



Visual Evidence as Legal Fiction in *Queen's Bench III*

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Abstract

The name *Queen's Bench III* (1990) signifies that the criminal case in this film is tried in the High Court of Justice within the English legal system. Moreover, its Cantonese title 古惑(or 蠱惑, gu2 waak6)大律師 (A Mischievous Lawyer. Gǔ huò dà lǚ shī in Mandarin) refers to the characteristics of the protagonist, Zhang, a Hong Kong barrister, who is resourceful and full of unexpected legal tricks. On the night before Chen Tsu Hui (陳子輝), a local hooligan, is set to move to the U.S., he secretly meets his lover, Ms Chen, who is engaged to a wealthy man. On his way back home, he finds an unconscious girl, who has been choked and raped by the son of the village leader, Li Fan Gen (李範根). She is close to death, and so he performs CPR. However, the villagers, misunderstanding the scene, believe he is molesting the girl. They arrest and beat him and then send him to the police station. Chen Tsu Hui is subsequently charged with murder after the girl dies in hospital. Barrister Zhang accepts a pro bono offer from the government to be Chen Tsu Hui's defence lawyer. Since Chen Tsu Hui has an ignominious life record and the true culprit imputes guilt to Chen Tsu Hui for his crime, Chen Tsu Hui looks to be losing the court case, despite the excellent performance of his lawyer, Barrister Zhang. Therefore, Barrister Zhang decides to falsify a film on VHS using CCTV (not prevalent in the early 90s), in which someone is violating the victim according to the culprit's description of the crime scene. Ultimately, the culprit confesses that it was he who killed the girl. The truth is phenomenological. At the moment something happens, the truth is open to interpretation. The truth of something can only be understood in a historical context. As Gadamer says, "understanding is, essentially, a historically effected event". That is to say, the truth is only a logical product made by our minds, as Vaihinger says, "our subject is the active activity of the logical function; the products of this activity—fictions." In this paper, I will examine the connection between truth and fiction in *Queen's Bench III*, represented by a videotape as visual evidence, in which a fiction that imitates the truth is the truth of the case that has been lost.

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1 Introduction

According to some classical principles about evidence, the judges of the courtroom trials should value three types of evidence: “witnesses,” “documents” (evidence supplied by information in texts), and “real evidence” (evidence from things) (Vadim 67), which require a paramount number of verbal explanations and interpretations. As Vadim Verenich says:

For a long period of time, the first two instruments, i.e., witnesses (oral verbal evidence) and documents (written, verbal evidence), have been privileged over all types of visual demonstrative evidence. (Vadim 67)

The visual evidence, which is included as factual evidence, has less value than verbal/written evidence due to its non-verbal, self-explanatory, and misleading (or even deceptive) nature [1].

In this media and digital age, the court as an institution has drastically changed. In the past, people in court could only see some objective evidence and listen to the witnesses' testimonies. It must be shocking and confusing when people experience the power of such self-approving visual evidence for the first time in a courtroom. Moreover, it is not difficult to imagine how people are heavily influenced by and susceptible to visual evidence. *Queen's Bench III* (1990) is a courtroom drama that depicts how visual evidence serves to bring about justice in an unprecedented but comical and satirical manner at a time when CCTV [2] and VHS were still not applied extensively either in real life or in the court [3].

The name *Queen's Bench III* (1990) signifies that the criminal case in this film is tried in the High Court of Justice within the English legal system [4]. Moreover, its Cantonese title 古惑 (or 蠱惑, gu2 waak6) 大律師 (A Mischievous Lawyer. Gú huò dà lǚ shī in Mandarin) [5] refers to the characteristics of the protagonist, a Hong Kong Barrister Zhang, who is resourceful and full of unexpected legal tricks [6].

On the night before Chen Tsu Hui (陳子輝), a local hooligan, is set to move to the U.S., he secretly meets his lover, Ms Chen, who is engaged to a wealthy man. On his way back home, he finds an unconscious girl, who has been choked and raped by the son of the village leader, Li Fan Gen (李範根). He uses CPR in an attempt to resuscitate her. However, the villagers believe that he is molesting the girl, and so they arrest and beat him and send him to the police station. Mr Chen is then charged with murder because the girl dies in the hospital afterwards.

Barrister Zhang accepts a pro bono offer from the government to be Chen Tsu Hui's defence lawyer. Since Chen Tsu Hui has an ignominious life record and the true culprit imputes guilt to Chen Tsu Hui for his crime, Chen Tsu Hui looks to be losing the court case, despite the excellent performance of his lawyer, Barrister Zhang. Therefore, Barrister Zhang must fabricate a VHS from a CCTV, in which someone is violating the victim, as described by Li's description of the crime scene. In the end,

Li confesses that it was he who killed the girl. In this paper, I will examine how a paradoxical phenomenon, as truth and fiction co-exist, in *Queen's Bench III*, is represented by the duality of the visual evidence, a VHS videotape, as a semiotic tool that denotes the uncertainty of reality [7].

2 Fiction in Law and Literature

2.1 Fiction and Language

Language, based on Ferdinand de Saussure, is a system of signs that represents, but will never be, the signified to which a signifier refers. Moreover, language does not have meaning in itself. Meaning is, in fact, created by the necessary phonetic and grammatical differences—for example, *tree* is *tree* is because *tree* is not *three*. As Saussure says in *Course in General Linguistics*:

Everything that has been said up to this point boils down to this: in language there are only differences. Even more important: [...]; but in language there are only differences without positive terms. Whether we take the signified or the signifier, language has neither ideas nor sounds that existed before the linguistic system, but only conceptual and phonic substance that a sign contains is of less importance than the other signs that surround it. (Saussure 120) [8]

Furthermore, the meaning of language, most of the time, is not determined solely by the differences between words or by the grammatical syntax, but by the context. Based on one of Derrida's examples of performative utterances, the "I" who says "Yes, I do" in a wedding ceremony is not the real "I" as a personal identity, but the "I" who commits by saying "Yes, I do" to complete the performance. Without "Yes, I do", the ceremony cannot be completed and "I" cannot be established; therefore, I, the groom, as an element of a wedding, need to say it even though the personal "I" might not want to. As Derrida states in "A Certain Impossible Possibility of Saying the Event":

[T]here's an utterance that is called performative and that does in speaking. For instance, when I make a promise, I'm not saying an event; I'm producing it by my commitment. I promise or I say. I say "yes," I started out by saying "yes" earlier. The "yes" is performative. The example that is always cited in speaking about performative utterances is that of marriage, the "I do" [oui in French] in answer to "Do you take this man or this woman [...]?" does not say the event, it makes it, it constitutes the event. It's a speech-event, a saying-event. (Derrida 446) [9]

Language, as a sign system, is used to describe empirical and psychological (natural or supernatural) phenomena; however, language is sometimes unable to meticulously depict reality. Bentham used the concepts of *in* motion and *at* rest to explain that a person is not moving *in* a box or resting *at* a place like a dog chained to a pole (Ben-

tham 1932: 13) [10]. A person is *in* motion when that person is changing position over time, and a person is *at* rest when that person is not changing position over time. Therefore, *in* motion and *at* rest, even though they are very useful in describing reality, are still fictitious.

2.2 Fiction and Law

Fiction can be an alteration, or even a manipulation, of reality. Due to the fictitious nature of language and the potentially deceiving nature of fiction (Bentham 1932: 141) [10], even though fiction “in the logical sense, has been the coin of necessity” (Bentham 1932: 18), people—especially lawyers—should avoid using it. If using fiction is necessary, users’ discretion is advised, and it should not be used to deceive. Otherwise, as Bentham says:

By the priest and the lawyer, in whatsoever shape Fiction has been employed, it has had for its object or effect, or both, to deceive, and by deception, to govern, and by governing, to promote the interest, real or supposed, of the party addressing, at the expense of the party addressed. (Bentham 1932: 18)

That is to say, based on the above-mentioned points, language can be contextual, meaningless, and inconceivable, even if the addresser genuinely intends to express what he has in mind. In addition, language can be fictitious, diverting the listeners from the truth. Despite the potentially fictitious nature of language and its other disadvantages, fiction, in both law and literature, is not always used to deceive; it is also used to explore the unknown. As Knauer says, “The traditional legal fiction is an enabler. It is a device used to facilitate the application of the law to novel legal questions and circumstances.” (Knauer 9) [11]

The concept of fiction applies to both law and literature. In law, even when facing an unprecedented case, a judge must decide and cannot say, “For the litigation now before me there happen to be no clearly formulated legal rules, so I shall simply leave it undecided” or “The facts of the case before me fall outside the constraints of established law; I shall therefore decide for the defendant and dismiss the plaintiff’s complaint” (Fuller X) [12]. The judge, as well as the legislator and the lawyer, needs to pretend to accept that a fabricated, fictitious scenario is real, which is logically explainable but unreal, such as treating a corporation as a real human being, even though it is not, that can encompass and be applied to both existing cases and unprecedented ones. Such a practice is necessary; otherwise, the current law would never be sufficient to cover all possible cases, especially in today’s constantly changing world. Therefore, despite the potential deceptive nature and falsity of fiction, we still need to utilise it in a constructive way, whether with complete or partial consciousness, (Fuller 9) [12, 13] for the sake of improvement and the future of the law and whole mankind.

Therefore, legal fiction can also be considered as a narrative that extends legal principles to cover rare cases—situations that are seldom encountered but that can be explained through existing legal theoretical frameworks. In addition, legal fiction can be employed to predict future scenarios by imagining completely impossible situa-

tions that share a logical similarity to existing cases. In other words, legal fiction is a narrative tool that envisions all possible situations to which current legal principles might apply.

2.3 Fiction and Literature

In literature, a narrative may depict unimaginable events, yet it can still be interpreted through various literary theories or philosophical frameworks. Therefore, even if something is uncanny, it still can be understood through its inner logical coherence. Even if a narrative is indecipherable as a dream, it is still a fiction with a degree of certainty that both metaphors and metonymies are generated. That is to say, even if a story is written in a surreal or dreamlike manner, it still represents real life and the real world because dreams are the reorganisation of symbols and signs embedded with meanings from reality. As Raman Selden states:

The unconscious hides meaning in symbolic images which need to be deciphered. Dream images undergo 'condensation' (several images combine) and 'displacement' (significance shifts from one image to a contiguous one). Lacan calls the first process 'metaphor' and the second 'metonymy'. In other words, he believes that the garbled and enigmatic dream-work follows the laws of the signifier. (Selden 158) [14]

In literary studies, legal fiction refers to narratives that depict legal cases and ideas, including representations of how law functions and is conceptualised in literature, including film and other narrative art forms. Writers employ fiction to expose the confrontation between competing legal ideas, to imagine forms of justice that are absent in reality, and to construct literary worlds shaped by and organised around law. In this sense, legal fiction in literature is connected to both the unreal elements of the literary world and to the facts in the real world [15].

For example, even if a legal case portrayed in a novel is fictional and has never occurred in reality, it can still represent real-world (in a particular region on Earth, not on Mars) cases that follow similar legal logic and reflect the social conditions in which such cases arise. Furthermore, a case depicted in the literary world may still plausibly occur in the real world one day. In this sense, the case presented in a novel is both unreal and real – unreal because it is fictional, yet real because of its legal logic, social significance, and probability of happening. Legal fiction in literature, that is to say, like legal fiction in law, functions as a means of exploring possibilities and uncovering what is not yet known.

3 Factual and Fictional in Legal Fiction

Based on the above-mentioned, therefore, in contrast to the negative implications of fiction mentioned by Bentham (Bentham 1843, IX 77) [16], I, as a literary scholar, will take a rather neutral notion of legal fiction in this paper: Legal fiction depicts how legal decision-making and literary writing are logical and imaginary activities of

the psyche – the neurological activities in the brain caused by the interaction between the external stimuli and the mind [17]. As Vaihinger says:

The mind is not merely appropriative, it is also assimilative and constructive. In the course of its growth, it creates its organs of its own accord in virtue of its adaptable constitution, but only when stimulated from without, and adapts them to external circumstances. Such organs, created by the psyche for itself in response to external stimuli, are, for example, forms of perception and thought, and certain concepts and other logical constructs. Logical thought, with which we are especially concerned here, is an active appropriation of the outer world, a useful organic elaboration of the material of sensation. Logical thought is therefore an organic function of the psyche. (Vaihinger 2) [18]

And he continues to explicitly state that fiction is the result of the psychological activity:

We are therefore dealing with a peculiar kind of logical product, a special manifestation of the logical function. We have already seen that this peculiar activity is expressed in what we call artifices, that its products are artificial concepts. We would here, anticipating the outcome, substitute other terms for these expressions; our subject is the Active activity of the logical function; the products of this activity—fictions. (Vaihinger 12)

Fiction and fact seem to be two mutually exclusive entities. However, as mentioned above, even if the law in a film or a novel is fictional, it still represents something factual in the real world. Fiction and fact are two ends of a continuum, with most narratives falling in between. As Marie-Laure Ryan pleads: “Rather than trying to draw a strict dividing line between fact and fiction, why not arrange narrative texts along a continuum, based on the proportion of truth and invention?” (Marie-Laure 8) [19] This continuum can also be analogised to different shades of a colour, as a Chinese Taichi yin-yang diagram, where there is neither a complete fact nor a complete fiction—a fact always has something fictional inside, and vice versa.

To facts, there seems to be no room for interpretation. However, even facts as concrete and simple as the math equation “one plus one equals two” are still open to interpretation and challenge, as Bertrand Russell tried to debunk it. In law, a legal decision must be made based on evidence and testimony, which are considered facts. Nevertheless, they require construction through various narrations and interpretations. We can use food as an analogy: facts are the ingredients of reality. Interpretations are the cooking methods. Realities are the culinary presentations with different looks and flavours. None of them is the only truth, but all of them share a quality of the truth. As such, the stories told based on the same evidence by two parties in a trial, which might be contradictory, can also be considered not only as fact but also as fiction from a literary point of view. Both parties are chefs who use their own techniques and prepare different dishes with the same ingredients. Moreover, a narrative, in both written and spoken form, is a series of linguistic symbols. As suggested by Saussure’s theory regarding the signifier and the signified, the incongruity between them will make any narratives difficult to be certified as fact.

In addition, according to Gadamer, a reality in the past is not only constructed by facts, such as spoken, written, and physical evidence in a law case, but is also created by the interpretations of these facts. Even if the reality that once happened in history can be truthfully reproduced, it is not a copy of the past because the reality is in a different situation. As Gadamer says:

The fact that philological, legal, and theological hermeneutics originally belonged closely together depended on recognizing application as an integral element of all understanding. In both legal and theological hermeneutics there is an essential tension between the fixed text—the law or the gospel—on the one hand and, on the other, the sense arrived at by applying it at the concrete moment of interpretation, either in judgment or in preaching. A law does not exist in order to be understood historically, but to be concretized in its legal validity by being interpreted [...] This implies that the text, whether law or gospel, if it is to be understood properly—i.e., according to the claim it makes—must be understood every moment, in every concrete situation, in a new and different way. (Gadamer 307) [20]

A judge, a theologian, or a historian seeks to discover the truth from fixed texts. However, these fixed texts are not rubble in a ruin; they are constructive pieces like Lego. To understand them in a hermeneutic sense, we must apply all necessary means, including historical knowledge, analytical methods and tools, an awareness of the needs of our time, and the integrity of interpretations across history, as Ronald Dworkin's theory of law as integrity suggests: Law should be interpreted as a coherent whole over time within a legal community, guided by principled consistency [21]. Through this application (*Anwendung*), we may arrive at the truth; yet this truth is not a relic of the past, but an innovative construction that remains useful and meaningful in our present situation.

To determine what truly happened in a case (*subtilitas intelligendi*) and which legal statute applies to it is itself an interpretive process (*subtilitas explicandi*) that assigns meaning to the facts. The meanings derived from the same set of facts belong to the interpreters, not only because they approach the case with different backgrounds and preunderstandings, but also because they apply the facts to new and varying situations (*subtilitas applicandi*), shaping meaning so that it fits particular contexts. (Gadamer 306) This implies that application—even when a case has a transcendental, ontological, or phenomenological reality—renders that single reality differently for each interpreter. It may seem paradoxical that an original reality and the multiple realities produced through interpretation and application coexist. Yet the coexistence can be illustrated by the philosophical idea that the moon in the sky and its reflections in rivers all over the world are authentic [22].

Literature and law differ in that literature embraces multiplicity—acknowledging that many realities can coexist only if these realities are logically coherent, while bearing no responsibility for making concrete decisions. Law, by contrast (although it may permit competing versions of reality in court), must ultimately choose one possibility as the only truth to render a legal decision. It is similar to Schrödinger's

cat: the simultaneous states of life and death, based on the same facts, collapse into a single outcome at the moment when the law pronounces its judgment.

Who the culprit is in *Queen's Bench III* is not what the film seeks to illustrate, because the audience knows the truth from the beginning. This narrative strategy follows a literary convention of traditional Chinese legal stories in which, unlike Western detective stories, the identity of the real murderer is revealed to the audience at the outset. The real mission of the film is to assess the reliability and validity of the facts and to ensure that the actual criminal can be punished by law. However, when all the facts are against Mr Chen and there is no crucial evidence to prove that Li is the real culprit, this mission appears impossible. As a result, barely any legal evidence is presented by the defence attorney to ensure that justice is fulfilled.

4 The Courtroom Trials in *Queen's Bench III*

In law, different kinds of evidence – oral, written, photographic, and visual—are akin to literary texts that are open to interpretation and application. A text is presumptively neutral, and its original meaning corresponds with the author's intention (denotative meaning). However, the participants (both parties in the court and the audience) explore and find multiple meanings (connotative meanings) that align with their interests based on the same facts in the texts and their personal backgrounds. Interpretation is a human intervention: as the double-slit experiment suggests, it is the observer who determines whether light is made of particles or waves. As Vadim Verenich says:

At the same time, connotations are always culturally coded, because the secondary content of a connotative sign is added to its primary denotative meaning; the primary denotative sign lends it elements to serve new culturally coded functions. In plain words, we may say that the production of connotative meaning is always the result of human intervention. (Vadim 75)

Moreover, no interpretation is unbiased; everyone interprets evidence through their own lens and believes (or pretends) that their findings are the only truth. However, most people are unaware that our judgment is often biased by our social, economic, and cultural backgrounds. In the case of *Queen's Bench III*, Mr Chen, as described in the film, is an orphan who becomes a hooligan, has never held a decent job, and has been in and out of prison for petty crimes. What is worse, he is a stranger to the rural village where the crime in the film takes place. Even though he intended only to help, he is still considered the criminal by the villagers, which explains why he is almost beaten to death before being handed over to the police.

Prior to using the tape, Barrister Zhang cross-examines three witnesses of the prosecutor. In these three cross-examinations, the witnesses, in a sense, show their bias based on their impression of Mr Chen as a molester [23]. The first witness is an old man, witness A. He testifies that he saw Mr Chen and the victim talking on the beach and overheard Mr Chen saying that he wanted to make up with the victim. The victim said no, then they ran off together. The second witness is an old lady, witness

B, who testifies that she saw Mr Chen and the victim talking in front of her grocery store. She also identifies the victim in the photo as the girl she saw. Both witnesses, A and B, confirm that the man they saw is Mr Chen. The third witness, witness C, is a man in his thirties; he testifies that he saw Mr Chen choking the victim and that the victim was already dead. Because Mr Chen is a stranger to the villagers and has an embarrassing history, the witnesses are convinced and deceived by their memories that it was Mr Chen who killed the girl, even if the person they saw was the son of the head of the village, who is the real culprit. To the villagers and witnesses, Mr Chen is treated as a subject that fits all the criteria of a criminal—abandoned child, uneducated, former inmate, thief, and unemployed. However, even if those mentioned earlier are all facts, the image of Mr Chen as a conscious subject in a legal sense is fiction [24]. As Nietzsche says:

“The subject” is the fiction that many similar states in us are the effect of one substratum: but it is we who first created the “similarity” of these states; our adjusting them and making them similar is the fact, not their similarity. (Nietzsche 269) [25]

This fictional subject is constructed on the basis of prejudice. Mr Chen is perceived as a molester by the villagers, not because of the facts mentioned above, but because the villagers have built a similarity between a molester and someone with these personal experiences. As Henry Fonda says in *12 Angry Men* (1957): “It’s always difficult to keep personal prejudice out of a thing like this. Where you’re run into it, prejudice always obscures the truth” [26]. Fortunately, every witness’s testimony has its vulnerabilities. Barrister Zhang skilfully challenges both the credibility and the logical consistency of the witnesses’ accounts.

He questions A’s ability to hear. Although A is an elderly man with remarkably sharp hearing, he could not have heard anything on the beach that day. This is because the day he claims to have overheard the conversation coincided with a high tide, when the roar of the waves reached about 120 decibels, which was loud enough to drown out any voices. When Barrister Zhang discovers that B is easily intimidated and has a poor memory, he uses a pair of unusual glasses to unsettle her. He even shows her his own photograph, yet B firmly insists that the person in the photo is the victim. Barrister Zhang then turns to C’s powers of observation: he asks C to guess what he is doing while showing only his back, highlighting the uncertainty that C could tell what Mr Chen was doing to the victim. Next, Barrister Zhang lies motionless on the floor and asks C whether he appears dead – demonstrating the absurdity of claiming the victim was deceased merely because she was lying still on the ground.

As a result of Barrister Zhang’s unorthodox, albeit effective, courtroom skills as a lawyer, Mr Chen seems to gain the upper appears to be winning. However, the real culprit, the son of the head of the village, Li, comes forth and testifies in the court as an eyewitness who was at the crime scene and who knows details that nobody knows about. As the prosecutor says to Li: “I don’t care why you did not testify until now and whether your story is real or not. What matters to me is that there shouldn’t be any logical contradictions in your story.” Since there is no loophole in Li’s testimony, Barrister Zhang can only pretend to be sick and force the court to adjourn [27].

Barrister Zhang's mentor, his aunt as well, whose licence had been revoked by the Hong Kong government, suspects that Li is the culprit because he knows everything a true culprit would know, yet less than an eyewitness would know. The reason Li stands in the court is to frame Mr Chen as his scapegoat. Because of a lack of direct evidence, the culprit's confession becomes extremely crucial to this case [28]. If Barrister Zhang can make Li admit that he committed the crime, he can then prove Mr Chen's innocence. Therefore, Barrister Zhang challenges Li about why he did not describe the victim's reaction at the crime scene. It was because he strangled the victim from behind. However, it is not easy to make Li confess to the crime he committed without solid evidence. Therefore, Barrister Zhang fabricates a tape and instead forces Li to confess. This fabricated VHS tape recording, which is used as visual evidence in *Queen's Bench III*, not only accomplishes the mission of upholding justice but also blurs the boundary between fact and fiction, explores possible truths within a case, and invites discussion of how fact may reside within fiction from both legal and literary perspectives.

There are two concepts of truth in literature that can be applied to this film. The first is fictional truth. Even if a statement is only truthful in literature, it does not make the statement a lie because a statement is not meant to deceive. As Michael Riffaterre says: "The only reason that the phrase 'fictional truth' is not an oxymoron, as 'fictitious truth' would be, is that fiction is a genre whereas lies are not" (Riffaterre 1) [29]. The second is truth in fiction. Even with some literary characteristics, such as rhetoric and imagination, a statement that is truthful in literature can also be truthful in reality, even if it is fictional. As Marie-Laure Ryan says:

A distinctive feature of the rhetorical approach is that it does not use any notion of [a] fictional world: it divides statements into fictional ones, which are obviously invented, and factual ones, which describe reality. A text can therefore be a blend of fiction and fact. In a world-based conception of fiction [...] (Marie-Laure 2)

This film presents a literary world grounded in legal activity, yet it is not a simple reflection of reality. Instead, it offers a creative representation in which factual elements are rhetorically shaped and transformed. Through these crafted details, the audience can experience a courtroom trial almost immersively, even if they have never stepped inside an actual court. At the same time, they remain fully aware that the trial depicted on screen could never occur in the same way in the real world. This tension between immersion and awareness resonates with Robert Newsom's account of how fiction operates. As he argues:

Both the antinomy of fictional probability and the ways we have of working around it (and indeed of ignoring it) arise from what is in my view the most important feature of fictions, that in imaginatively entertaining them we necessarily split ourselves between real and fictional worlds. Such a split, I argue, is invisible to the game of entertaining fictions, for to recognize the split is to end the game. And the game is a good deal more difficult to get out of than is often supposed. (Newsom 10–11) [30]

In other words, the courtroom trial, narrative progression, and comical scenes in the film function as both fictional truths and truths in fiction. As viewers, we recognise what is real, what is fictional, and what is between the two, yet this recognition does not disrupt our engagement. Rather, we are able to move fluidly between being inside and outside the fictional world, participating in the “game” of fiction. The presence of real elements does not diminish the literary force of the fictional ones, nor do the fictional elements deceive us. Instead, fact and fiction collaborate to create a form of reality that is truthful both in relation to real courtroom experience and within the film’s own literary world. Moreover, the film’s language incorporates numerous legal terms drawn from the professional lexicon of the legal community. Therefore, despite its comical or uncanny moments, the film cannot be regarded as entirely fictional.

5 Visual Evidence

In the last scene of the film, Barrister Zhang shows a VHS tape of a CCTV recording of the crime scene to the audience and the jurors. Nowadays, CCTV recordings are commonly accepted as visual evidence; however, they were rare at the time the film was produced. There are a few things worth mentioning regarding visual evidence: first, in Hong Kong, there are no specific laws regulating visual evidence and the way it is displayed in court [31]. Visual evidence is treated the same as oral and written evidence (Porter 13) [32]. According to the *Rules of the High Court* in Hong Kong, “[t]he Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order. [33]. Since there are no laws on visual evidence, both parties in a trial could use visual evidence in a way that favours them.

Visual evidence is more influential than oral testimony and text because visual evidence, such as still and moving pictures, is “more memorable and/or lead to stronger emotional responses” (Feigenson 2010, 149) [34] and helps people “understand trial information better”. (Feigenson 2010, 151) Compared with other forms of illustrative visual evidence—such as photographs, drawings, maps, models, and computer animation—that have “long been used in court to illustrate the oral testimony of eyewitnesses and experts,” (Feigenson 2010, 149) a VHS tape of CCTV footage showing the crime scene and the actual perpetrator can be regarded as real evidence that assists judges and jurors in determining a verdict. This is because videotaped recordings appear to provide a direct and reliable visual narrative of what actually occurred, thereby conveying the truth of the case more convincingly. However, this perception is a fantasy, as Neal Feigenson states:

The first fantasy that evidentiary movies on screen evoke is that our perceptions yield a seamless and direct knowledge of external reality. We all desire to hold correct beliefs about the world around us, naive realism presumes to give them to us unproblematically [...] The second, related fantasy that visual evidence in the form of movies evokes is purely subconscious – the illusion of the unified and autonomous self. The classic psychoanalytic account of the importance of

visual perception to the formation of the ego's sense of itself as a unified psychic entity [...] (Feigenson 2014, 17–18) [35]

In short, human beings tend to believe that the reality presented on screen is unquestionably real and subconsciously construct a collage of fragmented facts. In addition, a videotaped recording as visual evidence is not self-explanatory. Even if a videotaped recording covers the entire process of a crime and has not been adapted in any way, a video can still be examined from multiple perspectives: the angle of the camera, the motivation for making the video, what or who is or is not captured in the frame, and how the video is played and narrated in court. All of these factors can determine the truth of the case as represented in the video. As Jennifer L. Mnookin explains when discussing interrogation video in an interview:

Yet your (viewers of the interrogation recordings) assessment of the meaning of what you have seen may be influenced by who was in the frame, the camera angles, and the perspective selected, all in ways not at all obvious to the viewer. And of course, it may also be not entirely obvious that the video is actually a complete recording of what occurred. Was the camera ever turned off? Did any questioning precede the recording? What lies beyond the frame? In these ways and others, a videorecorded interrogation is not nearly as transparent as it might seem, though it is nonetheless powerful and important evidence. (Mnookin 3) [36]

Since visual evidence allows ample room for interpretation, modification, and even manipulation, it is no longer an undeniable fact but is instead prone to the fictional end of the fact-fiction continuum. When visual evidence is used properly, it is not intended to deceive but to discover possible truths, since our knowledge of the world is constructed from both facts and fictions. As Richard Sherwin states:

Our world knowledge is often scripted by a mixture of fictional and nonfictional claims. In fact, the credibility of a particular image or story may depend on its faithful emulation of fictional storytelling techniques that fulfill popular expectations about what reality looks like on the screen. (Sherwin 188) [37]

Legal professionals know that “when people are persuaded or moved by an especially compelling image or story, they do not always know why it is persuasive, or whether the source of its credibility comes from fact or fiction” (Sherwin 235). Images are more powerful than words since images seem to show the facts so that no room for doubt or interpretation remains. Even if images are supposed to have only a supportive role in court, they seem to have become dominant, controlling the court. The law nowadays cannot function without them. As Sherwin says: “Law is both a co-producer and a by-product of today's visually preoccupied society. We see this inside the courtroom, the law office, and the court of public opinion.” (Sherwin 231)

Second, the poor quality of the CCTV video in the nineties is, in fact, an advantage: it is clear enough to tell the story, but not clear enough to see the culprit's face in the video. As Sherwin says:

Truth readily intermingles with fiction. Our world knowledge is often scripted by a mixture of fictional and nonfictional claims. In fact, the credibility of a particular image or story may depend on its faithful emulation of fictional storytelling techniques that fulfill popular expectations about what reality looks like on the screen. Consider in this regard the credibility of the “home video” aesthetic. (Sherwin 187–188)

Even if the audience knows that found footage can be deliberately staged (such as in the movie *The Blair Witch Project* (1999) that Sherwin mentions), a film made using a handheld camera that depicts a fictional story can still be convincing. This is because poor image resolution and even damaged video emulate the truthfulness and nonfictionality, as if it could only be accidentally captured on a handheld camera or CCTV. In addition, people do not usually question what they see or do not see in the video. They just accept the video as a true story.

Third, after Li confesses in court, people are shocked that the CCTV recording contains fake footage. This raises three questions: (1) Is this videotape forged evidence in a legal sense? (2) Is evidence like this only allowed in fiction, not in reality? and (3) Is the confession still legitimate after the videotape is found to be forged? To answer these three questions, we can refer to the Chinese legal tradition and compare this film to *A Few Good Men* (1992), which has a similar scene of confession.

In *A Few Good Men* (1992), the defence lawyer Lieutenant Daniel Kaffee uses a document that does not exist and summons two military Air Force ground control officers to testify in court. Daniel Kaffee's move aims to push Colonel Nathan Jessep into confessing that he ordered the Code Red and that he did not sign Private Sandiago's transfer. However, the difference is that Daniel Kaffee has never called those two ground control officers to testify [38] because they do not remember whether the flight transporting Private Sandiago back to the U.S. from Guantánamo Bay existed. On the contrary, Barrister Zhang uses a tape that is not real as evidence to trick Li into confessing. Since the videotape in the film is just a fake videotape of the crime scene, it would have never been presented in a real court. However, it would be perfectly normal, not only in a film but also in a world that is built upon traditional Chinese legal culture, if confession-ism (口供主義) is considered, since the tape can also be treated as a means of interrogation used during investigation.

Confession-ism, which is similar to the Latin phrase *confessio est regina probationum* (confession is the queen of evidence), has a long history in the Chinese legal tradition. A local government Chinese magistrate, who also played a role as a judge in feudal China, would, after various investigations and interrogations, use any necessary method to attain a testimony and confession, including corporal punishment [39]. What it means is that in traditional Chinese law, the admissibility of evidence and due process are not prioritised. This is true not only in the past but also today in China's legal system. In this sense, a fake videotape that is used to attain justice is impossible in reality. As Hu Zhi-Jian (胡志堅) says:

The author believes that, because of the deep-rooted idea that the criminal procedure in the legal tradition is utilised to pursue the truth, acquiring evidence and convicting the real criminal need to be done as soon as possible. The fact

that the criminal procedure should be separated from other legal values, such as using criminal procedure as a tool to discover the truth, has been rejected [...] [40]

In Chinese legal culture, due process in law has been less important than a criminal's confession. Therefore, according to Hu Zhi-Jian's statement, we may conclude that forged evidence to coerce a criminal to confess is possibly used in reality, just as it is in the film. The culprit's confession is both a literary convention and a tool used in real life to bring about justice for people, and the culprit should confess in front of others. In the photo below, we can see that the videotape held by Barrister Zhang can be compared to a torch in the dark that sheds the light of justice.



Fourth, in the film, witnesses' testimonies and interpretations of the facts are unreliable, unreal, or even biased and fictitious. In addition, Li, acting under the instruction of the prosecutor, fabricates a story to frame Mr Chen for the crime that he himself committed. That is to say, nothing is real in this case. And the judge and jurors are influenced by this so-called evidence and these alleged facts and have already concluded that Mr Chen is guilty. Although the following quote is about video, it can also apply to other evidence and explains how the judge and jurors are influenced. As Yael Granot and David Igliozzi say:

Much psychological research has demonstrated that characteristics of perceivers may influence what they see. People's motivations and identities may lead them to interpret the same visual information in starkly different ways. For example, when observing ambiguous stimuli, people tend to perceive images in a manner that aligns with their goals and ignore alternative or goal-inconsistent interpretations. Relatedly, group identities may determine what information people take in from visual stimuli [...]. Such findings suggest that videotaped information may encourage divergent interpretations of the same events. (Granot and Igliozzi 2) [1]

In this sense, since everything is not real, why would Barrister Chang not make a videotape based on Li's testimony to force him to confess, since Li, in a sense, has confessed to the crime he committed in court? Moreover, even an authentic video

can generate multiple interpretations that blend fact and fiction in the real world. As a form of truth in fiction in literature, this tape in the film is hardly to be called completely fictional, since it is never meant to deceive but rather to reveal the truth to the audience.

In a legal sense, it is purposely made not real to avoid forgery and is stopped from playing after Li's confession and before it displays the disclosure that it is not real, as depicted in the scene here:



Nevertheless, this videotape is still legally truthful enough because the video is a legal fiction that simulates Li's testimony [41], which follows the logical coherence of the case and comprises all possibilities for who the real culprit might be: the person in the last scene shown on TV could be Mr Chen, Li, or even some random passerby. That is to say, the video does not need to be authentic for people to search for the truth. As Baudrillard says about a map in relation to real territory: "simulation is no longer that of a territory, a referential being or a substance. It is the generation by models of a real without origin or reality: hyperreal" [42]. What is most important about this tape is how we perceive and experience reality through such a simulation of the truth that happened. This tape is a legal fiction, both in law and in literature, that explores all the possibilities. In other words, the realities and truths in the video that have been experienced, discovered, or even interpreted are all admissible multiple-verses. Eventually, all universes collapse into one when Li confesses, and Barrister Zhang reveals the truth that the tape is only a simulation.

6 Conclusion

The audience already knows who the real culprit is, and that, therefore, Mr Chen is innocent from the outset, which is a literary convention that challenges judges, lawyers, and detectives in literature, if they could see the truth as we see it. However, the truth is unknown to Barrister Zhang and to the people in the court. The truth was unobtainable because the case in the film was during an era when CCTV footage was not prevalent. In addition, this case is surrounded by prejudice and bias. The testimonies are unreliable, and there is only circumstantial evidence. No murder weapon is found, nor is any concrete evidence. Therefore, to solve this case, decisive evidence is desperately needed to uncover the hidden truth.

On the one hand, Prosecutor Fang, who knows all along who the real criminal is, instructs Li on how to use his own crime to frame Mr Chen, who has no resources or power to defend himself. On the other hand, Barrister Zhang fabricates a story based on reasonable doubt – as an eyewitness, Li seems to know too much about what he should not have known, yet too little about what he should have known. Barrister Zhang is attacked by someone on the night before Li is called to court for cross-examination, making the idea that Li is the real culprit more plausible. However, this assumption that Li is the murderer is fictional, with no hard evidence or facts. As Vaihingar quotes from Lotze:

[e]very hypothesis claims to be not only a figure of thought, or a means of making thought concrete, but a statement of fact [...] The fact under consideration must be thought of as an existing actuality. Fictions, on the other hand [...], are assumptions made with a full realization of impossibility of the thing assumed, whether because it is internally contradictory, or because on external grounds it cannot be a constituent of reality. (Vaihingar 90) [18]

The only possible way to prove Barrister Zhang's theory is to secure the culprit's confession. Therefore, he needs to destroy Li's sanity to get at the truth. The find of footage, which is more convincing than words, is the only option. At a time when CCTV was hardly used as evidence in court, visual evidence immediately became irrefutable proof. To the judge, the juror, and the audience in court, the person in the video must be the culprit. However, this video, as visual evidence, is in fact Schrödinger's cat – both alive and dead. Before the moment when the only truth of the crime is revealed, which is necessary because justice must be delivered in a courtroom drama like *Queen's Bench III*, multiple truths co-exist – the only truth is pending, swinging between fact and fiction.

Moreover, after the only truth is revealed, Barrister Zhang does not, in fact, need to continue playing the tape since Li has already confessed. However, the judge still asks Barrister Zhang to play it to the end. This plot gives the audience satisfaction that Li is found guilty by his own words and is fooled into confessing because of the fake video: this is both comical and ironic. Therefore, the audience in court needs to know if the tape is fake. Thus, the semiotic significance of this video is two-fold: the content is fictional yet also factual. We actually learn the facts from a fictional video, which proves that legal fiction, both in law and in literature, is not meant to deceive but rather to enlighten people.

"Truth is stranger than fiction", said Mark Twain, "but it is because fiction is obliged to stick to possibilities; truth isn't." Truth is like the idea of the multiverse, which contains infinite possibilities. When the only truth is long-gone, the only possible method to retrieve it and to predict future possible scenarios is to create legal fiction. However, legal fiction, both in law and in literature, needs interpretation. In other words, an interpretation might be wrong, and the only truth might then be lost. The CCTV video seems to be the most reliable resource among all the materials that need interpretation. However, even if it is real, visual evidence, like other evidence, is still open to interpretation. In this sense, therefore, the video in the film is intended to incite the judge, the juror, the people in the court, and the audience watching this

movie, including the culprit himself, to interpret the message in the video and decide whether Mr Chen is guilty and who the guilty party really is. Legal fiction in this film of *Queen's Bench III* happens to explore the dialectical relationship between truth and fiction.

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3. By the 1990s. 2026. the presence of CCTV security systems had become ubiquitous. The adoption of VHS technology during the 1980s played a crucial role in this expansion, as it made the recording and storing of security footage more feasible for smaller businesses and public institutions. Solink. When did CCTV become common: History of the security camera <https://solink.com/resources/industry-insights/when-did-cctv-become-common/>. Accessed 8 Feb.
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23. In addition, there is another trial—unrelated to Mr Chen's case—that nevertheless demonstrates Barrister Zhang's unexpected and distinctive talent as a defense lawyer.
24. The prosecutor attacks Mr Chen based on his social background and insults the supporting witnesses—former drug addicts and prostitutes—arguing that such associations imply guilt.
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26. *12 Angry Men*. Directed by Sidney Lumet. 1957. Orion-Nova Productions.
27. Mr Chen testified that he was with his girlfriend, Ms Chen, that night. Although she confirmed this, her testimony was questioned because her fiancé claimed she had been with him instead.
28. The extraction of the culprit's confession usually seems to be the climax and finale in literature and films about law, such as *A Few Good Men*. 1992. in which Colonel Jessup admits it was he who ordered a code red and caused the death of Private Santiago. In the Chinese legal tradition in particular, a criminal's confession is considered a sufficient condition for conviction. A criminal can only be convicted after confessing to the crime.
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38. A false testimony. only happens once when Lieutenant Commander Joanne Galloway asked Downey, one of the two accused, to make a false statement in court.
39. A traditional Chinese judge cannot apply corporal punishment to force a suspect to confess without sufficient reason. Therefore, at the beginning of a trial, the judge must, according to the Tang Code and Tang Liu Dian. 2018. 'repeatedly examine based on the nature of the case' and 'scrutinize the suspect's statement, check the suspect's countenance, sense the suspect's spirit, listen to the suspect's narrative, and examine the suspect's eyes'. If the judge still cannot obtain the truth, he is allowed to torture the suspect based on the evidence he has found. If a judge disobeys the regulations, he will be punished by being given sixty lashes. Lung-Lung Hu. Challenging the supernatural in Chinese traditional law – comparison of Judge Dee and van Gulik's translation. *Law and Humanities* 12, no. 1 : 60–61 and notes 19 and 20.
40. Author's translation, the original text: 筆者認為，正是深藏於這一根深蒂固的法律傳統背後片面強調刑事訴訟程序對於發現案件真相和追訴犯罪的實際效用，強調如何有效地獲取有罪證據以儘快破案，而否認程序自身獨立於發現案件真相以外的其他重大價值的程序工具主義的訴訟價值觀念... 胡志堅。《刑事非法證據產生的原因》。China University of Political Science and Law – Procedural Law Research Institute(中國政法大學訴訟法學研究所)。 <http://www.procedurallaw.cn/info/1023/3337.htm>. Accessed 8 Feb 2026.
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