author points out that:

(w)henever one can describe, between a number of statements, such a system of dispersion, whenever, between objects, types of statement, concepts, or thematic choices, one can define a regularity (an order, correlations, positions and functioning, transformations), we will say, for the sake of convenience, that we are dealing with a *discursive formation* -thus avoiding words that are already overladen with conditions and consequences, and in any case inadequate to the task of designating such a dispersion, such as 'science', 'ideology', 'theory', or ' domain of objectivity' (p. 38).

Thus, a given discourse is enriched by a complex system of meaning (a discipline, for instance). Foucault exemplifies discursive formations through the discourse of psychopathology. In the first place, he elaborates on the object of discourse, namely, the thing that is discussed within the discursive formation and that may be unsubstantial (in his example, mental illnesses). This object has many aspects that separate it from other objects, namely:

- a) Its *surfaces of emergence*: Those individual conditions that separates it from other objects. In his example, the conditions that will be categorized as mental anomalies and illness, and which depend on the particularities of each society, time and discourse.
- b) Its *authorities of delimitation*: Medicine and psychiatry, in this case, but they extend to all of the discourses that wield the authority to isolate, designate and describe things, to understand them as objects of study. They are integrated by their institutions; their body and practice of knowledge, the individuals who hold this knowledge as well as the public opinion that legitimize their authority.
- c) Its *grids of specification*: That is, the systems that separate, specify, classify and regroup objects within a given discourse, in this case, the “kinds of madness” and their specificities. Thus, objects are dispersed within a set of immanent rules within

a practice that allow an organized relation between them and give them unity and specificity.

The second constituent element of a discursive formation is the speaking subject, the one who is authorized to construct knowledge through discourse:

Who, among the totality of speaking individuals, is accorded the right to use this sort of language (*Ianguage*)? Who is qualified to do so? Who derives from it his own special quality, his prestige, and from whom, in return, does he receive if not the assurance, at least the presumption that what he says is true? What is the status of the individuals who - alone - have the right, sanctioned by law or tradition, juridically defined or spontaneously accepted, to proffer such a discourse? (1972; p. 50).

A position of authority is granted to the subject entitled to speak, the doctor, in Foucault's example, or the filmmaker, if we analyze the film discourse. However, the rules that authorize these individuals are meant both to legitimize their words and to limit their practice (for instance, by pointing out the topics they are authorized to discuss, the terminology and jargon they are expected to use in that given discipline, and the spaces – magazines, institutions, and professional publications- where they can publish their words).

On the other side of the power spectrum are the ones who become the object of the discourse (the mad, in the case of psychopathology). They remain speechless and powerless since their voice has no influence or authority. Continuing with the case of psychopathology, Foucault explains that in the twentieth century the psychoanalysts allowed the mentally ill patients to speak, but not in terms of equality, since the doctor was considered to be in a higher position of knowledge and understanding. The mad's words were listened merely for the purpose of diagnosing. In this sense, it is importance to note that "saying" is not the same that "enunciating": anyone can say something, but just the *speaking subjects* are authorized to enunciate.

Thus, a system of relations and hierarchies supports the credibility of the speaking subjects. The subject status is also defined in relation to the institutional spaces that legitimize his discursive practice (the hospital, if we continue with Foucault's example, the

genre and the media technologies, in ours). In the third place, the domains or group of objects regulate the roles and duties that the subject may perform in that practice. All these together form a complex dynamic which is called the *institutional apparatus*. “Religious discourse, juridical and therapeutic as well as, in some ways, political discourse are all barely dissociable from the functioning of a ritual that determines the individual properties and agreed roles of the speakers” (1972; p.225).

Finally, “(t)he conditions to which the elements of this division (objects, mode of statement, concepts, thematic choices) are subjected we shall call the *rules of formation*. The rules of formation are conditions of existence (but also of coexistence, maintenance, modification, and disappearance) in a given discursive division”. (1972; p.38). These rules are social constructions, of course, developed by the institutional apparatuses that contain and regulate a given society. As we discussed, they operate in different levels of the discourse. For instance, they deal with the formal aspect of discourse by organizing its enunciation’s structure, that is, what would be a grammatically correct postulate within the discursive formation. They regulate also the content: “(i)n a society such as our own we all know the rules of *exclusion*. The most obvious and familiar of these concerns what is *prohibited*. We know perfectly well that we are not free to say just anything, that we cannot simply speak of anything, when we like or where we like; not just anyone, finally, may speak of just anything” (1972; p.216). These rules of prohibition cover the object of the discourse, its surrounding circumstances as well as the allocation of rights or privileges to speak on a certain subject. Thereby, discourse is not formed only through language but by a complex and transformative formation whose fundamental unit is the enunciation. Discourse represents the materiality of this set of relationships between the enunciated object, the subject who enunciates and the rules that articulate the meaning of the former and the authority of the latter.

Documentary discourse is created from a series of genre conventions endorsed by an institutional apparatus, that is, media and the society that produces and consumes. In the specific case of *Presumed Guilty*, this study intends to demonstrate and analyze the coexistence of two intertwined discourses within the film, namely, a legal and a narrative discourse. While both are developed from the same starting point, the legal case of the accused, each one is supported by different sources of knowledge and authority. More

specific notions about both discourses and their operation will be explained and carried into practice in further sections of the study.

6.2. Documentary Genre and Witnessing

Unlike other film stories documentaries are developed as non-fiction texts that intend to reproduce experience through representation. They are characterized by their portrayal of real events, which are also relevant in terms of social awareness. Although their styles and aesthetic resources may differ from one another, they all rely on certain premises related to their genre. According to Hayden White "...a given genre represents a commitment to a structure of representation..." (1978; p.252). Since Foucault considers knowledge the result of discourse, genre, as a discourse, informs about the ways in which a society organizes, interpret, and even exclude information. Regardless of its content, genre is a source of knowledge itself. It may be "understood as the structured conventions and classificatory regimes that link viewers, texts, and producers in a common framework of meaning" (Frosh et al. 2009: 62). In documentary genre, one of these conventions is the use of witnessing as a fundamental resource in terms of narrative and credibility. Whether witnessing is directly addressed through interviews, as in Fredrik Gertten's *Bananas!** (2009), or transformed into an animated or cartoon film, as in Ari Folman's *Waltz with Bashir* (2008), the inclusion of testimonies is paramount.

Furthermore, documentary itself is to be understood as a form of witnessing, regardless its style or aesthetics. As Frosh points out: "'bearing witness', then, is an act performed not by a witness but by a witnessing text. It is the witnessing text which creates presence at the event, which produces experience out of discourse" (2009; p.60). Thereby, it can be said that documentaries are supported by two levels of witnessing; the first is based on to the testimony of their speaking subjects within the story, the second is constructed from the genre convention that legitimize documentary as a witnessing text itself.

Since the concept of witnessing is crucial in the documentary genre it is relevant to revise its particularities. Both as noun and verb, the word witness refers to a process that involves several parts: an extraordinary or traumatic event, the observer who tells the others what s/he has seen, and the community who listens. Many times the value of the testimony comes from the first-hand knowledge of the witness who observed, or even survived, the

events. In other cases, a deep knowledge of the subject is what gives authority to the witness, as in the case of experts who are “supposed to be precisely objective, that is to ignore anything personal and only state professional opinion” (Frosh et al. 2009; p.47).

Tamar Ashuri and Pinchevski point out the importance of the selection of witnesses within a documentary film. As mediators, the filmmakers have the power to decide who gives testimony and in which way it will be portrayed. For instance, in the documentary *Jenin Jenin* (2002) director and producer Mohammad Bakri presents several testimonies of the Palestinians victims of an Israeli military operation in the West Bank refugee camp of Jenin. First, Bakri introduces the testimonies of a verbally handicapped person and two children, whose verbal limitations show a parallel with their voiceless and powerless situation. Their emotional testimonies enhance what Ashuri and Pinchevski call the traumatic narrative of the film. On the other hand, Bakri features the testimony of a Palestinian physician whose authority comes precisely from his social position: “(f)ilmed in a hospital, which further emphasizes this eyewitness’s social *status*, the physician recounts his experiences of the battle [...] As a physician his *enunciation* carries more weight than an identical witnessing discourse made by, for instance, a nurse, orderly, or patient” (2009; p.149. Emphasis in the original). This notion is consistent with Foucault’s explanations about the power that comes from the knowledge of authorized speaking subjects within a given discourse. *Presumed Guilty* is not exempt of discursive hierarchy in which social roles serve different functions within the narrative. Some characters seem to be there to give testimony of their suffering, while others are portrayed as the ones with knowledge. The former are the carriers of emotion, the latter has the authority of information and interpretation. As John Ellis points out: “(t)o hear the account of an individual implies a powerful interpersonal relationship: one of both belief and sympathy”. (2009; p.75). This sympathy may be created in an emotional level, one related to the audience’s ability to perceive the pain of the others. Trust, on the other hand is developed through knowledge, the knowledge of the person who was there in the place of the events. “Witnessing presupposes a discrepancy between the ignorance of one person and the knowledge of another...” (2009; p.25). Thus, witnessing and credibility are closely related. Even more, when witnessing is legitimized by a meaningful framework such as the documentary genre,

power and authority issues come into ethical discussion as Peters (2009) and Winston (2000) have discussed thoroughly.

However, something different happens when witnessing does not come from persons who give testimony, but from a camera. In this case, the basic premise of witnessing changes: media viewers are not present in the time or the place of the events. This presupposes a special condition, as interpretation and narrative take a more prominent role than in direct witnessing. In Peters' model, there are four witnessing modalities ranging from the "being there" witnessing position, that is, the person who was present both in time and space; to being present either in time or space; to the last one, which is the weakest according to Peters, namely, recording witness. In this category the witness is absent both in time and space, and watches a representation through mechanical reproduction. "Cameras and microphones are often presented as substitute eyes and ears for audiences who can witness for themselves" (2009; p.23).

Substitute eyes that, however, have already been focalized and filtered within a representational process that frequently aims to create shared points of views on a topic. While recording is able to capture a multiplicity of details, "...the camera cannot simply deliver an unmediated reproduction of the truth. Production means mediation" in Brian Winston's words (2000; p.132). According to Peters this recording witnessing is the hardest to sustain. Frosh calls it a pseudo-witnessing: "(r)ecording media can do time-axis manipulation, stopping, slowing, speeding, or reversing time –one reason why audiovisual media, despite aptitude in recording, are dubious witnesses" (2009; p.36). Indeed, what the viewer watches is always the result of a series of choices -- formal, aesthetic, ethical, among others - on what to show, how to do it, and what to omit.

The situation can be more complicated in participatory documentaries (Hall 2013; Nichols 2001) such as *Presumed Guilty*, those in which the filmmakers show openly their interaction with the subjects. Far from reducing their participation in the diegesis to the minimum, in this kind of documentary the filmmakers' role becomes meaningful and acquires symbolic value. For instance, they may represent the ordinary person, with whom the audience can identify with and who seems to be on an equal knowledge position compared to the viewer. Their participation may be portrayed as that of the average citizen who seeks information on a topic of public interest but has little influence on the course of

events. In other cases, the filmmakers' role is represented in what Jon Dovey (2000) calls a "klutz film", those in which the filmmaker portrays himself as someone below the average, less educated or prepared than the viewer. Nick Broomfield, Ross McElwee and Michael Moore would be examples of this type, according to Dovey. "The term 'klutz' Refers to an inept, not very bright and perhaps clumsy person" (Hall 2013; p. 72). By portraying himself in this way the filmmaker gets the sympathy of the spectator, who hardly distrusts a well-meaning fellow who seems to have little control over the process of mediation.

On the other hand, the filmmaker may choose to depict himself as an expert or professional in the subject, entitled to speak due to this expertise. In this case he is above the average person in terms of knowledge, but acts like a protector or guardian of the social interests: "(t)hey (the journalists) are there, their bodily sensation and experience authoring and testifying to the knowledge they impart to distant others" (Frosh et al.2009; p.49). Luc Boltanski points out that "(i)t is because the spectator is without ties and prior commitments that his report, his testimony, can be put forward as credible" (2004; p.29). In any case, a participatory documentary raises the question about the filmmaker's credibility as organizer of facts that involve obvious personal or professional interests. Furthermore, a documentary in which the director has such a visible role can also be criticized in terms of protagonism, as the issue in question takes second place after the filmmaker's figure.

To sum up, it can be said that the concept of witnessing is fundamental in media texts such as documentary, not only in its informative aspects but as a carrier of social meaning. However, witnessing per se does not provide full meaning to a documentary, narrative representation has also a crucial role. Consequently, Frosh et al (2009) and Boltanski (2004) among others address the importance of a cohesive narrative to provide structure and meaning.

6.3. Documentary as a Narrative

In his text *The Order of Things: An Archaeology of the Human Sciences* (1970), Foucault notices that: "(r)epresentation governs the mode of being of language, individuals, nature, and need itself. The analysis of representation therefore has a determining value for all the empirical domains" (1970; pp.207-8). According to him, discourse is a system of representation which produces knowledge, not only by its content –language—but through

its style and conventions. It exhibits the ways in which we organize and give meaning to the objects in the world. That is why Foucault's approach is called *constructivist* as opposed to the *reflective* or *intentional* perspectives, which consider representation a transparent reflection of reality, in the first case, or a faithful reflection of the author's intentions, in the second.

Representation has been succinctly defined by Stuart Hall as "...the production of meaning through language" (2013; p.2). Representation means also a translation from experience to discourse. In documentary, this notion is extremely important since one of the pillars of the genre is witnessing, which, as discussed previously, constitutes the process of telling, sharing and appropriating experience. Representation has also a considerable impact in documentary as it frequently goes beyond aesthetics and involves social denunciation. Documentary is not only authenticated by the persons who bear witness within but by the genre's credibility. In this genre, representation is constructed through narrative resources which organize chaotic footage into a meaningful narrative: "(t)hrough their authorship of the event, mediators provide it with a timeline, context, circumstance, and causality. In other words, they construct a narrative from a previously chaotic event" (Frosh et al 2009; p.145).

If we return to the concepts previously discussed on witnessing we may notice that a documentary cannot be sustained solely on isolated testimonies, nor be constituted as a witnessing text without a narrative that organizes the events and make them meaningful. However, as previously stated, documentary narrative differs from others in its representation of facts as starting point. According to Hayden White:

"Narrative is at once a mode of discourse, a manner of speaking, and the product produced by the adoption of this mode of discourse. When this mode of discourse is used to represent "real" events, as in "historical narrative", the result is a kind of discourse with specific linguistic grammatical, and rhetorical features, namely, narrative history" (1987; p.57).

This also applies to documentary discourse, in which real events are narrated following certain styles and conventions. In his book *Distant Suffering: Morality, Media and Politics* (2004), Luc Boltanski addresses the ways in which a documentary narrative may depict factual events in order to engage the audience to the story. Particularly, he focuses on the ways in which documentaries represent suffering, a relevant subject for this study as *Presumed Guilty* tells the story of a young man sentenced to twenty years of prison for a crime that, according to the producers, he did not commit. The account of his suffering constitutes a crucial part of the film.

According to Boltanski there are three topics of suffering for this purpose.

We call these three forms, the *topic of denunciation*, the *topic of sentiment*, and the *aesthetic topic*. The word topic should be understood in the sense of ancient rhetoric, that is to say as involving inseparably both an argumentative and an affective dimension (Boltanski 2004; xv).

Each one of these topics addresses suffering from a different perspective but they all have in common the pursuit of a response from the viewer. The topic of denunciation seeks to identify the unfortunate's persecutor, in order to create indignation upon this character. The topic of sentiment focuses on the victim's sufferings and the presence of a benefactor. Instead of anger, the viewer's involvement is orientated towards compassion and identification. Finally, the aesthetic topic leaves behind the story characters and deals with the viewer's confrontation to suffering itself: "(o)nce the fictional characters of the persecutor and the benefactor have been dispensed with along with their illusory reflections, the *enraged* victim and the grateful *miserable*, suffering is looked at in the face and confronted in its truth, that is to say as pure *evil*" (Boltanski 2004; p.119).

Boltanski's notions not only illustrate the ways in which each topic addresses suffering, but the narrative elements within them, that is, through the identification with characters, conflicts and responses. For the purpose of this study I intend to focus on the first two topics, which can be more easily identified within the narrative of *Presumed*

Guilty. As mentioned, the third one deals with an aesthetic experience that is related to the viewer's experience, and would suit better studies about reception.

6.4. Representing Suffering: Ethical Considerations

Representing suffering is a serious matter, especially for those whose lives are affected after the screening of a given documentary. Moreover, when personal interests are involved, there may be ethical derivations to consider. While this study does not pretend to have the answers to these issues, I do consider appropriate to review the ethical implications resulting from the filmic representation of legal issues that may affect the lives of those involved.

The representation of human suffering often relates to issues about the rights that witnesses hold within a media text whether they consent freely to participate or not. In his book *Lies, Damn Lies and Documentaries* (2000), Brian Winston elaborates on media's consent defence, that is, the permission that the participants give to the filmmakers to film them. This consent states that the participants are aware of the consequences of their involvement in a documentary and that any further damage after to the screening of the film is not the filmmakers' responsibility. "The consent defence applies whether or not participants benefit and never have second thoughts on their role; whether or not they benefit a little but also suffer so that they come to regret co-operation; or whether or not they just suffer and rue the day their involvement started on a disastrous path". (2000; p.138). If so, filmmakers would be in a privileged position as they hold all the rights and control over their material.

In fact, two witnesses featured in *Presumed Guilty* as well as the murder victim's family filed nineteen lawsuits against the film's producers accusing them of moral damage. The plaintiffs allege that they have been victims of social condemnation, harassment and retaliation after their participation in the film. While the filmmakers were authorized by the tribunal to film, the individuals involved, whose faces were exposed and reputations affected, did not give a personal consent. According to the documentary, these witnesses gave false testimony in a criminal trial, so their portrayal is certainly damaging for their reputations. In January 2014 Hernández and Negrete and were exonerated by the civil court

18 of the Superior Court of the city of Mexico on the basis of freedom of expression (I will discuss this matter further in the analytical part of this paper).

As for the involvement of personal interests, the subject touches on a fundamental aspect of the documentary genre, the one dealing with the power of the filmmaker over the situations and persons depicted: “criticism is more likely to be considered if it can be shown that the denouncer of the injustice does not *share* the unfortunate’s suffering” (Boltanski 2004; p.71). Negrete and Hernández’ condition as postgraduate students in the University of Berkeley appears to differ sharply with that of the other participants of the film. “The denouncer, especially when he is distant from the unfortunate, may additionally be charged with ‘irresponsibility’ in the sense that his accusations cost him nothing because he is safe but may provoke reprisals on the unfortunate whose cause he claims to defend” (idem 2004; p.71). In this regard, this thesis intends to describe the problem from Foucault’s ideas about power unbalance and its ethical derivations within documentary without pretending to exhaust the subject.

7. Methodology

7.1. Methodological Proposal

Since I intend to describe the legal and narrative discourses within the film, my approach will be a discourse analysis, based primarily on Foucault’s notions of power-knowledge within discursive formations. I seek not only to describe what these discourses openly expose, but also what they neglect or overlook. In this regard, intentional and unintentional omissions become also a fruitful source of information. As Foucault points out: “(t)o analyze discourse is to hide and reveal contradictions; it is to show the play that they set up within it; it is to manifest how it can express them, embody them, or give them a temporary appearance” (1972; p.151).

I intend to describe the way in which knowledge –legal and narrative— organizes and legitimizes both discourses. To achieve this purpose I will point out how the two of them have a common starting point, namely, the demonstration of Antonio Zúñiga’s innocence and the representation of his legal case. The legal discourse is supported by the

legal knowledge of the producers and developed in *informative* terms (from documents, witnessing and data), while the narrative discourse, developed from distinctive storytelling resources (temporality, voice over, emotional testimonies and scenes), and primarily relates to the *emotional* side of the case. Also, I intend to demonstrate that the inclusion of witnesses within the story have different purposes depending on their content (more informative or more emotional). In the former, witnessing is used as in legal defense, showing first-hand and legal knowledge about the case and the law. In the latter, witnessing is used to create sympathy to the victims and anger towards the perpetrators.

In order to follow the theoretical framework structure, I will focus on the three elements that constitute a discursive formation, namely, (1) the object of discourse (the thing that is discussed), (2) the speaking subjects (the ones that produce the discourse), and (3) the institutional apparatus that regulates its practices (the legal system, the genre and its conventions). I will thus structure the analytical chapter into three parts - object, subject and institutional apparatus of discourse - describing how these three components operate in the legal and narrative discourse. I will integrate Frosh et al. notions of witnessing as well as Boltanski's notion of suffering representation within the analysis.

The object of discourse is the topic which is discussed and cinematographically represented. In this documentary it is Antonio Zúñiga's innocence, which is discussed and legally defended through evidence, witnessing and storytelling. According to Foucault this object –his innocence-- would be addressed by the speaking subjects from a position of knowledge, and would eventually lead to new knowledge about the object itself and the institutional apparatus as well. This analytical model seeks to identify the object of discourse, the speaking subjects and the institutional apparatus in relation to the legal and the narrative discourses of the film. Thus, the model is structured as a parallel study which compares the approaches of both discourses. Both discourses are deeply intertwined as they part from the same case but approach it differently. It is important to note that the notion of power-knowledge influences all of the levels of discourse.

7.2. Delimitations of the Study

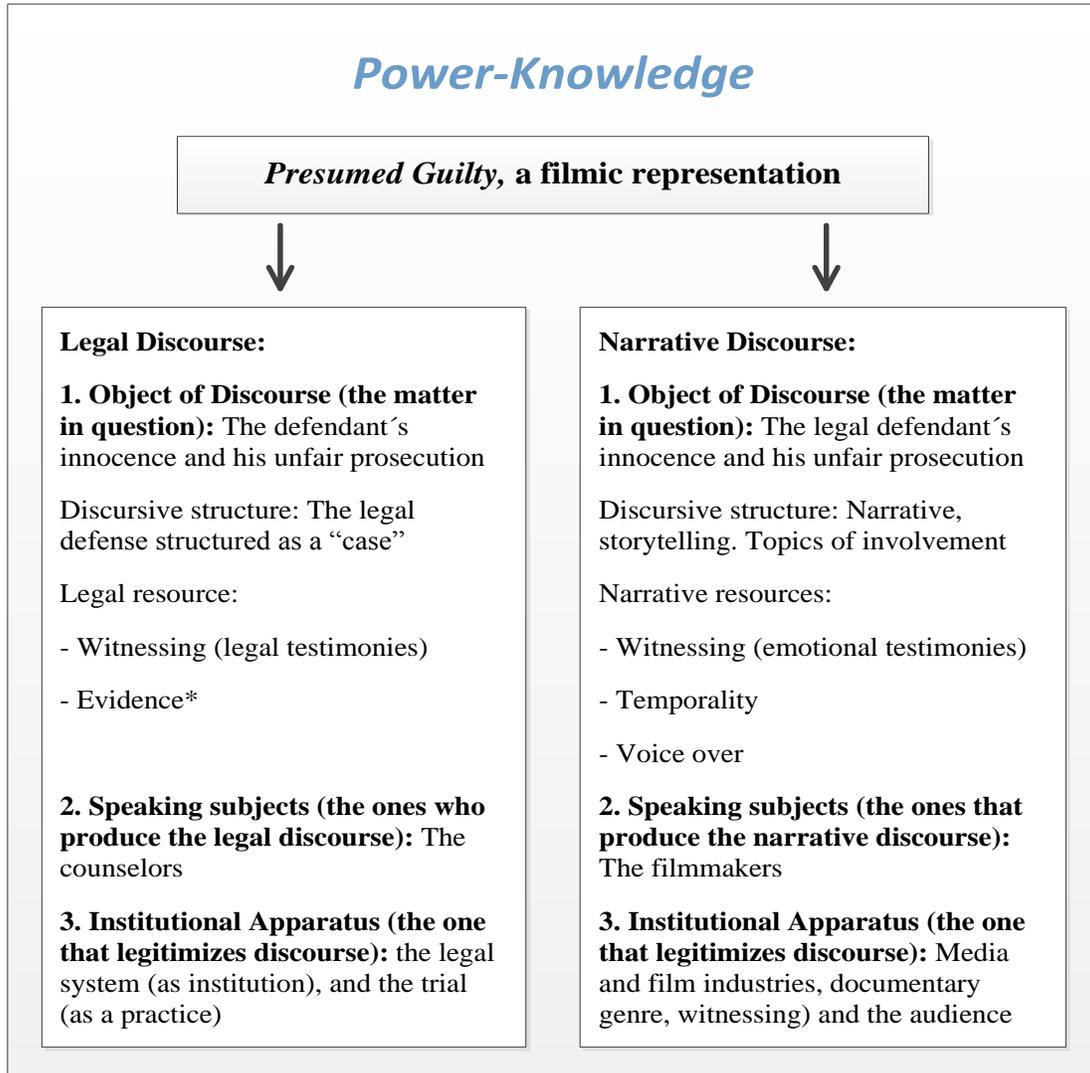
As mentioned previously, this study aims to analyze discourse within a filmic narrative, considering the object of study, the speaking subjects and the institutional apparatus as its dynamic structure. However, it is important to note that this work is a textual study, and therefore all the analyzed elements will be taken just from the information that the film provides. Other factual information or references have been used as introduction and background data, not as a part of the analysis.

For this reason, the followings aspects will not be considered in the analytical part of this work:

- a) The authors' intentions
- b) The characters' backgrounds (beyond what is reported about them in the film)
- c) The characters' motivations (beyond what is reported about those in the film)
- d) The film's reception

I consider relevant to point out that this analysis will depart from the notion of a film narrative and, therefore, the participants may be addressed sometimes as "characters". That is meant to follow film and narrative conventions.

7.3. Analytical Model, a Parallel Structure



* The defense's evidence will be analyzed within the legal structure part.

8. Analysis

8.1. The Object of Discourse: Antonio's Innocence and his Unfair Prosecution

Presumed Guilty tells the story about a young man who was accused of first degree murder and sentenced to twenty years in prison. This would be, in simple terms, the storyline of the film. In discursive terms, however, the object of discourse would not be limited to its informative aspects. Data itself has no meaning before it is organized and

valued by a speaking subject within an institutional apparatus. In other words, the speaking subjects in this documentary are not just providing information about this case, they are defending (enunciating) something very concrete about it: the defendant's innocence and the irregularities of his legal process. There is not a single scene of the film in which this innocence is questioned, neither from the legal nor from the narrative discourse within. The fact that this man's innocence is defended by two distinguished lawyers and filmmakers gives value to this claim. In this regard, the speaking subjects are constructing their meaning from two different discursive formations, namely, the legal system and the documentary genre. This means that, in order to enunciate –Antonio Zúñiga's innocence--, they are following the rules, conventions and terminology of the legal and film practices. Consequently, the structure of the film is a combination of legal facts and emotional storytelling intertwined in the form of a single recount of the events. Throughout the film, the viewer is not only informed about the details of the legal process, but introduced to the personal life of the accused and the harsh living conditions of the prison.

8. 1.1. The Legal Discourse within Antonio's Case Representation

For a non-expert viewer, criminal proceedings and legal terms can be complicated and difficult to interpret. In *Presumed Guilty* both of them build the defendant's case and the argumentative line of the documentary. In this regard, if the facts are not clear to an average viewer s/he will not understand the film's denunciation. Thus, to organize and interpret legal facts is crucial in this representation.

Presumed Guilty narrates the case of Antonio Zúñiga, from now on just Antonio, a Mexican young man accused of first degree homicide and sentenced to twenty years in prison. The film follows the process of the case's review and appeal, and ends with the liberation of the accused issued by a higher court. I include below a list of dates and relevant information about the legal process of the accused. While these events are all recounted in the documentary, some of them are narrated as previous facts and others are represented as witnessing events.

This information is also important to separate the events that occurred before the documentary and those which were filmed by the producers after their involvement in the case.

1. The murder took place on December 11, 2005. The victim, Juan Carlos Reyes Pacheco, died from firearm injuries.
2. On December 14, 2005 Antonio was arrested. The Public Prosecutor of the Federal District (Mexico City) initiated the preliminary investigation and criminal penal action against Antonio, considering him the probable responsible in the commission of aggravated homicide.
3. On December 16, 2005, the Twenty-Sixth Judge of Criminal First Instance of the Federal District (Mexico City) ruled against Antonio and ordered his imprisonment.
4. On April 19, 2006, after the trial and evidence presentation, the Twenty Sixth Judge ruled against Antonio and sentenced him to twenty years in prison.
5. After an appeal, the Superior Court of the Federal District, confirmed the court decision on June 15, 2006.
6. On August 9, 2007 the new defendant's attorney filed a legal resource in order to invalidate the judgment against Antonio, on the basis of the lack of an authorized lawyer in the first trial (according to the defense, he falsified his professional license and was therefore not authorized to litigate). The replenishment of the procedure was requested. *From this part, the producers are involved in the case.*
7. On October 15, 2007 the Superior Court overturned the first sentence and ordered the replenishment of the legal procedure and the revocation of the judgment.
8. On October 18, 2007 the Twenty-Sixth Judge of the Criminal First Instance of the Federal District, dictated order of imprisonment against the accused.
9. On February 25, 2008 the Judge judged against Antonio after the retrial and sentenced him to twenty years in prison.
10. On April 25, 2008, after an appeal, the Fifth Criminal Chamber of the Superior Court of the Federal District revoked the previous conviction, ordering the immediate liberation of Antonio on the basis of *in dubio pro reo*, which can be understood as reasonable doubt (the juridical principle will be commented in further analysis). The main evidence for the appeal was the filmmakers' recordings.

The legal discourse within the documentary is constructed as a penal case, organizing the facts and the evidence chronologically. There are no dramatizations or reenactments; the case is built upon exhibition of documents, testimonies and footage of the

legal procedures (including the face-to-face confrontations between the defendant and the prosecution's witnesses). The following table shows the irregularities that the defense seeks to point out and prove within Antonio's legal process. The left column enlists the facts, according to the defense, and the right one their evidence within the film narrative.

Figure 8.1.1. The defense evidence

Irregularities of Antonio's Legal Process	Evidence Source within the Film
1. Antonio's arrest, executed without informing him the reason or explaining his rights	The character's testimony The character's friends testimony
2. The absence of physical evidence in the crime scene: <ul style="list-style-type: none"> - Negative results of the gunpowder test - The eyewitnesses who declared that the accused was working, as usual, in his market stall the day of the murder - The inconsistencies between the prosecution's witnesses 	Documents showed in the film (the results are highlighted) <ul style="list-style-type: none"> - A document (a copy of the gunpowder proof) with the word "negative" in the results area - Interviews to eyewitnesses who work in the street market - Recordings of the trial with the prosecution's witnesses, who fail to remember some details or contradict themselves
3. The impossibility to speak to the judge	<ul style="list-style-type: none"> - Testimonies of the victim and other persons imprisoned saying that they never met their judges - Figures from Hernández and Negrete's research about the impossibility of the accused to meet their judges (93% of the imprisoned, according to their study. No references about the research method or scale)

4. The counselors' finding that Antonio's defense lawyer falsified his professional license and was not authorized to litigate	- Copy of the fake license (just the photo and the main data highlighted)
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As the table shows, all of the irregularities described in the legal process of the defendant occurred before the filmmakers made contact with him. For this reason, there is no actual footage of them. Documents and testimonies build the case. Interestingly, there are no interviews with other legal experts –academics, former judges, lawyers—about juridical principles and procedures, besides the ones made with the producers and the new attorney of the accused. Thus, the case is sustained over the producers' guidance.

Also, the filmmakers address constantly a previous research they made about the corruption within the Mexican legal system. According to their results, the conviction of innocent people is the result of a corrupted and inefficient system. In the first minutes of the film *Negrete* mentions that one of their findings showed that the police and other authorities were awarded for the number of arrests and convictions made (1). However, the film offers few details about the method or scale of this study (for more information the viewer has to watch Hernández' previous documentary, *The Tunnel* 2006). Either way, Antonio's case seems to be stronger when portrayed in the context of this study. In this regard, one can say that the case works as an exemplification of the researchers' results.

Later, when the trial is filmed, the prosecution's witnesses are constantly questioned in two levels, first by the defense advocate during the trial, and then by the filmmakers throughout the documentary. Several of their testimonies are highlighted and contrasted with the evidence that the defense have about the same point, noting that the prosecution witnesses cannot be telling the truth. Thus the credibility of the witnesses is not only questioned but, in fact, destroyed. Likewise, continuous approaches to the sweaty or confused faces of the witnesses work - as the appeal seems to prove- as part of the legal strategy against the prosecution's witnesses. Further elements of the film's witnessing will be discussed in the following sections.

8.1.2. The Narrative Discourse within Antonio's Case Representation

Presumed Guilty does not begin with legal facts. The viewer is introduced first to the main character, Antonio, a young man walking through the corridors of a prison. He narrates that when he was going through a big problem (not specified), he desperately asked God to take his life or bring him to jail. Two weeks later he was arrested without any explanation, almost in a Kafkaesque style. He thought, then, that that was God's answer to his prayers. By the time that his legal situation unfolds, the viewer has already met the protagonist and possibly began to sympathize with him. Here is the structure of most literary and filmic stories: the main character –perhaps a hero-- and his conflict. Moreover, this may be seen, from the beginning, as a story of unjust suffering. As discussed previously, the documentary genre follows a series of conventions in order to organize chaotic footage into a meaningful narrative. This means also that "...narrativizing discourse serves the purpose of moralizing judgments..." (White 1987; p.24). This notion becomes even more significant in the case of a documentary narratives, for most of them deal with the suffering of real people. Therefore, the role of the documentary filmmaker as storyteller entails also a moral choice about the portrayal of the events.

As discussed in the theoretical framework, in Boltanski's (1999) typology the *topics of suffering* meant to engage audiences into the representation of other people's affliction. *Presumed Guilty* is a denunciation narrative meant to create indignation. This kind of topic, according to Boltanski, seeks to accuse a *persecutor* whose actions make the audience feel sympathy for his victim. —Indignation is addressed to the persecutor in the first place" (2004; p.64). The filmmakers clearly identify this persecutor, who is not one single person but the whole legal system, constituted by judicial officers, prosecutors, judges and prison guards. For instance, there is an interview in which a policeman admits that they (the police force) usually arrest people through fabricated or exaggerated charges in order to keep dangerous people in jail. This is an example of the kind of testimony that has no value as legal evidence in court --this policeman is neither the one who arrested him nor an eyewitness of his arrest--, but has a denunciation value in terms of documentary narrative.

That means, according to Boltanski, that there is a claim within the accusation of *collective responsibility* which, interestingly, should not be just shared by the persecutors, but the filmmakers, who also belong to the legal system, and the whole society. However,

the producers seem to disassociate themselves constantly from it by emphasizing how unfairly and corruptly the persecutors behave. Thus, persecutors are not only pointed out, but bitterly depicted. Their role within the narrative is dehumanized; their appearances in front of the camera are often accompanied by outraged comments from the producers, who even include macabre laughs as a background once. However, Boltanski stresses that —(t)he violence of accusation must be justified by proofs” (2004; p.65). Unlike documentaries that show recordings of violent acts perpetrated against a victim (torture, assault, murder and so on), in *Presumed Guilty* the injustice carried out against the accused, i.e. his unfair arrest and trial, happened before the producers met Antonio, and, therefore, there is no footage of these events. In this regard, the filmmakers have a great power as they are the ones who explain why those events should be understood as legal malpractice. They are also the only source of knowledge about the subject. This may sound self-evident, but one has to think that, according to them, it was the first time that a camera was allowed in a Mexican court and, therefore, it may be difficult for many viewers to separate footage from narrative.

However, parallel to denunciation there is also an emotional involvement between the characters and the viewer. For instance, several scenes show Antonio break dancing and rapping, as he wants to work as a musician. Other parts record Antonio and his counselors phone calls, in which he states that fear is no longer ruling his life, and that he is ready to fight for his rights. This is exactly the structure of the narrative, the tale of the struggle of a simple man —and his lawyers—to fight a corrupted system. While the legal part of the film represents Antonio’s case, there are several testimonies which are not directly related to the trial, but to the lives of the persons involved in the case: “A documentary, on the other hand, might use testimonies to add an emotional dimension rather than concrete knowledge” (Frosh et al. 2009; p.145). There is a sequence in which Antonio explains that he shares the cell with twenty inmates and sleep in a berth called “the tomb”, which is rather a claustrophobic hole, cold and infested with cockroaches. Later, the camera shows the sad faces of young prisoners while Antonio comments that Mexico’s youth is behind bars. In all of these cases, testimonies are accompanied by gloomy images about the prison corridors and its inmates, reinforcing sympathy with those there.

The inclusion of emotional parts in the narrative aims to develop sympathy, both for the victims and their benefactors, Negrete and Hernández. “Emotion here is understood as an *externalization of the interior*” (Boltanski 2004; p. 82). This tale, in the style of David and Goliath, relies in what Boltanski denominates a topic of sentiment: “(i)dentifying a benefactor whose figure serves as the object of the audience’s sentiment” (2004; p. 146). The producers not only express their indignation against the penal system, but openly show their sympathy for the victims. Sentiments of compassion and sympathy may be developed towards the victims and their protectors. The testimony of the accused and his friends, movingly thanking their benefactors’ help reinforces the roles of the latter as caring persons.

There is also a scene in which Antonio calls the producers –who live in the USA– asking for advice. Hernández comments that they will try to talk albeit it’s five o’clock in the morning on Sunday there. Then, Negrete encourages Antonio to be positive and not to give up. In the film, Negrete says that they have trained Antonio to litigate, in order to take action in his own defense. “So that’s why we have been training Toño” (2. My translation). In a later interview (3), Layda Negrete comments that Antonio read books about litigation, but that is not said in the film, and, as I pointed out, I am just considering the film’s content.

In traditional storytelling terms, the occurrence of the conflict often leads to the presence of antagonistic and protective characters. As I commented, while I do not focus on the intention of the filmmakers, it is clear that their documentary contains all the elements of any epic tale, from the detonation of the conflict to the redemption of the hero, who has been transformed through the battle. In addition, whether intentional or not --does not matter, as we speak about the story, not the authors’ intentions--, the film also highlights the talents and support of the hero’s mentors and protectors. At the end of the documentary, Antonio asserts that his life is full of purpose (as opposed to his initial state, when he asked God to be killed or imprisoned).

8.1.3. The Case and its Witnesses

There is a key witness who had not previously participated in a criminal trial in Mexico: the film camera. As explained earlier, the documentary is a witnessing text itself,

and the camera is its vehicle. In Antonio's words: "from the moment you get into the prison you are useless. You don't matter. You are nobody. You are guilty. The first time we brought the camera we balanced things out" (4). That is why the camera, in its condition of public eye, becomes a vehicle of witnessing and social pressure.

As mentioned, the filmmakers' recordings were used as the main evidence for the defense in the appeal. One of the three higher court judges explains to the camera that, at the beginning, he was not convinced of Antonio's innocence. Neither his other two colleagues, who considered him guilty. According to the judge, it was precisely the film that convinced him of Antonio's innocence. Since none of the senior judges were present at the second trial, the camera became the strongest evidence of the legal appeal.

However, according to Peters (2009), recording should be considered the weakest and less reliable form of witnessing. This kind of witnessing means the absence of the viewer both in time and space of the actual facts, the type that Frosh denominates a pseudo-witnessing. Furthermore, it means a mediating process in which several choices have been made before the viewer has the chance to see the result. In John Ellis words: "(t)he viewers of audiovisual material do not see and hear for themselves: they are the persons to whom a particularly complex form of testimony is directed" (Frosh et al. 2009; p. 75). Even among high-educated viewers, this mediation process may be overlooked, as shown in the interview with the judge of the superior court.

There are also human witnesses within *Presumed Guilty*: "Insofar as media witnessing is concerned, mediators determine who qualifies as a witnesses. Their choice has to do with technical, professional, circumstantial, and ideological considerations that may differ from one report to another" (Frosh et. al. 2009; p. 139). In this case, the presence of witnesses is crucial both within the legal case and the storytelling. The difference is the way in which these witnesses are depicted. Two police commanders and the victim's cousin testify against the accused. The defense witnesses are three market traders who claim to have seen Antonio in his market stall the day of the crime.

During the trial, the prosecution witnesses are questioned by Rafael Heredia, defense attorney, and by Antonio himself in the face-offs (confrontations between the accused and the accusers). The witnesses, indeed, fall into contradictions and claim to have forgotten important details too. However, it is important to note that each of these

omissions or contradictions is highlighted by the producers who, either facing the camera, showing graphics, or through voice-over, point out each inconsistency as evidence of perjury (one can argue that this is their job as defense lawyers, but it may be argued then that as filmmakers this uneven depiction of the witnesses has a strong impact as moral judgments about them). Actually, in one of the scenes of the trial the voice of the legal secretary is heard while she reads the sanctions which may be applied to those who give false testimony. At the same time, the camera shows two prosecution witnesses talking to each other and nodding at the back of the courtroom (their voices are inaudible, though). After a while, they both look directly at the camera (one of them smiling confidently). Then, a sinister laughs effect is heard as background, and a macabre melody begins.



Figure 8.1.3 Still of *Presumed Guilty*. The prosecution's witnesses chatting at the trial

On the other hand, the defense witnesses are not interrogated thoroughly –the producers just ask if they saw Antonio the day of the murder and if they remember anything else--, and since they are not called to trial, it is impossible to know if they would have also fallen into contradictions or forgetfulness.

But witnessing is not just about legal facts in this film. As discussed before, considerable parts of the documentary are dedicated to show the sufferings of Antonio and

his beloved. According to Ellis: “(t)o hear the account of an individual implies a powerful interpersonal relationship: one of belief and sympathy” (Frosh et al 2009; p.75). For instance, in many scenes, Antonio and Eva Gutiérrez, his girlfriend –who later becomes his wife— give testimony of the pain that they have suffered from the moment of the arrest. The film has abundant examples of scenes which emphasizes the fear and sufferings of the couple (others show also their love and struggle). The following list shows some of these scenes:

- a) Antonio explains that the courtrooms and the cells are connected by a claustrophobic and dark corridor, called The Tunnel. The constant exhibition of these gloomy corridors helps to reinforce the notion of a human being trapped in hell.
- b) Antonio narrates the unfair conditions in which he was arrested and mistreated in jail. Tears prevent him to talk sometimes.
- c) When Eva contacts the producers she explains how she couldn't believe the judge's decision (Antonio told her by phone about his twenty-year sentence). She cries and expresses her pain.
- d) She describes the sexual harassment that she has suffered by the prison guards when she visits Antonio. She cries and expresses her helplessness.
- e) Eva explains that she has to work very hard in order to financially support Antonio (inmates need money to pay for basic products or even “fees” to other inmates).
- f) Eva and Antonio get married in a collective ceremony in the prison. The camera shows many newly wedded couples kissing, laughing and dancing. (Photo)
- g) Eva is really nervous before the new decision of the judge, she doesn't eat or sleep well.
- h) She is pregnant when the judge sentences Antonio (in the second trial) to twenty years of prison again. The film shows a scene where Eva and Antonio's friends cry desperately after the sentence is made public. A friend tells Eva that her baby would be very sad to see her mom like this.
- i) She delivers her baby hoping that her birth represents a good omen for her father's liberation. Layda Negrete and Roberto Hernández are there, in the hospital, to support Eva and the family.



Figure 8.1.4 Still of *Presumed Guilty*. Antonio's wedding

These scenes are not meant to work as legal evidence, of course. Its inclusion serves narrative purposes. They show the human side of the story, the one that creates sympathy with the characters beyond the criminal conviction. This side also includes the relationship between the characters and the producers. For instance, Negrete and Hernández praise Antonio for his courage and intelligence, and encourage him to fight. In other scenes, they refer to the legal Mexican system as “perverse”, “filthy” and “unfair”. The story is based in this hero-villain dichotomy.

One can say that the producers give these persons a legitimate chance to tell their stories and express their pain, which can be perceived as a way to empower them within discourse. In this regard, the camera may be seen again a crucial role as the most important witness in this production. However, there is a complication in this emotional side of witnessing in this film. *Presumed Guilty* is structured as a case defense, perceived from the eyes –and the cameras—of the defense attorneys. Therefore, in Foucauldian terms, the power unbalance still remains. The speaking subjects, in possession of the knowledge and the cameras, decide who gives testimony in this discourse and in which way s(he) will be portrayed.

Whether Antonio is innocent or not, the fact is that in narrative terms only he, his wife and advocates are "humanized" in the film. Those who do not support his innocence are either portrayed as liars, or completely ignored on a personal level (their motives, opinions, feelings are not considered). In this sense, it can be said that the film works efficiently as a defense case and as a narrative, but in terms of documentary ethics does not show the other side of the story.

8.1.4. Narrative Resources

Temporality

In *Presumed Guilty*, temporality has an important role for storytelling purposes as it gives an emotional meaning to the time that Antonio spends in jail. The film is accounted chronologically and keeps track of the number of days that Antonio has been imprisoned. The documentary begins when Antonio has already been convicted and has spent more than a year in jail. There is no information about the appealing and his final liberation, so the viewer is compelled to follow the story and “stay in prison” with the character until the last minutes of the film. Narratively speaking, this suspense can help to keep the viewer interested in the story and also identified to some extent with the feeling of confinement of the protagonist. For instance, this chronological tracking becomes particularly emotional after Antonio is convicted, for the second time, to twenty years in prison. As Staffan Ericson points out in his text “The Times of Television: Representing, Anticipating, Forgetting the Cold War” (2011), “Hayden White suggests that the “realness” of any historical discourse consists, not only in events having occurred, but in their being remembered and placed in chronological sequence” (Ruin et. al. 2011; p. 146). In *Presumed Guilty*’s case this realness involves the moral value attached to this chronological structure. That means that the chronological line of the story does not only help the viewer to understand the case and the facts, but to visualize the long days of Antonio’s confinement in the prison. If words are not enough, the graphic register of the days in prison –featured in several parts of the film-- illustrate the protagonist’s desperation. At the end of the film, when Antonio’s liberation is revealed, a final recount of the days in jail provides meaningful information about the time that will never be retrieved to him. Thus, the events

are not only organized in time –the exposition, disruption, complication, climax and resolution of Antonio’s case–, but used as an effective narrative and emotional resource. This use of temporality has been developed also in other narratives –fiction films, novels— to elongate time and make the viewer/reader feel close to the protagonist’s state of mind and despair. Also, a similar use may be found in those detective series in which time is documented -showing the hours, days or months in which a case-takes place- both to establish the chronology of events and to highlight the urgency of the case resolution before a new crime is committed or the victim dies. Then, time conveys an emotion that engages the viewer in a deeper level.

Voice over

Narrative resources such as “...the use of the present tense and the first-person singular and plural [...], the presence of a dominant narrating voice and persona” (Frosh et al. 2009; pp. 52-3) fulfill the dual purpose of narrating and interpreting facts. Specifically, the voice over in *Presumed Guilty* has the voice of God’s role, that is, the leading voice within the narrative, the role of an omnipresent and omniscient narrator. Hernández and Negrete’s voices stand out throughout the documentary explaining, commenting and even judging the situations that the camera shows. After the first scenes where Antonio is introduced, Layda Negrete begins the narration of the case noting that their knowledge about the penal system comes from their position as lawyers and researches of the legal system: “Roberto and I are lawyers and have spent several years collecting statistics about the criminal system in Mexico” (5. My translation). As mentioned, they also explain that there is a previous short film about their research results, which situates their narrative voices at a level of credibility as well. Then, Negrete and Hernández’ voices are heard during the film both as narrators and characters of the story. When they narrate, they mostly stick to the details of the case; when they speak in front of the camera as characters, they express personal opinions and feelings. This distinction achieves to create a certain distance between the “objective” voice of the narrator and the “human” voice of the lawyers. In *Presumed Guilty*, there are no amateur chroniclers who share their spontaneous impressions about a situation that is happening in that moment; instead, voice over narrates and interprets facts that already happened, from an expert point of view.

8.2. Power-Knowledge and Speaking Subjects

The second component of these discourses is the speaking subjects, that is, the ones with the power and the knowledge to organize discourse, decide who is featured in the film as a witness, and in which way each witness will be portrayed. In this sense, their power as speaking subjects and organizers is stronger than the individual voices of the witnesses. This also means that they have the power to present themselves as lawyers with legal expertise in the legal discourse, and as witnesses and concerned human beings seeking for justice in the narrative discourse.

Authority is often connected to power. As discussed previously, Foucault explains how the speaking subjects are backed by an institutional apparatus that authorizes their enunciations. In this sense, “saying” is not the same as “enunciating”. This means that in order to become a speaking subject within a given discourse is not enough to say something about a topic, but to be entitled to speak by the apparatus, to have the knowledge and the expertise to influence others and create new knowledge. Thus, knowledge is a crucial concept since it is both the starting point and the result of discourse. As mentioned before, Foucault illustrates the concepts of power-knowledge within the medical and legal discourses, in which the persons with no knowledge, the so called mad and criminals, are voiceless. While in *Presumed Guilty* there are many characters who talk or give testimony about what they have experienced, just two of them have the knowledge, authority and influence to film, organize and give meaning to the facts. Also, only two had the chance to decide who were featured in the film and in which way they would be portrayed. These persons are at the same time researchers, lawyers, filmmakers and producers of the documentary. They are Layda Negrete and Roberto Hernández.

In *Presumed Guilty* the legal discourse is developed from a position of knowledge and expertise. The documentary is not a klutz-film, on the contrary, the filmmakers have a higher position than the average viewer, being so deeply informed about the case and possessing the legal expertise as well. The documentary is constructed from Hernández and Negrete’s account, and leaves aside other sources (i.e. interviews to academics, other lawyers and judges). This means that there is only one point of view about the case in this film as opposed to non-participatory documentaries in which the filmmakers do not take prominence or the leading voice.

Negrete and Hernández are the speaking subjects, both as lawyers and filmmakers. They were contacted by Antonio's girlfriend, who watched their previous film *The Tunnel* (2006), and asked their professional help. In this regard, the couple was not only acknowledged as a team of important lawyers, but as filmmakers as well. In this regard, the speaking subjects hold authority in both institutional apparatuses, namely, the legal system and the documentary genre. Hernández and Negrete were trusted in both apparatuses as speaking subjects. Within the legal system, they were literally authorized to bring the camera to the court-room for the first time. As filmmakers, they were also trusted by Antonio and his friends, who not only seek their help but consented to be interviewed and featured in the film.

As mentioned, Negrete and Hernández also decided who would be featured in the film and in which way to portray them. The credibility of the witnesses is not only developed through their own words and testimonies, but through the authority of the documentarists as prominent experts. Within the documentary discourse, authority is also linked to credibility. As Ellis has noted, is not enough to record: "if it is to acquire meaning and significance, it must be enounced by an agent" (Frosh et al. 2009; p. 77). This agent then acquires the status of a witness, with the possession of a knowledge that the others lack. Knowledge about the actual events, but also expertise to represent or interpret them.

At one point in the film, Hernandez explains to Antonio's friends, that he and his wife are moving to Berkeley to begin his PhD, so he cannot guarantee his help. Then he recommends them to make Antonio's case public, to bring it to the media and expose what had happened to him (6). His suggestion is extremely interesting as it relates to this study's discussion about power-knowledge. Hernández suggests to Antonio's friends something that seems to be unrealizable: an average person cannot enunciate within a given discourse. A person without knowledge and credibility does not have discursive power. This means that this person may say things about a topic and try to make them public, but the apparatus would not authorized these words. In other words, without Hernández and Negrete's knowledge and power within the legal and film discourses, the words of Antonio may be the ones of another criminal claiming to be innocent. One can ask then if this documentary would have achieved such notoriety and received so many awards if the filmmaker was the accused himself, or his friends (young women from a non-privileged social class and with

no legal knowledge)? Would it have been possible for them to attain the same level of credibility as the producers, known filmmaker and Ph. D. students at Berkeley?

Then, Foucault's notions are applicable in this case: the film is not supported exclusively by legal facts or plain footage, but by the power-knowledge of the filmmakers. Not anyone has the power to state and wield authority in a particular discourse. As I quoted before referring to the witnesses' status, the speaking subject's "*enunciation* carries more weight than an identical witnessing discourse made by, for instance, a nurse, orderly, or patient" (2009; p.149. Emphasis in the original).

The voice of Antonio, the "criminal" according to the legal court that convicted him, is distrusted by the system. As previously discussed, knowledge is intimately connected to authority and power in Foucault's theory, who elaborates precisely on the incredibility of the convicted and the mad in his works *Discipline and Punish: The Birth of the Prison* (1975) and *The Discourse on Language* (1972) respectively. The words of the mentally ill were first ignored and then heard from a position of superiority "...we have only to think of the systems by which we decipher this speech; we have only to think of the network of institutions established to permit doctors and psychoanalysts to listen to the mad..." (Foucault 1972; 217). The position of the psychologist –the expert, the science man– remains at a level of authority and expertise. The space given for the patient to speak is never in terms of equality; this science man listens to the patient's words just to diagnose and treat him later, that is, to demonstrate the medical principles of his practice. The same happens in the legal system, in which the word of the accused is no longer the word of an equal, but of the Other, the one that has become the study object.

While this short reflection is merely hypothetical, it may illustrate the operation of the power-knowledge duo within a given discourse. This documentary is legitimized to a large degree by the speaking subjects' position as experts. The overwhelming inefficiency of the criminal system cannot be denounced by anyone. It is essential the presence of subjects with authority. In this case, the subjects have shown to have it within the two film discourses.

8.3. The Institutional Apparatus

As I commented previously, in the final appeal, Hernandez and Negrete's recordings were used as evidence of the irregularities committed during the legal process of Antonio. As a result, he was not exonerated, but liberated under the juridical principle *in dubio pro reo*. The phrase, which comes from Latin, is translated as "in doubt, for the accused", meaning that the law should be in favor of the convicted when there is doubt. Either way, it is interesting to note that these recordings were not only admitted as evidence, but actually contributed to the defendant's release. That is, without the presence of the judges in the trial, recorded witnessing was considered accurate enough.

While it is important to note that I do not intend to suggest that the filmmakers falsified or concealed facts in their recordings, I do seek to point out that what one sees in any film footage is the result of a series of decisions concerning selection, editing and moral judgments about the case and its participants. As Peters notes "(t)he conventional wisdom about film and photography today, however, is the inescapability of interest in all representation" (Frosh et al. 2009; p.34). One could argue that this is already known in media theory, but, still, the fact that this has been discussed before does not change the everyday perceptions about documentary films. Even a high-educated viewer, like a senior judge, may read a documentary as an accurate reflection of reality, which could mean that the institutional apparatuses of the legal and documentary practices, have the power to legitimize a representation that, if made by an amateur, would not have the same value.

The example is the testimony of Salvador Ávalos Sandoval, one of the senior judges that liberated Antonio, who explains that, after reading the penal file, two of his peers were convinced of Antonio's culpability. One of these judges claimed that the defense witnesses were too distant from the time of the crime. That they were coached by the defense, prepared witnesses (7). Then, Avalos explains to the camera that he watched the film carefully, observing the prosecution witnesses' gestures during the trial, and that this careful observation revealed many things to him (he does not specify what sort of things). After that, he convinced his two colleagues that there was reasonable doubt about Antonio's culpability. Thus, the film had a decisive role as main evidence, used to settle on the reasonable doubt principle.

This documentary is an example of the authority of the institutional apparatus' operation. The film was considered a legitimate source of knowledge about reality, accepted both as a reliable witnessing text and legal evidence. In this regard, Hall points out that the institutional dimension of discourses "forces us to be alert to the particular forms of knowledge and expertise which are associated with the representations at each of these sites. (2013; p. 301). In this case, it is possible to say that the legal knowledge of the producers achieves a new form of authority within a media text, one that legitimizes their representation as admissible legal evidence of a case.

Again, one has to consider that the lawyers belong to the legal discursive formation as well as the judges and prosecutors. In fact, their authority comes from the legal apparatus, regardless of the criticism they express towards it. As documentary filmmakers, they are also authorized witnesses, whose credibility is not only developed as individuals, but as representatives of a genre apparatus through their previous work.

8.4. Ethical Considerations

As mentioned before, is not in the scope of this study to answer the ethical questionings derived from the documentary practice, but it is to point out its inconsistencies, particularly in the case of a documentary that illustrates what may be an interest-conflict representation, and yet is awarded in many countries. The relevance of this questioning may be answered if we consider that "(t)he involvement of documentarist and participant post-transmission or release has never figured much in discussions about documentary, whether scholarly or professional" (Winston 2000; p. 129). In this regard, this paper is concerned with two questions already formulated; one is about the ethical limitations of filming common individuals without their permission. The other deals with the filmmakers' personal interests which affect the accuracy of representation.

The film producers have defended their right to film relying on two legal protections. The first one is the court's permission to film. This permit was granted by the authorities based on the role of the producers as criminal lawyers, researchers and advisors in the case (that is, their authority as speaking subjects). "Any measure of dubious or even unethical behavior is justified after the event by the existence of the contract signed by the participant, the release form (2000; p. 129)". But this professional consent defense, as

Winston calls it, concerns exclusively the court's authorization, as none of the prosecution witnesses gave individual consent to be filmed. Their participation, both in the trial and the film, was requested, as they note within the footage. Thus, the presence of the camera was allowed, but not welcomed by all the participants. The second is the right to freedom of expression, which allowed the producers the subsequent screening of the documentary.

However, these two rights favor only the ones with the speaking voice within the story. The prosecution witnesses, on the other hand, seem to be unprotected. Legally, there is nothing objectionable in the filming, but ethically speaking it may be noted the power imbalance between filmmakers and witnesses. Yet, it can be argued that the inclusion of these testimonies is relevant both for the trial and the film but, then, it may be asked back: is it necessary to show the witnesses' faces? It is worth recalling that one of them is a youngster who, as speculated in the film, could have been threatened by the police detectives to give false testimony. As has been discussed previously, the defense of Antonio is based both on the lack of physical proof and the false testimony of the witnesses, which means that their depiction is indisputably negative and damaging to them. Besides, it is useful to remember that "(p)eople do not necessarily know how to behave in unfamiliar situations and making documentaries remains outside common experience" (Winston 2000; p. 137). This could be a possible explanation of the hesitations and contradictions of this young witness, who was asked to testify more than a year after the first trial and facing a camera. Of course, one can never know if that was the case, but the film's openly negative depiction of the witnesses, may be understood as a case of "the ends justifies the means". Is it ethically acceptable to film and exhibit in film theaters all over the world the face of a person that allegedly committed perjury? Wouldn't this filmic prosecution be similar to the actions of the judge that assumed Antonio's culpability and sentenced him to twenty years of prison? As I said before, I cannot answer these questions, but I consider important to note them.

This matter was actually discussed in court, after the law suits that the producers faced. As I mentioned, a judge ruled in favor of them on the basis of freedom of expression. In a message posted on CNN Mexico Roberto Hernández, director and producer, said: "This sentence is very favorable. It gives the message that we were right, that this was not illegal, that filming a trial is journalistically appropriate" (8). However, one has to

remember that this documentary shows much more than the filming of the trial, as it has been explained throughout this paper. Their representation provides moral value and transforms footage into a meaningful narrative.

The second matter to consider is the producers' involvement in the case. According to Brian Winston, one of the features that distinguish the role of the documentarists is that "they are empowered as mediating artists supposedly more distant from their subjects" (2000; p. 129). As discussed before, this distance may depend on the type of documentary – participatory documentaries exclude this distance in most of the cases--, but this case seems to be unusual as their involvement is not only evident, but highlighted throughout the film. Personal bonds between the producers and the characters is developed from the moment in which they show that Antonio's girlfriend called them, and that they accepted to help despite their time limitations (they are moving to Berkeley to begin their Ph. D.). While this bonding is not perceived as an ethical obstacle within the narrative it shows that the film is constructed from a personal interest position. As Peters points out: "(n)on-Christians, convicts, interested parties, spouses, children, the insane, or those standing in a relationship of professional privilege with the defendant have all been considered hindered in truth-telling or as possessing special motives to fabrication"(2009;27). Yet, in this documentary the interested parties not only give testimony, but organize the whole film.

9. Conclusions

The discourses within *Presumed Guilty* are authorized significantly by the filmmakers' knowledge as expert speaking subjects. The legal discourse is carefully structured as a defense case, addressing the viewers as the jury during the trial. The evidence is presented intercalating information and arguments, as well as the interrogation of the prosecution's witnesses. This discourse may be seen as an intellectual approach to the case, one that persuades about the defendant's innocence through facts. Rhetorically speaking, this discourse is based in the *logos*, namely, the deductive reasonings presented to approach a given subject.

The narrative discourse is equally sustained by knowledge, but here the position of the producers as researchers and expert legal counselors is overpowered by their humanitarian side and their skills as storytellers. This discourse is supported by the images,

music and testimonies that address the audience's emotions. It focuses on the *ethos* and the *pathos* of the rhetoric structure. The first relates to the credibility and influence of the speaking subject within the discourse (the knowledge of this subject plays a key role for this matter); the second seeks to generate emotions in the audience through narrative or literary devices.

As it may be seen, this documentary is a complex representation as it is created by individuals who have evident professional interests in the case they represent legally and cinematographically. This could be seen, paradoxically, as the strongest and weakest point of the film's discourses. Strong, since this involvement shows the deep knowledge and commitment –personal and professional- that the filmmakers developed about the subject. Also, their status empowers the case's exposition and actually held the authority to be admitted as evidence in a supreme court.

Weak or questionable in ethical terms since this involvement may have obscured the limits of their representation as an ethically correct documentary, leaving aside the rights of some of the witnesses in their eagerness to prove a point. In this regard, it may be concluded that Foucault's explanations about the connection between knowledge and power is demonstrated in this discourse: the speaking subjects undoubtedly achieved a great level of credibility and influence by the authority they hold as brilliant lawyers and awarded filmmakers. Not only the audience, but the journalists, critics, and the film community in general, approved and awarded the film. This recognition demonstrates that the documentary is not operating outside of the two discursive formations –the legal and the film systems--, but is actually legitimized by both. Layda Negrete and Roberto Hernández certainly criticizes the legal system, but their authority come at the same time from their privileged position as part of the system they expose. In this regard, one can only remember Foucault's observation: "Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it" (1978; p. 101).

10. Notes

1. Hernández Roberto and Smith Geoffrey (2011). *Presumed Guilty*. Minute 05:09: “Lo más importante de la investigación que hicimos fue descubrir que a los policías y a varias autoridades del sistema penal los premian por personas detenidas y acusadas”.
2. Hernández Roberto and Smith Geoffrey (2011). *Presumed Guilty*. Minute 44:45: “Entonces por eso hemos estado entrenando a Toño”.
3. POV Interactive. (2010) *Presumed Guilty –Behind the Lens POV on PBS*. Interview to Roberto Hernández and Layda Negrete by Jetsy Ford. <http://www.youtube.com/watch?v=rHTsdyMh814> Accessed: 01/05/2014.
4. Hernández Roberto and Smith Geoffrey (2011). *Presumed Guilty*. Minute 24:52. “Desde que yo entro al reclusorio tú no sirves para nada. No importas. No nada. O sea no eres nadie, eres un culpable. La primera vez que llegamos con la cámara equilibró esto”.
5. Hernández Roberto and Smith Geoffrey (2011). *Presumed Guilty*. Minute 05:00 “Roberto y yo somos abogados y llevábamos varios años recabando estadísticas sobre el sistema de justicia mexicano”.
6. Hernández Roberto and Smith Geoffrey (2011). *Presumed Guilty*. Minute 09:19. “Difundan esto. Esto es lo mejor que tienen. O sea, en la televisión, en el radio, con quien se pueda, con quien se deje”.
7. Hernández Roberto and Smith Geoffrey (2011). *Presumed Guilty*. Minute 1:17:55. “Son testigos a muy larga distancia de los hechos. Son testigos aleccionados por la defensa. Son testigos preparados”.
8. “Un juez absuelve a productores de 'Presunto culpable' de 19 demandas”. CNN México. Jueves, 30 de enero de 2014 a las 15:59. <http://mexico.cnn.com/entretenimiento/2014/01/30/un-juez-absuelve-a-productores-de-presunto-culpable-de-19-demandas>. Accessed: March 26, 2014.

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