

Introduction to the Symposium on Visual Images and Popular Culture in Legal Education

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Legal education historically was based entirely on written text. Traditional casebooks were just that—edited copies of appellate cases with textual notes. Pictures in casebooks were so rare that they deserved protection under the Endangered Species Act. In class, law teachers wrote words on the board. In recent years, many have used technologies such as PowerPoint to facilitate teaching, but the material projected on the screen was often more text. In our social world, however, the authority of the visual rivals that of written text. Today, all of us swim in a sea of images on television, on billboards, on computer screens, everywhere. Our students think visually. Legal education must keep pace.

This symposium explores the possible uses of visual imagery in legal education. The fifteen relatively brief articles that follow take many different tacks, but all of them are intended to suggest new ideas and new methodologies to law teachers. We have divided them roughly into three categories. First, the use of visual materials (including scenes from television and film) in teaching traditional law courses. Second, teaching law students to interpret and to create visual materials and cope with new communication platforms. Third, teaching courses in law and popular culture.

Of course, these three categories overlap in many ways. A law and popular culture class could be devoted entirely to using television and film to teach jurisprudence or professional responsibility (thus mixing the first and third categories). Or a course in making documentaries could be focused on documentaries for use in death penalty cases (thus mixing the first and second categories). Or a trial practice class could concentrate mostly on making visual aids such as simulations for use in personal injury cases (again mixing the first and second categories). But while the categories may be fluid, we hope that organizing the symposium this way helps readers identify the visual tools most relevant to their teaching goals.

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A. THE USE OF VISUAL MATERIALS (INCLUDING POPULAR CULTURE) IN LAW SCHOOL COURSES

The first six articles in the symposium concern the use of visual imagery in teaching traditional law school classes. Elizabeth G. Porter's article *Imagining Law: Visual Thinking Across the Law School Curriculum* is a good place to start. As law practice becomes increasingly multimodal, Porter argues, the use of visual materials must be integrated into legal education. And she suggests some "low-friction, hands-on ways to incorporate a visual element into whatever course you teach." Law teachers can show students legal documents, such as pleadings, that incorporate visual imagery. But the persuasive effect of layout, font, and other visual aspects of traditional words-only documents can be analyzed as well. Porter also suggests inviting students to practice spotting and analyzing the legal issues through images that capture legal concepts.

The other articles in this part of the symposium focus on the use of visuals in teaching particular areas of law. For example, George Fisher's article *Evidence by the Video Method* describes his use of short but vivid video clips drawn from popular culture to generate hypotheticals in a class on evidence. Fisher then assigns student prosecutors and defenders to argue about the admissibility of the evidence. One clip Fisher uses involves chilling testimony from a former girlfriend of the defendant about his threats to torture her if she was unfaithful. Is this unlawful character evidence? Not in California, it isn't. Or how about a scene from *Fatal Attraction* in which a husband confesses an affair to his wife? Would it be inadmissible hearsay when offered in a subsequent murder trial? It all depends on who is on trial for what. While Fisher argues that some of the horrifying human acts we encounter in evidence must be addressed without the gloss of fiction, using scenes from popular culture has at least two advantages. One is that it allows students to role-play as advocates more freely—no real-life occurrence is at stake. The other is that popular culture imagines and dramatizes events that no camera could capture in everyday life. These scenes bring to life the emotional and social stakes of questions that might feel opaque or sterile as written text.

The article by Felice Batlan and Joshua Bass, *Beyond Greed Is Good: Pop Culture in the Business Law Classroom*, brings movies and television into the business organizations classroom. Students coming to business organizations might understandably expect a heavily quantitative and abstract course. Using popular culture to contextualize the concepts of the course helps make those concepts more accessible and engaging. It also provides opportunities to discuss the larger social frame in which those concepts arise. The documentary *The Trouble with Antibiotics* and an episode from *Billions* cast light on whether the purpose of a corporation is exclusively to make a profit regardless of social harm. An episode from *Silicon Valley* provides levity but also enriches the discussion of limited liability and the duty of care. And, of course, Gordon Gecko's notorious pronouncement that "greed is good" from *Wall Street* enlivens the discussion of leveraged buyouts, junk bonds, and insider trading.

In *Expanding the Pie or Slicing the Bug? ADR Education via Animated Short*, Jennifer L. Schulz discusses the uses of a short cartoon in teaching alternative dispute resolution. *Dinner for Two* is an animated short starring two lizards fighting over the same bug and a frog that ultimately helps them find a compromise solution. In just seven minutes, the film demonstrates many foundational ADR concepts, including the risks of entrenchment in one's position, the use of mediation to avoid a zero-sum resolution (such as litigation), and the importance of allowing combatants to save face. The frog's behavior also raises important questions about mediator ethics.

Philip N. Meyer and Catlin A. Davis argue that successful criminal law advocacy depends on the lawyer's ability to tell a persuasive story. Their article, *Law Students Go to the Movies II: Using Clips from Classic Hollywood Movies to Teach Criminal Law and Legal Storytelling to First-Year Law Students*, describes how Meyer uses a short clip from the film *A Place in the Sun* to teach the elements of *mens rea* in homicide law. The clip shows the difficulty in classifying the mental state of George Eastman when his ill-fated canoe trip results in the drowning death of his pregnant girlfriend. Is it first-degree murder? Second-degree? Manslaughter (voluntary or involuntary)? Or none of the above? Meyer assigns students to serve as prosecutors who must weave the available and ambiguous facts into a compelling narrative.

In *A Dose of Color, A Dose of Reality: Contextualizing Intentional Tort Actions with Black Documentaries*, Regina Austin describes the way documentary films can provide important cultural context in the assessment of tort claims. This kind of contextual analysis, Austin argues, exposes the social conditions that drive legal disputes. As an example, she discusses the case of *Klayman v. Obama*, in which Larry Klayman claimed that Black Lives Matter, among other defendants, was liable for various intentional torts (including intentional infliction of emotional distress) by fomenting hostility toward the police in black communities. The court dismissed the case but declined to hold Klayman liable for sanctions. Austin juxtaposes the claims in *Klayman* to two documentary films. One, *I Am Not Your Negro*, locates Klayman's claims in a historical tradition of white resistance to black self-assertion. The second, *Whose Streets?*, focuses on the protests in Ferguson triggered by the police killing of Michael Brown. In its exposure of discriminatory practices by the Ferguson city government, exposure of police violence, and humanization of protestors, *Whose Streets?* provides a compelling counter-narrative to Klayman's complaint.

B. TEACHING LAW STUDENTS TO INTERPRET AND TO CREATE VISUAL MATERIALS

Six of the articles in the symposium offer perspectives on teaching law school courses in visual literacy. The courses described variously teach students how to interpret visual images and employ visual forms of storytelling, how to deploy visual rhetoric and create visual images for use in legal contexts, and how to both spot and avoid the mistakes of naïve realism.

Richard K. Sherwin describes his visual persuasion course in *Visual Literacy for the Legal Profession*. Sherwin observes that visual materials convey more information more vividly, and with much greater emotional impact, than words alone. As a result, people are less likely to challenge visual evidence than they are text- or witness-based evidence. People also tend to think their own interpretation of visual images is objective, a tendency described as “naïve realism.” In his interdisciplinary course, Sherwin teaches students to both interpret and create persuasive visual materials, including visual narratives. Students view a wide range of images, including graphics, simulations, and surveillance videos. They also learn by doing through participatory exercises and by making and editing their own videos.

Michael D. Murray also teaches visual persuasion. His article, *The Sharpest Tool in the Toolbox: Visual Legal Rhetoric*, stresses that visual imagery is not only faster than words, it is better than words at persuading an audience of the truth of the speaker’s communication. The article offers practical guidance for determining when to use or not use visual tools in writing pleadings or briefs or presenting evidence. When visuals are used, the lawyer must consider issues of *mise-en-scène* (that is, what is in the picture), the degree to which it is appropriate to manipulate the contents of visual images, and whether to use color. The stakes of these considerations, he reminds us, are not merely strategic, but ethical. Murray also encourages the use of focus groups to evaluate visual evidence that the lawyer is considering, as the emotional impact of a particular visual may vary greatly among different viewers.

Naomi Jewel Mezey’s article, *Teaching Images*, focuses on the now-infamous car-chase video in *Scott v. Harris*. Mezey employs the video in teaching summary judgment, but her article models teaching students how to engage critically with video evidence more generally. In *Harris*, the Supreme Court majority treated dashboard camera video as conclusive. But as Mezey insists, an image never speaks for itself. Mezey describes the class exercise through which students come to understand the ways in which the Court’s analysis of the video mistakes subjective interpretation for perceived fact. Through the exercise, students learn that when a photo or video is used as evidence, it must be scrutinized as carefully as the testimony of an eyewitness. Among the questions that must be asked of an image are from what point of view it was made, how it is edited or limited by the position of the camera, what is its relative clarity, and whether it is equipped to answer a given legal question at all. Determining the reasonableness of an act from a video is much more difficult when it is acknowledged that different viewers will interpret the same video differently.

Ticien Marie Sassoubre’s article, *Visual Persuasion for Lawyers*, wrestles with the meaning of the term “visual literacy.” Visual literacy is not like textual literacy; we don’t read pictures the way we read text. Visual images do not convey information the same way that text does. Nor is there a single authoritative rubric for interpreting images that law can borrow from another discipline. Sassoubre proposes that visual literacy for lawyers might require developing

competence in a wide range of visual representational practices as they make their way into legal discourse. Her course in visual literacy emphasizes inquiry into how and why various types of images are produced, the legal and social histories of different visual representational practices, and competing theories of interpretation. Her course also explores the way the visual images that pervade our culture inform legal analysis and construct social facts.

William S. Bailey's article, *Lessons from Pop Culture: What School of Rock Can Teach the School of Law*, discusses the uses of popular culture and visual evidence in teaching trial advocacy. In *School of Rock*, Dewey Finn transforms a boring music class by involving the students in rock 'n' roll. Channeling Dewey, Bailey contends that most lawyers fail dismally in communication and persuasion skills. In his teaching, Bailey uses pop culture to demonstrate effective storytelling and provides intensive training

ning in the use of visual tools such as computer animation.

In their article *Narrative Topoi in the Digital Age*, Zahr K. Said and Jessica Silbey argue that law teaching must take into account new and pervasive forums for storytelling and communication (which they define as narrative topoi). They offer three examples of potent and legally relevant new genres: podcasts and TV serials, connected Twitter feeds, and fake news. Televised serials and podcasts, like the hit *Serial*, have changed the way audiences relate to narratives by inducing binge-watching and binge-listening. Many are also law- and crime-themed. Said and Silbey explore the way that such serialized storytelling informs audiences' expectations: *Serial* was a real breakthrough because it did not resolve neatly; each podcast heaped on new information, but in the end the listeners who sought a clear answer about the guilt of Adnan Syed were left in doubt. Connected Twitter feeds, like Sarah Jeong's rapid-fire accounts of the *Google v. Oracle* trial, also constitute a new narrative form. And the phenomena of clickbait and fake news are challenging traditional conventions of authority and truth. Law students will need to understand these new storytelling modes.

C. CLASSES IN LAW AND POPULAR CULTURE

Finally, the symposium concludes with three articles about courses in law and popular culture. Inspired by the better-established law-and-literature curriculum, those who offer seminars on law and popular culture take a variety of different paths in teaching this vast body of material.

Michael Asimow's article, *The Mirror and the Lamp: The Law and Popular Culture Seminar*, argues for the value of such seminars. The media of popular culture serve as a valuable though distorted "mirror" of the reality about law and public opinion that they pretend to represent. And they serve as a powerful "lamp" by which people are taught (and misled) about the legal system. Asimow chooses different films and television shows to illuminate particular areas of law and law practice, such as the classic 1933 film *Counsellor at Law* (directed by William Wyler). This film shows students what a lawyer's life is really like. It

isn't dramatic showdowns in the courtroom. Instead, it's running a busy office, the waiting room packed with clients, the phone ringing off the hook. Lawyers have to deal with personnel issues—partners, paralegals, associates, and staff members who operate the switchboard. They have to make money. And they must maintain a personal life as well. The film is packed with material about race, class, and ethnicity. Ethical dilemmas pop up constantly, and the protagonist, successful lawyer George Simon (John Barrymore), isn't always on the right side.

In her article *It All Started with Columbo*, Christine A. Corcos discusses the value of the law-and-pop-culture seminar as well as some of the practical problems the instructor encounters in teaching it.¹ She regards the class as an excellent way to re-examine through a cultural lens the legal doctrine and procedure that students have already learned in other classes. Of the practical problems, the first is the need to convince the curriculum committee of the value of the course. Second, the teacher must settle on a method of structuring the course. Third, the teacher must acquire and maintain some facility with disciplines other than law. Fourth, the instructor must choose a teaching book, decide whether to assign homework, decide what sort of paper topics are acceptable, and establish grading criteria. Fifth, the instructor should consider inviting guests to the class. Corcos invites a local filmmaker, whom the students always enjoy. Finally, the instructor must strike a balance between the need for students to interpret the films on their own and the need for the better-informed instructor to impose his or her own views.

In *Dr. Strangelaw, or How I Learned to Stop Worrying and Love Pop Culture*, Donald Papy recounts how he came to be teaching law and pop culture. It started with a frustrating experience as a TV commentator on the Clarence Thomas confirmation hearing. Then came the O.J. Simpson case and a dawning realization that the mass media was having an enormous effect on the legal system. Then came reading some of the fascinating literature of the new law-and-pop-culture movement. All this led him to realize that people learn most of what they know about law and lawyers from pop culture, and that mass media affects the legal system in many profound ways. Papy insists that law teachers must be aware of the interface between law and popular culture.

D. CONCLUSION

We live in a multimodal world. That reality is already transforming legal practice, and it is time for legal education to join the twenty-first century. As we hope this symposium makes clear, the opportunities for enriching and enlivening law teaching through visual images and popular culture are well worth exploring. We hope that all law teachers will consider carefully how they can make use of these powerful teaching tools. Meanwhile, enjoy the fifteen articles that follow!

1. We call your attention to the forthcoming book *Teaching Law with Popular Culture*, edited by Christine Corcos, to be published by Carolina Academic Press in 2019. This book surveys the use of popular-culture materials in teaching a broad range of law school classes.