Law in the Age of Images: The Challenge of Visual Literacy

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The process of changing back and forth from conception as paramount, to the actual visual document as paramount, is the key learning process ... It is the way in which the students learn to see.1

INTERDISCIPLINARITY IS THE sign of our times. The widespread recognition that meanings are socially (as well as psychologically and culturally) constructed entails a turning away from hegemonic theorising and an increasing need for multiple systems of interpretation. Meaning-making and understanding become more complex precisely because no one interpretive frame or expert discourse can be taken for granted. Visual communication epitomises this trend: our culture is flooded with images whose import may be simultaneously overdetermined and indeterminate, whose layers of significance can be teased apart only by means of a varied array of interpretive tools.

What is true of the culture at large is true of law as well.2 Mass mediated images, conveyed through television, film, video, CD-ROM, DVD, the Internet, and traditional print media, are infusing law practice just as they have come to dominate our entertainments, our politics, our news, and our methods of education. 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. For example, American jurors today are increasingly turning to electronic screens. They are looking at visual evidence in the form of digitised graphics and video documentaries showing the injuries and personal suffering allegedly caused by accidents. They are


2 Our analysis of visual rhetoric in legal practice and pedagogy pertains mainly to the Anglo-American legal systems, in which proof is gathered and presented adversarially and in which (in America) juries decide both facts and ‘mixed questions’ of law and fact (eg, the reasonableness of a party’s behavior) in roughly half of all trials. Although we are unaware of any empirical studies of the matter, anecdotal evidence leads us to believe that visual displays are
looking at witnesses testifying from a distance, at accident and crime reconstructions, and at police surveillance tapes. They are also looking at PowerPoint slide shows and videos that serve as legal arguments. In all of these instances, what audiences believe is heavily influenced by what they see; but how do the advocates who construct the images capture those beliefs?

The specific challenge we face is how best to maximise the benefits of a multidisciplinary approach to legal rhetoric and practice given the specific constraints and demands of legal argumentation. To prepare lawyers both to deploy images in the service of their cases and to critique them effectively when they are in play, we have devised a course, 'Visual Persuasion in the Law.' Our task is to describe something of the contemporary visual practice of law and to explain how students can best be acculturated into this polysemous world in an educational program that is not only multidisciplinary but multimodal, embracing the experience of making visual arguments as well as studying and reading about them. Given this premise, what follows is an exercise in semiotic complexity. First we set the technocultural scene of the contemporary interpenetration of law and visual culture. Then we shift the focus to law students' efforts to work within this world, creating images that persuade on multiple levels. Finally we explore the pedagogic theory and practice that allows students to flourish in a world of polysemy and uncertainty.

II

THE INTERPENETRATION OF LAW, MEDIA, AND POPULAR CULTURE

Legal semiotics provides a methodology for the sociology of legal knowledge. It offers a stable platform for the descriptive and critical tasks of legal

at present used much less often in Continental than in Anglo-American legal proceedings. It might be expected that the perceived need for and effects of visual communication and persuasion would differ in Continental adjudication, in which fact-finding is dominated by legal officials rather than the parties and many of the critical factual determinations are made before trial (M Damaška, The Faces of Justice and State Authority (New Haven, Yale University Press, 1986)). Decision making under different procedures implicates different cognitive and other psychological dynamics (M Damaška, 'Epistemology and Legal Regulation of Proof' 2 Law, Probability & Risk 117 at 119–22), so image-based communication would be expected to play different roles. For instance, in Continental legal systems in which documentary records produced by official investigations before trial guide later proceedings, there would seem to be less malleability in the determination of facts for visual displays to exploit, although lay participants may well need the kinds of visual representations that can enhance understanding of technical forensics, and these might be provided before rather than during trial. At present, methods of proof and fact-finding vary across the Continent; however, the development of the European Union and larger globalisation forces have increased the importance not only of global markets, but also of transnational criminal and civil legal issues that call for a harmonisation of forensic expertise (see JF Nijboer and WJIM Sprangers, Harmonisation in Forensic Expertise, An Inquiry into the Desirability of and Opportunities for International Standards (Amsterdam, Thela Thesis, 2000)). Moreover, the increasing influence of Anglo-American visual culture in general around the world is altering laypeople's views of what happens in the law. Under these pressures, some European legal systems may soon come to resemble the Anglo-American in their receptivity to visual rhetoric.
pragmatics. Rather than commencing with a body of rules or general principles, characteristic of the legal positivist tradition, legal semioticians start with actual behavior: What forms of discourse are being used, by whom, when, and with what effect within the legal system?

This pragmatic semiotic perspective has historic roots in the twentieth-century Legal Realism movement. Scholars associated with critical legal studies subsequently advanced its semiotic thrust. Currently, a broader, multidisciplinary approach to the pragmatics of meaning-making is taking shape under the rubric of cultural legal studies. This emerging body of legal scholarship takes as an important point of departure the insight that law is not an autonomous domain.

To be sure, law continually generates its own highly specialised forms of discourse together with rule- and custom-driven processes (or rituals) of usage. However, the border separating law from the culture at large has always been highly porous. Just as the specialised culture of law exports storytelling forms and content for popular consumption, so too does it import a wide range of shifting meaning-making practices from society at large. The legal semiotician’s task, therefore, is to look at law from within and without in order more fully to understand and descriptively capture the complex relationships that form between the domains of popular and legal culture.

Tracing the diverse ways in which legal meaning-making occurs, or breaks down, or remains occluded, requires a broad array of disciplinary tools. Visual tropes and genres, audio cues, and nonlinear digital editing, among numerous other rhetorical offshoots of screen-based communication practices, must now take their place among more traditional rhetorical, linguistic, and cognitive mappings of the terrain of meaning. As new signs proliferate within society, legal semiotics must meet the challenge of providing an adequate typography of emerging patterns of discourse. New tools must be grasped if we are to describe and assess systematically the meaning-making processes in which we are now situated.


4 ‘[A]lthough Pierce’s enormous contributions are rarely directly discussed, they do actually constitute the basis of realism in law and its related movements’: B Kevelson, ‘Interpretation and Discovery in Law from the Perspective of Peirce’s Speculative Rhetoric’ 61 Indiana Law Journal 355 at 357.

5 D Kennedy, ‘Form and Substance in Private Law Adjudication’ 89 Harvard Law Review 1685. ‘What one discovers, then, when one studies the forms of legal discourse, is that the basic styles of argument do not vary as one moves from one set of rule choices to another ... I call this the crystalline structure of legal thought’: J Balkin, ‘The Hohfeldian Approach to Law and Semiotics’ 44 University of Miami Law Review 1119 at 1132.

6 ‘In the last fifteen years ... legal scholars have come regularly to attend to the cultural lives of law and the ways law lives in the domains of culture’: A Sarat & T Kearns, The Cultural Life of Law in A Sarat & T Kearns (eds), Law in the Domains of Culture (Ann Arbor, University of Michigan Press, 2000), at 5; see also A Amsterdam & J Bruner, Minding the Law (Cambridge, MA, Harvard University Press, 2000), at 18 noting the ‘ubiquitousness and power of categories, narratives, rhetorics, and culture in law as in the rest of life’.
The present work represents a first step in the effort to grapple with this new semiotic challenge. First we address the interrelationship among law, mass media, and popular culture. More specifically, we wish to examine the various ways in which the rise of visual mass communication is changing the practice, theory, and teaching of law in contemporary western society. Our thesis may be simply put. Law today is traveling down the same path as journalism and politics. In our media-saturated world, advertising may be the most important paradigm for communication and persuasion. In a visually literate society, effective storytelling requires immediacy, familiarity, and the illusion of transparency, which is to say, it must operate within the available bandwidth of popular culture. To be sure, lawyers have always tapped popular cultural forms in their efforts to persuade lay juries. In today’s wired courtrooms, however, the spoken and written word must now compete with sounds and images on ubiquitous electronic screens.

The implications of this development are profound. The ways people think about law, the ways law is practiced, and the ways legal meanings, including substantive policy decisions, are produced, are changing. One reason for these changes is that communication technologies are providing people with new cognitive tools for making sense of actions and events in the world. These days, most people get their news in visual form, from television. Likewise, most people get their legal knowledge not from direct experience, but vicariously—by watching notorious trials, like the OJ Simpson case, and by watching documentaries, docudramas, and feature films.

What is interesting about this, as recent social psychology studies have shown, is that these different sources are not always kept neatly separated in people’s minds. Truth readily intermingles with fiction. The important thing, in terms of affecting real-world judgments, is the strength of the association between the story concept and pre-existing world-knowledge concepts. Our world-knowledge is often scripted by a mixture of fictional and non-fictional sources. Indeed, 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 a ‘home video’ aesthetic. A few years ago, this low-tech style was exploited in a popular American horror film called The Blair Witch Project. In this film, three amateur filmmakers go off into the woods in search of a fabled witch. The rough, ill-lit images produced by an unsteady camera, off-centre framing, and seemingly unscripted exchanges all contributed to an enhanced sense of immediacy.

and visual truthfulness. What began as a distinct cinematic visual style may have serious consequences outside the realm of popular entertainment—particularly when the chief evidence in a law case is a film. Consider, for example, a recent criminal case prompted by an ‘amateur’ video that was made by several college students who used a camcorder to film what American prosecutors are calling a kidnapping and assault of a young woman, and what defense lawyers describe as nothing more than an amateur horror film. In due course a jury will be called upon to watch and judge for themselves the ‘truth’ or ‘simulation’ of what they see. Is it real horror, or is it staged? Here, then, we encounter a criminal case that essentially turns on a jury’s response to aesthetic cues.

In our view, the point worth emphasising is 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. Indeed, governments and television networks are well aware of this confusion and have shown little compunction about exploiting it. Consider, for example, JAG, a fictional American TV series about military justice.\(^\text{9}\) In a recent episode, producers and writers worked closely with the United States defense department to show that the newly created, post-9/11 ‘military tribunals’ for alleged terrorists operate in a fair and trustworthy manner. In essence, the story was scripted to highlight the legitimacy of this as-yet untested, and highly controversial, legal procedure. As the chief writer and consulting producer put it, ‘War is terrible, conflicts are terrible, but somebody has to do it and so it’s necessary, maybe not completely honest, but necessary to imbue those things with glory.’ Clearly, the producers understood, and apparently were banking on the expectation that by confusing fictional images with the real thing, viewers might adopt the scriptwriter’s values.

Trial lawyers, judges, jurors, and the lay public must deal with similar challenges as visual evidence and visual storytelling become more commonplace in courtrooms and everywhere else legal meanings are being disseminated. Of course, successful trial lawyers have always been good storytellers. It is through stories that people make sense of fragmentary bits of evidence, linking the salient facts of the case (or perhaps finding no link at all) with the relevant rules of law. Popular culture is a major supplier of familiar story genres, metaphors, plot lines, and character types. These are the materials that shape and inform popular expectations about how a particular kind of story is supposed to go, and when one story, rather than another, best fits the circumstances. Trial lawyers need to take this cultural knowledge seriously. How else can they hope to cue, and tap into, people’s narrative expectations?

Today, those expectations more often than not are based on the visual codes of film and television. In modern visually literate societies, these codes have become a part of our visual common sense, which is to say, they have been unconsciously assimilated. People understand cross cutting and parallel editing. They do not need anyone to explain these storytelling techniques. Put bluntly, the camera is inside our heads. Consider, for example, Ridley Scott’s now famous TV commercial introducing the first Apple computer in 1984. The ad agency that made it describes it this way:

Open on an Orwellian vision of the future. Mindless, hollow-eyed people march in lockstep toward assembly hall, where big brother harangues them with the party line in a huge video screen. As the crowd stares, unseeing, an athletic young woman, pursued by guards, runs into the hall, wielding a sledgehammer. The woman runs toward the screen, winds up and throws the sledgehammer with all her strength. The screen explodes in a blinding flash of light which sweeps over the staring uncomprehending crowd. An announcer’s voice then proclaims: ‘On January 24th Apple Computer will introduce Macintosh. And you’ll see why 1984 won’t be like ‘1984."

This ad was broadcast only once, during the 1984 Super Bowl. Apple’s sales exceeded all expectations. One minute was all it took for Scott to set up a familiar story: a tale of David and Goliath. The giant is, of course, ‘Big Blue,’ the monolithic IBM. The young upstart is Macintosh. The ragged, walking dead are all those who have been imprisoned by Big Blue’s tyranny. They are liberated by the vibrant female athlete, the life force. She alone appears in living color.

We get the message because the iconic images of oppression, of big brother and technocratic dehumanisation from George Orwell’s classic novel, 1984, are now stock images in the popular imagination. We need only a little stimulation to recognise the genre, and we are only too happy to fill in missing details. This is something that advertisers know well. They know that it is far easier to prompt and then piggyback onto what is already in someone’s mind than to introduce something new. This is also what experienced litigators teach other trial lawyers. We submit that it is what law teachers should be teaching their students. Like filmmaker Ridley Scott, students need to understand that legal conflict is often expressed in mythic terms: good vs. evil, man vs. nature, big vs. small, innocence vs. deceit. They must also recognise how to use the raw materials that popular culture supplies—materials out of which lawyers, like advertisers, will craft the right story for their clients. To paraphrase Aristotle, students need to know which tools in their storytelling toolkit are best suited for the problem at hand.

Perhaps it will be a detective story, like the one Marcia Clark told the jurors in her summation for the prosecution in the OJ Simpson case. In Clark’s hands

the case became a whodunit, and in the end the pieces of the puzzle fit neatly into place. Indeed, this is literally what the jurors saw on a large electronic screen inside the courtroom during the state's closing argument. As the prosecutor rattled off each clue, a fragment of Simpson's face clicked into view: his opportunity to kill (click), his motive (click), the victim's blood on his socks and glove (click), the blood trail that he left at the scene (click). Until there he is. The face of OJ Simpson is revealed; the crime has been solved.

Or perhaps it will be a hero quest story, a subjunctivised narrative (as cognitive psychologist Jerome Bruner has put it) that casts the jurors themselves as protagonists, making them the true heroes of the tale told in court. This is the story that Johnny Cochran told jurors in his summation for the defense in the OJ Simpson case. Cochran launched the jurors on a heroic quest against 'genocidal racism.' 'If you don't stop it [i.e., the state's cover up],' Cochran urged, 'then who? Do you think the police department is going to do it? ... You police the police through your verdict.' Once the defense rests it will be up to each individual juror to complete the lawyer's tale by bringing home the holy grail of justice, something each juror can achieve, but only if he or she reaches the right verdict.

Today, the stories about law and politics that people carry around in their heads frequently come from television and film, the chief generators of popular culture. Notably, visual stories use a different code for making meaning than do written texts or oral advocacy. They are non-linear and they work by association. Often, their meanings are implicit. They are also rich in emotional appeal, which is deeply tied to the communicative power of imagery. This power stems in part from the impression that visual images are unmediated. They seem to be caused by the reality they depict.

But visual images not only enhance their credibility by masking the way they mediate reality. They also often prompt the same emotional response as experience in real life. Watching on the screen is like being there. Consider, in this regard, the amateur videotape shot by George Holliday of Los Angeles police officers surrounding and beating motorist Rodney King. In presenting the state's case against the officers, the prosecutor repeatedly told the jurors to just watch the tape. What more was needed? The state was banking on the credibility of Holliday's 'low-tech' film aesthetic. But in this case the prosecutor's confidence was misplaced. In fact, the prosecutor was so locked into his own literal viewing that he missed the defense's digitised re-narration of the scene. By changing the flow, and rhythm, of images, the defense reversed causation. 'Look,' defense experts urged, as they pointed to still frame images moving slowly across a large screen. 'You see, he's getting up. His knees are cocked. He's like a linebacker getting ready to run.'

14 Sherwin above n 7.
Only when he rises up do the police batons come down. And when they do, King appears to move back down.

This is the way the eye and the brain construct causation: When two bodies meet and one moves away, the still object seems to have caused the other object's movement.\textsuperscript{15} By the end of the trial, when the jurors watched the tape, as the prosecutor had instructed them to do, they saw police officers 'escalating' and 'de-escalating force' in response to Rodney King's aggressive resistance of arrest. By getting up, instead of lying prone, as the police commanded him to do, King caused the batons to come down. As jurors told journalists after their acquittal of the officers, Rodney King was in control.

Making legal meaning is more than simply showing data or reciting facts; it is more than merely reading the applicable rules of law (as all too many litigators do—much to the distress of the poor, distracted juror). We make meaning by turning information into a compelling story that captures and organises popular images and character types, the stuff of popular imagination. Notably, the dramatic nature of visual metaphors often masks, and in so doing diverts attention away from, its technical imprecision. As we remarked previously, visual images not only prompt strong emotional responses, they also effectively convey implicit meanings. As teachers of law it is not enough for us to demonstrate to our students that legal semiotics provides a theoretical master key to understanding the movement from the spoken and printed word to audiovisual constructs on the screen—interesting and challenging as that is. We believe that it is of even greater scholarly interest to researchers, and of greater practical value to our students, to engage in a semiotic analysis of the visual rhetoric actually generated by everyday legal practices in the digital era. Applied theory is the hallmark of our course, Visual Persuasion in the Law.

III

CONSTRUCTING LEGAL VISUAL RHETORIC

Successful legal rhetoric involves not only mastery of relevant legal texts and accepted modes of interpretation, but also mastery of stylistic forms of communication that are strategically crafted to appeal to specific audiences. It must also effectively address particularised problems within the constraints of evidentiary rules and in the face of aggressive testing by opposing views.

\textsuperscript{15} 'There is a celebrated monograph, little known outside academic psychology, written a generation ago by the Belgian student of perception, Baron Michotte. By cinematic means, he demonstrated that when objects move with respect to one another within highly limited constraints, we see causality': J Bruner, \textit{Actual Minds, Possible Worlds} (Cambridge, MA, Harvard University Press, 1986), at 17. A classic reference is David Hume: 'I find that in the first place, that whatever objects are consider'd as causes and effects, are contiguous...': D Hume, A \textit{Treatise on Human Nature}, Ernest Mossner (ed) (Middlesex, England, Penguin Books, (1739–40) 1969), at 123.
Electronic images introduce interesting and complex elements into this rhetorical culture. Yet, the traditional emphasis in law school classrooms on the printed word persists. This raises important pedagogical issues. For example, can law students be acculturated into the multivalent world of persuasion through many modalities? Can they learn, in the span of a few short months, to complement their almost exclusively text-based training with the substantive and strategic training required to construct persuasive arguments using sound and images? After three years of experience teaching Visual Persuasion in the Law, we are inclined to answer this question in the affirmative: Students can bridge this pedagogic gap. In an effort to explain further how this cultural shift occurs, we turn now to the design of the course. First we will describe the work product of the students in our course and illustrate how students draw on the multidisciplinary resources we offer to construct persuasive visual displays. Next, we will discuss the particular pedagogic strategies that we use to get them there.

We ask our students to create two major pieces of legal visual rhetoric. The first is a still visual display (graph, photo array, etc) for use as demonstrative evidence at trial. The second is a digital video for use during closing argument. Both projects are anchored in highly detailed and realistic case simulations. Together, they challenge students to explore the persuasive potential of both static and time-based images, and to construct visual rhetoric first within and then without the tight constraints of rules of evidence.

Whether arguing in words or images, the successful advocate must discover and refine a *theory of the case*, which is "a simple, plausible, coherent, legally sufficient narrative that can easily be integrated with a moral theme." 

16 Figuring out a compelling theory of the case requires the advocate to grasp not only the law and the facts, but also the audience’s likely ‘common sense’ response to the case: What will strike them as most important about it? Where is the emotional impact? What important values can be upheld only by a decision in the client’s favor?

To think through these questions and find the moral/emotional crux of the case, our students draw on readings in several disciplines. From classical rhetoric, they gather the insights that persuasion works on both the audience’s thoughts and their feelings, and that audiences can be persuaded by the form as well as the content of the message; from cognitive and social psychology, an awareness that the audience’s intuitive understandings of ‘how things go,’ the way the world is, play a critical role in how they receive the message; from narrative theory, the recognition that people use stories to organise their understandings and that narrative forms help cue their emotional and cognitive responses; and from advertising and public relations, the importance of focusing the persuasive message into a single point, like a sound bite or tag line (which can then be effectively envisioned).

As outlined above, our students' first major project is to create a non-moving visual display for use as demonstrative evidence in a trial. Demonstrative evidence includes any visual display—photographs, movies, and diagrams, for instance—used to illustrate oral testimony. Generally speaking, it is admissible at trial as long as the judge believes it can help the jury (and the judge) to understand the case and is not substantially more prejudicial than probative. A typical example would be an accident reconstruction expert's use of a diagram, computer animation, or model to show how the accident occurred. Perhaps the most difficult rhetorical task posed by the use of demonstrative evidence generally is how to use it to further the theory of the case without appearing to argue. (If an advocate uses demonstrative evidence to argue rather than illustrate the facts, opposing counsel can object, prompting a judge to rule the display inadmissible.)

A particularly challenging task is to make quantitative evidence both meaningful and persuasive. In 2001, using a hypothetical juvenile justice case, we asked our students to represent a black youth trying to avoid transfer from juvenile court to adult court—where, if convicted, he would face a longer sentence and, if incarcerated, would do the time in adult prison. We asked the students to argue that statistical disparities in the treatment of white and black youth offenders violate the Equal Protection Clause of the Fourteenth Amendment to the US Constitution. (For example, in one jurisdiction blacks are more than twice as likely as whites who commit the same type of offense to be tried as adults.) It is a difficult legal argument: The Supreme Court has held that the Equal Protection Clause forbids only intentional racial discrimination, and that (with few exceptions) an intent to discriminate (here, on the part of prosecutors and/or juvenile court judges who make the transfer decision) cannot be inferred from mere statistical differences (here, e.g., in the rates at which white and black youth, respectively, are transferred).

How might the lawyer present the relevant statistical data? The statistical expert might simply testify, saying something like: 'White youth make up 45 per cent of the general youth population and 24.7 per cent of those arrested but only 5 per cent of those tried as adults. Black youth, by contrast, make up only 8 per cent of the general youth population but 12.6 per cent of those arrested and, most strikingly, 30.1 per cent of those tried as adults.' But purely verbal representations of quantitative information are notoriously difficult for laypersons to understand and remember. So the lawyer might have the expert augment the oral testimony with a table of the relevant numbers, providing at least some visual anchor for the audience. A well-designed chart, however, featuring simple visual representations of quantities (e.g., by bars of differing heights), would make the essential contrasts (e.g., between black and white youth transfer rates) even easier to grasp and retain. Thus, the design challenge our students faced was to educate the judge by

presenting the expert's statistical information in clear, intelligible visual form, but also, if possible, to do it in a compelling way that linked the numbers to something the judge would be inclined to identify as wrongful discrimination—and yet to do this without explicitly arguing.

One student used colorful pyramids (blue for white youth, red for black youth), instead of the usual bars or columns, to represent the chosen data: the percentages of whites versus blacks in the general youth population, youths arrested, and youths transferred to adult court, respectively (Figure 1). The shapes and colors attract interest and hold attention, while still managing to present clearly a considerable amount of information (three different paired comparisons of white and black youths in percentage terms). More importantly, read from left to right (the natural pattern for English and European readers), this student's graphic representation of the data tells a story about what happens to young men as they move from the general population through the juvenile justice system. And following the tips of the blue pyramids down (from left to right) and the red pyramids up, the viewer sees the student's theory of the case, the equal protection narrative: As youths progress through the criminal justice system, whites systematically get fewer bad outcomes and blacks get more.

![Comparison of White and Black Youth in the Criminal Justice System](image)

Data obtained from "The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California"

**Figure 1.** Demonstrative evidence: graph of juvenile justice statistics (by Catherine Esposito)

19 All illustrations are of work created by students in the Visual Persuasion in the Law course in spring 2001.
A second student transformed the standard graphic display of (a similar set of) data to communicate a simple, powerful story of inequality (Figure 2). The difference between white and black youths’ outcomes in the juvenile justice system can be expressed not only in simple percentage terms (e.g., in one jurisdiction, 60 per cent of young black felony offenders are tried as adults, compared to 36 per cent of white youth who commit similar offenses), but also as the ‘advantage’ that white kids have over blacks (e.g., white youth in that jurisdiction have a ‘24 per cent advantage’ in avoiding transfer to adult court). This student had a brilliant visual insight: Instead of the usual bar chart method of setting the y-intercept of the x axis at zero and the bars for different values (e.g., percentages of kids of each race transferred) at different heights (this is what the first student’s graphic, like most bar charts, did), he set the zero value at the midpoint on the y axis, converting values above to plus-per cents and below to minus-per cents. The midpoint, the zero value, represents equal treatment, the law’s ideal—no advantage for one race over the other. Now the black and white values do not merely differ in height; they go in different directions: The white bar representing white youth, who have the advantage, goes up from the midpoint; the black bar goes down. This makes more visually salient the narrative theory of the case: when white and black youth, otherwise equal, enter the juvenile justice system, they head in different directions—to an extent that can be explained only by racial discrimination. And the visualisation of the directions—up is good, down is bad—fits with one of our culture’s deep cognitive metaphors.

![Graph of waiver advantage and disadvantage in drug cases by race](image-url)

*Figure 2. Demonstrative evidence: graph of juvenile justice statistics (by Christopher Major)*
A third student's visual display confronted a different rhetorical challenge. How can the lawyer who makes a statistical argument of racial inequality present the data clearly and yet also make visible that behind the aggregate percentages stand individual white and black boys, the individual victims of the alleged discrimination—including the lawyer's client? This student broke up the aggregate to represent the individuals who comprise it. Instead of using bars of different heights (or other shapes) to represent the different outcomes for white versus black youth at different stages of the juvenile justice process, she created two square grids, each filled with over a thousand small white and black circles, and placed them side by side; the one on the right, representing the racial composition of the population transferred to adult court, shows far more black circles than the one on the left, representing the racial composition of those arrested for comparable offenses. The display visually persuades by using immediately understood visual signs (circles indicating heads, which signify people) and by signaling quantitative detail that gives an impression of accuracy. The viewer's eye immediately registers the sheer number of circles, their arrangement into grid-like arrays making overall patterns, and the contrast between the two arrays, which is the main point of the display.

The students' final project is to make a video closing argument. Video arguments use a full array of media sources (including edited videotapes of testimony, re-enactments, news or feature film footage, and animations) in a single presentation—in essence, a persuasive documentary for the client's position. The most apt analogy may be the American political campaign film (eg, Ronald Reagan's 'A New Beginning' or Bill Clinton's 'Man From Hope'). Video arguments are already used in negotiations (video settlement brochures) and administrative proceedings, and while not yet commonly used at trial, they may very well be in the near future.

To make their videos, students work in groups of three or four, shooting their own footage if they want to (eg, to simulate expert testimony that would have been introduced at trial), adding documentary or other sources of information available through the mass media, and then using digital video editing software to create their own texts and graphics and assemble the entire movie. They complete the entire job—from first learning about the case to screening their videos—in six to seven weeks. We are not looking for high production values (especially given the students' lack of prior training and time constraints), but rather for the visual thinking embodied in their work.

We will briefly describe (as best we can within the medium of print) how two groups of students used the medium of digital video to envision the same legal argument in very different ways. In this case, students were assigned to represent inmates in a 'supermax' prison in a hypothetical lawsuit against prison officials. In a supermax (or 'secured housing unit' within a larger prison), persons whom prison authorities consider to be disciplinary risks
are assigned to indefinite solitary confinement and extreme sensory deprivation (sometimes lasting over a decade). The legal argument is that supermax imprisonment inflicts 'cruel and unusual punishment' in violation of the Eighth Amendment to the US Constitution. The legal argument is difficult to win: The test for deciding whether a punishment is cruel and unusual—whether it falls short of 'evolving standards of decency'—is itself defined partly in terms of current practices, so if a majority of states use supermax imprisonment, it becomes hard to argue that supermaxes are cruel and unusual. But the visual rhetorical challenges are at least equally daunting. How can the advocate, in just a few minutes, convey to the judge and jurors what long-term solitary confinement and sensory deprivation are really like, making this treatment seem so repugnant that jurors will want to reject it as unconstitutional?

One group of students made a video that emphasises the expository style, presenting an ostensibly objective point of view with a consistent 'voice of God' narration. This relatively dispassionate 'discourse of sobriety' locates the argument in what the students expected the judge and jurors would accept as the world of fact. In several respects this video closing argument is 'by the book,' a kind of an illustrated text driven by a traditional verbal argumentative structure: The structure itself is consistent with readings on closing arguments taken from a leading trial practice text; crucial scenes consisting of photomontages (of prison exteriors, of cartoons about torture) with text represent the screen as flat surface, like a page (Figure 3); and historical references to earlier forms of imprisonment rely on shots of still images taken from books or book-like web pages. The video's visual narrative style effectively communicated the students' theory of the case: Supermax conditions are the equivalent of punishments from earlier eras once found acceptable but later found to be cruel and unusual—the pillory, water torture, and the sweat box.

A second group of students envisioned the same legal argument very differently. While addressing the legal basis for their claim as precisely and thoroughly as did the first group, these students framed their argument as a (largely) subjective account anchored in the prisoner's point of view, designed to heighten jurors' empathy and hence sympathy for the clients (Figure 4). They sought to convey a personal and emotional truth that

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21 More than 30, as of 1999 (US Department of Justice, National Institute of Corrections, *Supermax Prisons* *Overview and General Considerations* (1999), at 6).
24 This convincingly addresses one of the most difficult aspects of the Eighth Amendment argument—how to get around the apparent devolution of American 'standards of decency' regarding what prisoners should be expected to put up with.
would elicit the audience's imaginative participation in the case. How did they accomplish this? Like the makers of the first video, these students tried to achieve credibility for their images by using the visual language of popular media, which they presumed their audience would recognise and immediately understand. But they emphasised a different vocabulary, that of cinema vérité. They used ambient sound, but also, and more importantly, the amateur video aesthetic—the shaky, hand-held camera style—popularised by *The Blair Witch Project*, the George Holliday videotape of the police beating Rodney King, and a variety of 'reality' television shows.

Taken together, these two different video arguments indicate law students' intuitive grasp of at least some of the variety of visual language in contemporary culture, and their skill in adapting the forms of visual persuasion, so effective in the world at large, to the precise demands of legal argumentation.

IV

THE PEDAGOGY OF VISUAL PERSUASION

How do we get our students to put theory into practice in the thirteen short weeks of a semester in the United States? Our teaching methods evolved out of some assumptions about what skills would best serve our students in the long run, and about the relationship of the pedagogical model to the desired outcome.
Figure 4. Closing argument video on supermax confinement (by Edwin Farrow, Matthew Stachowske, Aaron Kanar, Philip Kent)

Just what is it that law students need to know when it comes to images? In its simplest formulation, law students need to learn what images are, how they are perceived and interpreted, and how they propagate through the culture like sporulating fungi. Legal professionals rarely understand the images they use because visual literacy has not been part of their education; it has not been regarded as an essential skills set. Many people reach adulthood maintaining the naive and fundamentalist assumption that a picture is simply its subject matter. Yet visual texts are different from printed words, and to learn the possibilities for both forms and ranges of meaning, our students need to decode them more consciously and more completely.

Verbal text is time-based, moving from one word and one sentence to the next. Words are understood to be abstractions, signs for something else. Pictures are first seen whole; only later are their parts decoded and understood in relation to the initial interpretive gestalt. When they are photographic they carry an additional indexical charge. The problem is that in everyday life such critical analysis occurs only infrequently. Consequently, the totalised visual gestalt remains, and the picture is identified with its subject matter just as text is first experienced as its semantic meaning. The ways in which the picture has been constructed, and the various perceptual, cognitive, and cultural elements that contribute to the meaning of the whole, tend to be ignored. Of course, such economy of perception makes sense. If we were to think about such things with regard to every percept and every visual text we encounter it would become impossible for us to
conduct our lives.\textsuperscript{25} Yet, in order to understand how images are made meaningful, such an exploration cannot be avoided.

All images are signs of one kind or another; and they may also be made up of many signs. But the first perception of the image is a non-verbal one. To make that perception available socially, we must translate our non-verbal experience into words that can be shared. Like the compression of files on a computer, some aspects of the image will be sharpened and clarified in the move to the verbal; other data will be lost. The efficiency of the verbal translation is such that it quickly can become the basis for all further discussion in ways that lead the viewer far away from the image text itself; viewers may dispute the meaning of verbal constructions (rather than the image in all its complexity). One way to look at our double task is that we must increase the amount of ‘original’ information taken in as we read the image so that our translations can be fuller—when we have more to work with, we can then make more meanings consciously available through verbal construction. In a Peircean sense, we will have more abductions, hypotheses, available to sort through. We can say with Floyd Merrell that

in spite of the many incursions into the depths of signs, their meanings have remained elusive, meaning flows within the semiotic process, resisting any and all artificial pigeon-holes. It is, as a result of this flow, plurality not singularity; it is many not one; continuous not discrete.\textsuperscript{26}

Perhaps it is best to say that our goal is to make students both more comfortable and more conscious of the semiotic process itself. ‘To learn to see anything well is a difficult undertaking. It requires the activity of the whole personality.’\textsuperscript{27} Little in legal training asks for the engagement of the whole personality.

Our students display a wide range of capabilities. Some come to our schools directly after graduation from college from their early to mid-twenties; others are mature adults in their fifties with grown families and successful careers. They take this elective at the end of their legal education; spring semester students are anticipating graduation as soon as the course is completed. This means that we teach them as they are about to go from being students to being professionals. They have thoroughly assimilated the skills and culture of law school.

\footnote{For a description of the scale of our routine image encounters, see M McCullough, \textit{Abstracting Craft} (Cambridge, MA, MIT Press, 1998). He begins his summary with an MIT Media Lab dictum that ‘[i]n the course of a single day, you will see more artificially constructed images that a seventeenth-century Englishman would have seen in his entire lifetime’ (McCullough 1998 at 42).}

\footnote{F Merrell, \textit{Peirce, Signs, and Meaning} (Toronto, University of Toronto Press, 1997), at x.}

\footnote{J Dewey, A Barnes, I Buermeyer, V de Maxia, & M Mullen, \textit{Art and Education} (Philadelphia, The Barnes Foundation, 1947), at 7.}
We had to work within obvious constraints. For example, we had to confine our efforts to a single semester. We also had to be sure that what we did was securely anchored in the culture of the law even as we stepped into new territory. Finally, whatever we did, we had to overcome what we assumed would be the shyness and resistance of law students when asked to work in unfamiliar ways. After all, they were admitted to law school because they enjoyed, among other strengths, a facility with words. Nowhere in the application process were they asked to demonstrate skill in making visual representations.

And yet making such representations is precisely what we had decided to do as a first move in pedagogical strategy. There are two assumptions at work in this here. The first is that people are more committed and more engaged when their own work is being discussed. The second is that in confronting real design problems and making decisions themselves, students can begin to anticipate how the design professionals with whom they may eventually work engage in real problem solving. Students encounter the questions and think generally about how to approach them—which is far more important in the long run than knowing a few particular design answers. We enable untrained students to embrace information design and high-level video graphics computing even though we lack the time to train them in sophisticated design skills. The ‘hands-on’ practice in visual analysis and production builds skill sets targeted to the specific problems the students will confront in practice. By using the power of the peer group and creating a micro-culture that supports and enhances the goals of the class, we plunge them into a classroom environment that is itself a multi-media, semiotic creation.

Although a number of assigned texts contain images, the primary image texts used in class are those made by the students themselves. Their investment in making these images increases their confidence in their knowledge about them, which in turn guarantees their interest in responses from other group members. The six or so exercises that lead up to the projects move from word-image collages from the newspaper, to photographic images arranged to tell stories, to real objects accompanied by invented stories from made-up legal cases, to image-only ‘books’ and, finally, a storyboard exercise. Our first exercise doesn’t seem to involve any personal material at all. By the fourth one, students have acculturated to the class and their books are often highly suggestive as snapshot self-portraits. For instance, a recent book had a black cover with a small title. Inside, every page illustrated scenes from sports. The inside pages, though, were not rectangular like the cover but were, instead, shaped like the ball used in the game illustrated—footballs, basketballs, baseballs, and soccer balls, two for each of these sports. The maker was a young man, very quiet in class—like his book, he was 'covered' by an inscrutable demeanor but repeatedly surprised us with the way he solved his problems in the projects.
We bring all our visual exercises to class, put them out for all to see/read/explore, and then discuss them together, mostly without specific reference to who made what. We model exploring what is seen and read these exercises in a wide-open way. These assignments directly prepare students in ways of thinking they will need when producing their videos, but we do not tell them that until the second project is introduced and we can make visible the connections between the assignments and their new work. The professors join the students in producing and sharing their work on these exercises because it is important for the professors to model the behavior that they wish to elicit.28

The work of learning to talk about perceptions of pictures begins here: in showing the range of readings/responses and non-judgmentally discussing what we have all made. Knowing that their work will be 'published' within the group leads students to take the production process seriously. The experience of making also sensitises them to the pedagogy of mutual interpretation and critique. Students experience this process of making, interpreting, and critiquing as very empowering, and this enables them to take further risks. Laterally sharing power over the reading of visual texts enhances the development of peer relations within the group and internalises the decentralised and collaborative pedagogy of the course. This subsequently carries over to their response to written texts as well. We encourage students to share their thinking rather than to withhold their 'good' ideas for the sake of some sort of competitive advantage. In this way, students come to regard the class as a model of the kind of collaborative process of case development and critique that goes on in the real world of legal practice.

As faculty we have to be prepared to respond in the moment—we never know what the students are going to bring in. We are not controlling the text.29 Some pedagogues would take this exercise in the direction of naming various kinds of signs and engaging in taxonomy. We follow a different path. We want our students to begin to trust the validity of their perceptions, and then to test them. We aim to show them both broad cultural themes and the realities of atypical, unexpected responses from individuals. While learning to use their own responses as tuning forks, they need to experience how very differently others may encounter the same material. As lawyers they will have to make just these kinds of judgment calls about likely audience reactions to their arguments, and they need this practice.

If we assume, then, that the goal is to make self-conscious engagement with visual meaning-making possible, with the understanding that absolute

28 This is true for all forms of professional training; when there are calls for change, it is often because of pressure to produce new styles of authority.
29 Faculty of course retain control over the syllabus and have the power to grade, with all its attendant consequences. Our classroom practice is not an abandonment of all authority but its reconfiguration.
and stable meanings cannot be constructed, then we must create a classroom where pluralities of meanings are tolerated and experienced as non-threatening. The students must become active agents and not just passive receivers, comfortable with the absence of conclusive answers.\textsuperscript{30} They need to enjoy liminality, the entrance of thoughts and feelings just below the threshold of consciousness, while at the same time thinking critically: They must both lower barriers and be more conscious. If, as suggested above, pictures provide a particularly powerful way for lawyers to exploit implicit meanings in making their arguments, the only way to explore what those meanings might be in any one image is to test people's direct responses to the images. Such explorations put visual legal training on a collision course with traditional law school pedagogy. This is so not because law teachers regard text as transparent, but because the students' responses to texts or other materials are sharply controlled by teachers who generally seek to elicit specific answers, which they already have in mind upon entering the classroom. Students in law school learn to read texts differently than they do outside law school. According to Elizabeth Mertz, the classroom discourse [in a traditional law classroom] is a semiotic disciplining to a new form of reading and discursively organizing texts, and this reading can of course be multiply recontextualised in the various speech settings of legal practice.\textsuperscript{31}

First-year law students often find this retraining of reading stressful and they depend upon faculty and faculty's authority to make this transition; it is non-obvious from the materials themselves. We are introducing yet different habits of mind that require the cultivation of creative, nonlinear thinking and more active, decentralised, and collaborative participation than the traditional law teaching model allows. We have had to reconfigure the traditional law school paradigm.

We signal the different culture of this classroom immediately. Two professors, coming from very different disciplines—law and fine arts—share authority (more about this later). The group is small enough (between twelve and sixteen students) so everyone can have face-to-face contact. The professors use their first names. Unlike other law school courses, we do not

\textsuperscript{30} G Hess & S Frideland, \textit{Techniques for Teaching Law} (Durham, NC, Carolina Academic Press, 1999), at 108-09, while asserting that '[m]odern professional practice is characterised by complexity, uncertainty, and value conflict,' state immediately thereafter that 'student experiences are most likely to promote significant learning if they are carefully planned, monitored, and structured to achieve specific learning goals.' While we believe that careful teaching is important, our model is more wide open, the goals of any one class more a moving target. Maybe this is due to the fact that we are engaging in a non-linear curriculum where constant themes move between the warp and the weft and we look for recursiveness both to reinforce those themes and to build the group.

\textsuperscript{31} E Mertz, \textit{Recontextualization As Socialization: Text and Pragmatics in the Law School Classroom} (Chicago, American Bar Foundation, 1993), at 36.
post the readings for the first class in advance. Students arrive with no orient-
ation apart from the various expectations that the course description
may have sparked. This highly practical classroom structure may be uncon-
ventional for American law schools, but it has enabled students to bring
their individual interests and experiences into the classroom, often supple-
menting the planned materials in important ways. For example, one student
with experience in the District Attorney’s Office taught us how drug deal-
ers in Connecticut do their accounting. A former corrections officer taught
us about adolescents in prison. A psychotherapist moved our discussions to
levels of counter-intuitive sophistication that students might have otherwise
missed. Finally, a master player of the popular video game ‘Doom’ showed
us what we needed to know to pursue a hypothetical case against the game’s
publishers in litigation deriving from the shootings at Columbine High
School. These contributions of what anthropologists call ‘local knowl-
edge’ have, each time, expanded the content available for use in the class
and enhanced the development of our classroom micro-culture.

Once faculty realize that the small group dynamics are producing a
micro-culture, it becomes relatively simple to cultivate this dimension more
deliberately. With all members of the group freely engaging a variety of
materials—both verbal and visual—we develop a system of reference to the
formal elements of the course as well as to jokes arising from our common
experiences and some knowledge about our personal lives. These refer-
ences, not unlike the private language of family life, can be evoked and
deliberately invoked by faculty as part of classroom communication. Such
gestures toward group bonding contribute to the overall sense of the class
as a self-contained discourse community.

Patterns are already emerging after four iterations of the course. At the
beginning of the semester, when confronted by thick packets of interdisci-
plinary materials—not just those of the law and facts of the hypothetical
case, but also those drawn from social psychology, cognitive science, phi-
losophy, literature, art history, history of science, media studies and so on—
students often panic. Their initial uneasiness is exacerbated by our not
telling them why or how to argue (although we give them everything they
need to make their arguments). Responses range from groans to ‘Can’t we
just settle the case and be done with it?’ or ‘What do I do—I dislike my
client?’ As the mid-term looms, there are more and more questions about
the formal written requirement—what form do we want, how long, etc.—
seemingly reflecting a fear of having no boundaries when, in fact, we give
clear guidelines but more than the usual latitude. We have provided extra
class time to work as a committee of the whole in thinking through the
issues. A student last fall noticed the general anxiety in the classroom and

32 C. Geertz, Local Knowledge: Further Essays in Interpretive Anthropology (New York,
said: 'The project is big, lacking definition. We have to swallow without sufficient chewing.'

Just as students voice their anxieties, outside of class, so do the professors. 'Are we losing them?' comes up when we see how anxious they are. 'Are we letting them down by not dealing with every dreading in detail?' 'Am I, a non-lawyer, on target or not?' 'Will they take my thinking seriously?' About three quarters of the way through each semester (or nine to ten weeks into it), the law-trained member of the team usually begins to be really concerned, and so plans a little structured presentation or two—very useful, pulling together the various intellectual threads we have in play, weeding the garden a bit. And each time, in slightly different versions, the students have manifested resistance to going back to a more conventional classroom style. They become inattentive, sometimes even engaging in side conversations during the professor's presentation on the law. Our students have brought food and drink to share with the class. This too can be seen as an aspect of rebellion ('we are going to nurture ourselves, the leaders aren't the only source of feeding') but when this occurs at the end of the course, it is a celebration and a sharing of leadership, a mature self-definition of the group. It is not uncommon for students to ask to bring guests to class for the project presentations at the end, opening and extending that boundaries that we faculty have so carefully protected.

Rebellion also occurs just around the time we are asking them to work seriously on the video project as a small group activity. They have to take on the mantle of authority to do this project and set out into the unknown, with their grade depending upon the collaboration. Their rebellion can be seen as furthering the goals of the course as well as a stage in the maturing of the group. Our students are adults and the course has many real task-oriented demands. The drama of the group is a subtext. Nevertheless,

*a deliberate* group action enormously strengthens group confidence, group self-awareness, and internal differentiation. This is one of the reasons why the group revolt so often marks a major advance in group consciousness. In the context of this short paper, it is not possible to lay out a complete group dynamics analysis. This reading of the group's behavior is carried out under the analytical frame of P Slater, *Microcosm* (New York, John Wiley & Sons, 1966).

The video projects are accomplished in six weeks after two hours of video production training and two hours of editing training. All it takes is the experience of lifting a sound track from one clip and attaching it to another for students to know with certainty that everything on film is constructed

33 Slater 1966 at 246. What is unknown, and would be interesting to study, is what effect having two professors has on the revolt of the group. Does this automatically diffuse some of the leader's power without any abandonment of it? Also unknown is how important it is that the two are a man and a woman in our working contexts. We certainly repeat visually images of the two parent, two gendered family. Unlike some families, there is a full sharing of authority between these two 'parents.'
and that they can be builders in this medium. We teach them just what they need to know to do the project. Our bottom-up approach—'here's a tool; 'use it' rather than, 'you need to know this and this and this before you can use it'—works. It works because people are empowered; it works because they call upon other knowledge they have—one student said, 'I see, it's a word processor for film!'—and it works because they discover, when they sit in front of the computer and perform the simplest operations with it, that whatever they don't know about computers pales beside everything that they do know about film and video. Students have displayed a fluency and sophistication in their editing that is often lacking in the written portion of their midterm projects. While visual literacy has been neglected as a component of formal education, American students have been unwittingly assimilating a complex knowledge of film language simply from watching television and going to the movies. Not having to draw upon that knowledge, or think about it in a more self-conscious and critical manner, they didn't realize they had it. However, once they begin to apply this body of knowledge, they feel competent and able—and patient—with the technology. They also have the support of their peers both as team members and as an audience.

In what follows we will pull together the foregoing observations about course pedagogy and content in an effort to summarise how the Visual Persuasion course reflects the value of an interdisciplinary approach to legal visual rhetoric. We offer five brief observations about how the course reflects the value of an interdisciplinary approach to legal visual rhetoric.

First, to persuade in any medium, both the content and form of a message must mesh with what the audience is prepared to understand and believe. Readings in rhetoric, the psychology of persuasion, and cognitive and social psychology introduce students to this basic idea (among many others). Narrative theory shows them that audiences are more likely to accept an argument packaged as a story that resonates with familiar themes of right vs. wrong, good vs. evil, man vs. nature, big vs. small, innocence vs. deceit.

Second, in a visual culture, students who are to succeed in discovering the possible means of persuasion in any situation need to know about the psychology of perception, information design, art history, advertising, and media studies, among other fields. In addition to these intellectual tools, students also need to practice making and responding to images, which is what visual exercises (and examples of legal visual rhetoric shown in class) provide.

Third, students' efforts to argue using images as well as words reflect deep, intuitive understandings of modern visual culture, from movies to documentaries to advertising. But to integrate the persuasive techniques of popular culture effectively with the demands of real legal arguments, that intuitive knowledge must be made (at least partly) self-conscious and explicit. Interdisciplinary readings give students many ways to articulate
what they already know, and thus to develop a common vocabulary for creating and critiquing modern visual rhetoric. Visual exercises and larger projects make their understanding active. And students are much less likely to forget what they have done themselves, for their experiential knowledge is but an extension of who they are (or have become).

Fourth, making digital videos allows students to discover how easy it is to access and manipulate information today (it’s all zeroes and ones), and how easy it is to represent reality in multiple ways. This in itself makes them more critical consumers of mass media. As students tell us: ‘I’ll never watch TV the same way again.’ Readings in digital media and communication enhance students’ appreciation of what it means to use digital technology to persuade—as well as how audiences accustomed to computer interfaces and digital interactivity may respond differently to visual appeals than do audiences comfortable only with analog media.

Fifth, and finally, a highly multidisciplinary approach increases the connections among law, media, and culture that students visibly realise in their work. This encourages a new visual ethnography of legal communication, allowing us to observe how the coming generation of media-savvy lawyers is primed to creatively and strategically import into descriptive and adversarial legal discourse the contents and styles of popular culture. Studying how these new lawyers use the latest visual technologies may ultimately help us to reconceive the theory and practice of legal rhetoric itself.

V

CONCLUSION

Close to the end of the semester, one of our students said, ‘I thought we were supposed to learn the rules and apply them and now you are leading us down a different path altogether.’ We answered, ‘Laws and rules are interpreted, facts arranged into a theory of the case. How are you going to convince people that your position should be adopted without thinking about persuasion?’ Yet, we can understand the student’s quandary. Classical rhetoric is rarely taught any more in the law school curriculum, and the move to the visual leaves us exploring unknown territory where images evoke not just visions of reason and justice but also encounters with difficult emotions and the imponderables of audience reception. All three of us believe that the empowerment of rhetorical speech which we try to foster will do more than make students smarter and more thoughtful about pictures; it will also enable them to be more active participants in public rhetoric and more sophisticated observers of how mass media shape and inform how people think and feel.

The empowerment and critical sharpening of their speech have also led to a sense of greater personal integration. Many students have told us at the
end of the course that they feel the course has helped them to rescue parts of themselves that had remained dormant. They never realised that they could use more of themselves in their professional work. In this course, we have constructed a semiotic environment in which our materials, assignments, and practices are indexical for the very thing we wish to teach, just as the 'recontextualisation, [of legal texts] to a significant extent, performs the semiotic mediation of social praxis' 33.

What we did not anticipate was how our course might help to fulfill the most fundamental purpose of Martha Nussbaum's call for the literary imagination to be incorporated into the practice of the law. She defines this as the development of empathy for the other. When students make their video projects, they are left completely free to decide whether they wish to film original footage or just appropriate existing material to be used as part of their arguments. When they film original footage, some cast themselves as professionals, which they are becoming; others as citizens, with whom they must be comfortable; and still others imagine themselves as outsiders, convicts, tricksters. We believe that this is demonstrative evidence that these new lawyers are 'capable of entering imaginatively into the lives of distant others and to have emotions related to that participation.' 34 It is our hope that this experience of empathy, combined with the sturdiness of legal testing in the adversarial setting of the law, will help to constrain the adverse effects of rhetorical manipulation while making our students effective communicators of the facts and narratives of their cases.

Visual literacy presents lawyers, especially trial lawyers, with new communicative power. Complex events can be translated into clear and easily accessible images without sacrificing accuracy. At the same time, however, this power introduces new challenges: technical, strategic, and ethical. In the long run, there is no choice but to confront these challenges. As law, like the rest of our social and cultural institutions, increasingly uses visual means to communicate, legal practice will look increasingly like politics, advertising, and TV journalism. It, too, will assimilate the fluid reality of images moving across an electronic screen. This is our vernacular, the popular bandwidth of an increasingly global culture in which lawyers will operate. In recent years, as the technologies of visual communication have proliferated, the pace of change has accelerated rapidly. As academics, it is up to us to teach our students how to self-reflectively tell and critique the visual stories and visual arguments that are being presented in the courtroom, and that circulate within the popular legal imagination in the culture at large. With its potent integration of theory and practice, we believe that legal semiotics provides the tools that are needed for this descriptive and critical task.

33 Mertz 1993 above n 31, at 5.
34 M Nussbaum, Poetic Justice (Boston, Beacon Press, 1997), at xvi.