

1995

Symposium: Picturing Justice: Images of Law &
(and) Lawyers in the Visual Media - Introduction
Symposium: Picturing Justice: Images of Law and
Lawyers in the Visual Media

Richard K. Sherwin
New York Law School

Follow this and additional works at: http://digitalcommons.nyls.edu/fac_articles_chapters

Recommended Citation

30 U.S.F. L. Rev. 891 (1995-1996)

This Article is brought to you for free and open access by the Faculty Scholarship at DigitalCommons@NYLS. It has been accepted for inclusion in Articles & Chapters by an authorized administrator of DigitalCommons@NYLS.

Introduction

Picturing Justice: Images of Law & Lawyers in the Visual Media

By RICHARD K. SHERWIN*

"Movies and the law have a lot in common. It's all illusion. Whatever you want them to see, they see."¹

IT IS NOW WIDELY accepted that our sense of history, like our sense of memory and self-identity, is in large measure the result of arranging and telling stories.² It is through stories that we construct the meaning of individual and collective experience³ just as it is through stories that we are moved to blame (or exonerate) others.⁴ As Avi Stachenfeld and Christo-

* Professor of Law, New York Law School. J.S.D., Columbia University, 1989; LL.M., Boston College, 1985; J.D., Boston College, 1981; B.A., Brandeis University, 1975.

I would like to express my appreciation to Harriet Inselbuch and Dean Harry Wellington of the New York Law School for their support of this venture into new territory. Thanks are also due to the members of the *University of San Francisco Law Review* for their extraordinary help in making the conference *Picturing Justice: Images of Law & Lawyers in the Visual Media*, held at the University of San Francisco School of Law, March 22-23, 1996, such a success. I also would like to express my thanks to the conference panelists, whose stimulating insights from diverse fields of expertise have helped break new ground in the study of law and popular culture. Finally, I wish to thank Professor John Denvir of the University of San Francisco School of Law for his dedication to this project and for making work on the planning, presentation and post-production stages of the conference and symposium issue so enjoyable.

1. *L.A. Law* (NBC television broadcast, Nov. 18, 1992).

2. See ROGER C. SCHANK & ROBERT P. ABELSON, *SCRIPTS, PLANS, GOALS AND UNDERSTANDING: AN INQUIRY INTO HUMAN KNOWLEDGE STRUCTURES* (1977); DONALD P. SPENCE, *NARRATIVE TRUTH AND HISTORICAL TRUTH: MEANING AND INTERPRETATION IN PSYCHOANALYSIS* (1982); THE PERSISTENCE OF HISTORY: CINEMA, TELEVISION, AND THE MODERN EVENT (Vivian C. Sobchack ed., 1996); HAYDEN V. WHITE, *TROPICS OF DISCOURSE: ESSAYS IN CULTURAL CRITICISM* (1978).

3. See JEROME S. BRUNER, *ACTS OF MEANING* (1990); NELSON GOODMAN, *WAYS OF WORLDMAKING* (1978).

4. See W. LANCE BENNETT & MARTHA S. FELDMAN, *RECONSTRUCTING REALITY IN THE COURTROOM: JUSTICE AND JUDGMENT IN AMERICAN CULTURE* (1981); Anthony Amsterdam & Randy Hertz, *An Analysis of Closing Arguments to a Jury*, 37 N.Y.L. SCH. L. REV. 55 (1992); Nancy Pennington & Reid Hastie, *A Cognitive Theory of Juror Decision Making: The Story Model*, 13 CARDOZO L. REV. 519, 528 (1991) ("A story is plausible to the extent that it corresponds to the decision maker's knowledge about what typically happens in the world and does not

pher Nicholson note in their contribution to this symposium issue, "powerful litigators are effective storytellers."⁵ But what, we may ask, makes a legal storyteller effective? What does a good legal story *do*?

For one thing, it should convey a compelling sense of truth or reality, which is to say, of *verisimilitude*. According to literary critic Michael Riffaterre, *verisimilitude* is "a system of representations that seems to reflect a reality external to the text, but only because it conforms to a grammar."⁶ Or as cultural theorist John Fiske observes in his symposium piece:

The nature or truth of an event is determined in part by the discourse into which it is put, and no event contains its own prescription for the correct discourse by which to know and communicate it. To put it another way, any event can be put into discourse in different ways, so the critical relationship is between the different discursive constructions of that event⁷

In short, our cognitive styles, like literary ones, change from one generation to the next and from one social group to another. What establishes a sense of *verisimilitude* in a given text or story, then, is not simply a matter of correspondence to something in the real world. It also stems from the text's consistency with well-known linguistic usages in a particular social and cultural context, at a given moment in time. In the above illustrations truth has been treated as a matter of trained *linguistic* perception. That too, however, is subject to change.

The principal storytellers of our culture today are television and film. Effective storytelling in these media is highly dependent upon visual and aural cues. The legal storyteller must have a sophisticated understanding of mass communication in order to grasp how truth, law, and justice are constructed in the popular imagination. Only then can she effectively tell her story before a particular lay audience. On this view, law cannot be isolated from the influences of the visual mass media and the shifting styles and content of popular cultural storytelling. In practice, it hasn't been.

Today, savvy lawyers know and are putting to practical use what advertisers and politicians have known and practiced for quite some time: how to get the message out, how to tailor content to medium, how to spin

contradict that knowledge"); Richard K. Sherwin, *Law Frames: Historical Truth and Narrative Necessity in a Criminal Case*, 47 STAN. L. REV. 39 (1994).

5. Avi J. Stachenfeld & Christopher M. Nicholson, *Blurred Boundaries: An Analysis of the Close Relationship Between Popular Culture and the Practice of Law*, 30 U.S.F. L. REV. 903, 904 (1996); see also Symposium, *Lawyers as Storytellers & Storytellers as Lawyers*, 18 VT. L. REV. 567 (1994).

6. MICHAEL RIFFATERRE, *FICTIONAL TRUTH* at xiii-xiv (1990).

7. John Fiske, *Admissible Postmodernity: Some Remarks on Rodney King, O.J. Simpson, and Contemporary Culture*, 30 U.S.F. L. REV. 917, 918 (1996). See generally CLIFFORD GEERTZ, *LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY* (1983).

the image, edit the bite, seize the moment on the screen and in the mind of the viewer. To effectively persuade another requires gaining control over reality. The reality that counts most in this context is the one that people carry around in their heads: the popular images, stock stories and character types, the familiar plot lines and recurring scenarios.⁸ With such knowledge in hand, the persuader gains the leverage she needs to mobilize and arrange the mental constituents of reality making.

Lawyers who are in the business of persuasion, who make a living out of weaving facts into persuasive narratives, may be viewed as agents of a larger cultural convergence that is now under way. It is a convergence of mass communication and the multi-perspectival, constructive epistemology of postmodernism. For that is what we are seeing in the proliferation of cinematic and televisual styles of storytelling in the courtroom—along with the proliferation of videos, monitors, and computer-generated sounds and images. And why not? If persuasion is a matter of tapping into the reality that people carry around in their heads and of emulating the habits of perception and styles of thought that come with extensive exposure to mass-mediated popular culture, where else would one turn but to the screen?

As contributor Philip N. Meyer notes, “jurors seem to make sense out of increasingly complex simulations through references to *other* imagistic stories.”⁹ Based on his own in-court observations, Meyer notes that there is a newly emerging, open-ended legal storytelling style that is “remarkably influenced by the conventions of popular imagistic storytelling.”¹⁰ In short, the storytelling of contemporary popular culture is finding its way into court.

Legal reality is being visually projected in a variety of ways inside the courtroom: from day-in-the-life videos in personal injury cases, to reality-based police surveillance videos, to civilian and news journalist videos (e.g., of the police in action) and digitalized reconstructions of the images they contain,¹¹ to computer graphics and digitally reconstructed accidents and crime re-enactments, to video montage as a form of legal argumenta-

8. See Amsterdam & Hertz, *supra* note 4; Neal R. Feigenson, *The Rhetoric of Torts: How Advocates Help Jurors Think About Causation, Reasonableness, and Responsibility*, 47 HASTINGS L.J. 61 (1995).

9. Philip N. Meyer, “*Desperate for Love II*”: *Further Reflections on the Interpenetration of Legal and Popular Storytelling in Closing Arguments to a Jury in a Complex Criminal Case*, 30 U.S.F. L. REV. 931, 932 (1996).

10. *Id.* at 933.

11. For example, consider the heavy reliance by defense lawyers in the first Rodney King assault trial on in-court digital reconstructions of the George Holliday video tape which showed Los Angeles police officers in the act of “subduing” Rodney King. The defense’s re-orchestration of these images helped to persuade jurors that it was *King’s* movements that “caused” the officers to strike King with their batons.

tion (including the strategic interweaving of commercial feature film footage and evidentiary material from a case file). The latter montage has even replaced an attorney's live summation before the jury.¹²

Where else can one go but to the screen? It is where people look these days for reality. And it is the look of reality that they get from the screen that is the object of persuasion, the look that must be captured to make the image work (for reality's sake, which is to say, for the sake of verisimilitude). This is what skilled legal video producers like Stachenfeld and Nicholson are after. As they note, describing a video they made for a Dallas-based client, Maxus Corporate Company, against New York-based defendants Ivan Boesky, Martin Siegel, and Kidder Peabody:

Through the use of Digital Video Effects ("DVE") editing, we gave the Maxus attorneys the ability to "fly out" first the New York State flag and from it a highly stylized organizational chart of Kidder containing Martin Siegel in a central location. Ten or fifteen years ago, television was a colorful, yet relatively static, medium. The literal bandwidth has not changed; however, motion is not only common, it is expected. Consequently, it is an integral component of our work.¹³

Of course the intermingling of law and popular culture is not new. Nor is the appearance in court of popular cultural storytelling conventions. Ever since telegraph wires began knitting this nation together, law has played through the air—often to a rapt national audience.

Consider for example the 1859 trial of militant abolitionist John Brown, following his disastrous attempt at Harper's Ferry to instigate a slave insurrection. Assured of execution, acting as his own counsel, Brown manipulated the trial proceedings to suit his own purposes. In the process he brought the nation its first mass-mediated trial.¹⁴ The narrative genre that played out before the public, in the culturally ascendant story form of the Romantic hero, resonated deeply in the popular imagination of the time.

Appealing to the lay public's narrative tastes requires tapping into prevailing cultural beliefs and expectations about what constitutes good storytelling. Whether it is John Brown or Johnny Cochran, popular narrative conventions supply courtroom advocates with crucial information about persuasive story forms and content for lay judgments about truth and justice. As the contributors to this volume make clear, legal storytelling may

12. See Rorie Sherman, *And Now, The Power of Tape: Videos Are Being Used To Argue the Case and Not Just Demonstrate the "Facts"*, NAT'L L.J., Feb. 8, 1993, at 1 (discussing an Arizona case in which the plaintiff used a summation video that included scenes from the 1958 British feature film, *A NIGHT TO REMEMBER* (Rank 1958) in order to make visually vivid its comparison of the defendant's negligence to that of the officers aboard the iceberg-bound Titanic).

13. Stachenfeld & Nicholson, *supra* note 5, at 909 (footnote omitted).

14. See Robert A. Ferguson, *Story and Transcription in the Trial of John Brown*, 6 YALE J.L. & HUMAN. 37 (1994).

continue unabated inside the courtroom, but its style and content have altered significantly over the years. The look and sound of truth and justice are not what they were even a generation ago. The stories told and the storytelling techniques that are in use reflect constant changes in mainstream culture. These changes include shifts in narrative genre, in the media by which stories are communicated, and in underlying cultural tensions that erupt in the course of notorious trials, often bringing into public view deep normative conflicts that previously lay hidden within the collective unconscious.¹⁵

For example, John Brown's masterful emulation in court of the well-known character type of the Romantic hero brought to the surface perhaps the deepest cultural contradiction of his time. How were universal principles of freedom and equality, so eloquently stated in the Declaration of Independence, to be squared with the legitimation of slavery embodied in the supreme law of the land? Notably, fifteen years later lawyers in the year-long adultery trial of Henry Ward Beecher would rouse a seemingly insatiable public with a different set of narrative beliefs and expectations, reflecting an altogether different cultural conflict.¹⁶

The injustice of slavery was the issue of the day when Brown's trial unfolded. When Beecher's turn came to stand before the nation the issue had to do with faith and disbelief, appearance and deception. Consider Beecher, the nation's foremost preacher, a symbol of morality and idealism, accused of committing adultery with the wife of New York author and editor Theodore Tilton. If such a man could do such a thing, the trial subversively asked, who is exempt? If so bright an exterior as Beecher's belies so dark an interior in what can we reliably invest our confidence?¹⁷ This clash played out both in court and in the mass media of the time as a battle between competing narrative genres: the world of romance (with its faith in

15. Cf. VICTOR TURNER, *DRAMAS, FIELDS, AND METAPHORS: SYMBOLIC ACTION IN HUMAN SOCIETY*, 45, 49 (1974) (describing *communitas* as an invisible, deep cultural bond uniting people over and above any social bond or positive structure and which is particularly apparent when structural conflicts must be redressed).

16. See Laura Hanft Korobkin, *The Maintenance of Mutual Confidence: Sentimental Strategies at the Adultery Trial of Henry Ward Beecher*, 7 *YALE J.L. & HUMAN.* 1 (1995).

17. Cf. Hennig Cohen, *Introduction to HERMAN MELVILLE, THE CONFIDENCE MAN: HIS MASQUERADE* at ix (Hennig Cohen ed., 1964). Describing Melville's pessimistic outlook, Cohen notes:

For Melville, 'annihilation' did not mean simply defeat or death, but the recognition of the limitations inherent in the human situation. As Hawthorne was aware, even more difficult and profound matters were involved—how to live in a world in which nothing is what it appears to be, in which . . . the only thing believable is that nothing can be believed.

Id. at x.

outward appearances) and the modernist world of suspicion (with its skeptical search for truths that outward forms often conceal).

It is no different in our day when notorious trials whip up a sense of public fervor vastly out of proportion to the specific facts of the case. Consider the following scenarios: a lone (white) gunman shoots four unarmed (black) teenagers in a New York subway; four (white) Los Angeles police officers are charged with using excessive force in the arrest of an intoxicated (black) motorist; a (black) celebrity and football icon is charged with the murder of his (white) ex-wife and her (white) male companion. Only when viewed in terms of the deeper cultural tensions that these recent cases reflect can we begin to understand the scope and intensity of the public's interest and emotional investment in them. Consider the almost mythic level on which these legal dramas played out—whether it was the case-winning story of the lone vigilante, enforcing order in the face of unchecked violence (Bernhard Goetz), or the story of the lone black man rising up against police brutality and racism (Rodney King), or the story of a vigilant jury acting as public watchdog in the face of a conspiracy of officially sanctioned racism (O.J. Simpson).¹⁸ Viewed in this way we can begin to appreciate the deep cultural forces that underlie and animate these and other notorious cases.

Turning our attention then to the recurring images and scenarios that millions of people see projected daily on TV and silver screens across the nation, images and scenarios depicting law and lawyers, truth and justice; this is no idle diversion. The dominant style of narrative representation consistently influences how cases are presented in court and how they come out, not to mention how they are perceived by an avid audience among the public at large. The difference today is that to an increasing degree many of our popular stories of truth and justice do not comply with print-based, linear narrative forms and genres. They are often non-linear; juxtaposing visual images and sounds that trigger associations and sentiments embodied in yet other images and sounds. In short, legal storytelling today reflects the influence of post-literate storytelling, the storytelling that we find in film and on TV.

There is another difference as well that sets our generation apart from those that preceded it. Aside from the shift in media from print to visual, the landmark cultural tension of our time seems to coincide with the growing, media-generated difficulty of clearly demarcating fiction and reality, of

18. See Richard K. Sherwin, *Law and the Myth of the Self in Mass Media Representations*, 8 INT'L J. SEMIOTICS L. 299 (1995) (describing the in-court and mass media manipulation of images in the Rodney King assault case and the disparate rhetorical styles of the prosecution and defense in the O.J. Simpson case).

drawing the line between historic events and their visual representation. Where does the documentary form end and the docudrama begin?¹⁹ Increasingly, we read one in terms of the other, slipping back and forth between the two, from the televisual to the real, from history to dramatization, with little compunction, perhaps without even being aware that the shift has taken place.²⁰ We live in a time when TV judges are taken for real ones²¹ and law on TV is taken for law on the books.²² Cases may be won or lost depending on a trial lawyer's ability to meet a juror's TV-bred expectations.²³ From what has been said so far, it should come as no surprise that lawyers are increasingly complying with a new generation of narrative expectations.

On this view, to start with the stories that are in mass circulation, isolating popular plot lines, character types and cultural stereotypes, can help us to understand how truth and justice are being constructed and how these constructions capture belief in the everyday practice of law. This is where law and popular culture converge—in the stories that are being told by clients, witnesses, and experts, as well as by attorneys, to one another and to the lay jurors who make up their audience. These legal stories bring us into contact with a cultural repository of common knowledge and popular belief concerning law, truth, and social justice in our time.

To study these popular stories and the methods by which they are told leads us to their source: the popular culture of film and television to which we are all exposed and by which we are all influenced. Here we seek to

19. See, e.g., BILL NICHOLS, *BLURRED BOUNDARIES: QUESTIONS OF MEANING IN CONTEMPORARY CULTURE* (1994).

20. According to media theorist Timothy Murray: "[F]ictional models permeate factual discourse." Murray also notes that "[t]he more the facts in a given case are disputed . . . the more likely a TV or cinematic version of events will shape public opinion." Deborah Baldwin, *Is It Fact? Or Is It Fiction?: From Hollywood To The 6 O'Clock News, It's Getting Harder and Harder To Tell*, COMMON CAUSE, Winter 1993, at 25, 29 (quoting Timothy Murray).

21. See George Gerbner, *Trial By Television: Are We At The Point Of No Return?*, 63 JUDICATURE 416, 420 (1980) (noting that according to a recent poll seventy-three percent of those children surveyed could not cite any difference between judges depicted on television shows and those in real life).

22. See J.M. Balkin, *What Is A Postmodern Constitutionalism?*, 90 MICH. L. REV. 1966, 1981 n.35 (1992) (noting that in recent years Canadian citizens have been insisting upon receiving *Miranda* warnings following arrest—as if Canadian television viewers' shared popular culture with the United States included a shared *legal* culture as well).

23. Former CBS law correspondent and current Court TV anchor Fred Graham recounts the story of a defense lawyer whose client unexpectedly lost. When the lawyer asked a juror what happened, the juror said: "When you cross-examined the prosecution's key witness, you did not get him to confess." Graham's comment follows: "The lawyer realized that here is a real Perry Mason fan, and the real-life lawyer has not measured up." Fred Graham, *Keynote Address: The Impact of Television On The Jury System: Ancient Myths and Modern Realism*, 40 AM. U. L. REV. 623, 628 (1991).

uncover the popular myths, images and storytelling conventions that shape and inform the popular imagination. It is an imagination that has been stocked with representations produced by and screened on the visual mass media—as a matter of content (what is shown, and what is left out) and as a matter of style (how what is shown is made known and made to seem persuasively real).

We study the popular imagination because it is an important source of law: from the voters who put lawmakers and judges in power, to jurors who determine truth and justice in jury rooms across the nation. And just as it is the lay public from whom law's legitimacy ultimately derives, so too it is the public's continued belief and acceptance upon which law's legitimacy depends. It is the people who in anger may repudiate the law of the state, who may even make their own law from the streets.

In sum, this symposium aims to open a window onto the popular imagination of our culture and society as manifested in the ever-changing drama of legal storytelling. The view that it offers also allows us to look into more shadowy realms that lie at the intersection of law and popular culture, for we also encounter here a domain of meaning that often remains hidden beneath the surface of the legal stories being told.

The study of law and popular culture seeks to expand the traditional range of legal studies. It seeks to include what has often been omitted, such as the feelings, desires, conflicting impulses and wishes that circulate within the law, from its narrative construction to its (at times violent) social effects. To recognize this part of legal reality is to recognize as well the evisceration of the legal fictions that in the past succeeded in keeping this domain in the shadows. This includes the fiction that law derives from dispassionate reason, that it is the product of objective analysis disengaged from feeling or desire, and the fiction that legitimate legal decisionmaking cannot occur in the absence of deductive or inductive logic, strict causal analysis, and well-reasoned explanation. Postmodern legal storytelling challenges all of these assumptions.

Watching a film, and to a somewhat lesser degree watching a television screen, can be compared to gazing upon a mirror, a mirror that reflects what is going on outside as well as inside the mind.²⁴ This is a realm that is alive with emotions, fantasies, ideals, and self-deceptions. Law partakes of this realm when jurors bring their feelings and fantasies (albeit unwittingly) to the task of crediting one legal story over another and when they deter-

24. See, e.g., Sandy Flitterman-Lewis, *Psychoanalysis, Film, and Television*, in *CHANNELS OF DISCOURSE, REASSEMBLED* 203, 211 (Robert C. Allen ed., 1992) (“[W]hen we watch a film it is as if we were somehow *dreaming* it as well; our unconscious desires work in tandem with those that generated the film-dream.”).

mine how the law shall apply to the story they have chosen to believe. The shared elements of popular culture supply the materials out of which we construct self and social realities—they comprise the stories that we live in, and that we live out.

What legal stories are being told, and how are they being constructed? How do popular images and other storytelling elements affect our sense of ourselves and the world around us—particularly when it comes to assessing such common legal realities as claims of wrongdoing or criminality? These are the sorts of questions that arise when we venture into the domain of law and popular culture. It is a domain in which the worlds of law, film, television, and computer-generated imagery commingle. And because they commingle, both in and out of court, it is appropriate that we carefully examine the images and stories that popular culture purveys. For these are the stories that we (often unwittingly) carry with us into places of power, where they take root and where they help make up the realities of law and justice to which we are all subject.

The seven articles that follow lay the groundwork and suggest some parameters for the newly emerging field of law and popular culture studies. These are exploratory works merely suggestive of the kinds of interdisciplinary studies that may be undertaken in this area. They may be grouped within three general categories.

1. How Popular Culture Enters the Law

The first four articles canvas some of the ways in which popular culture seeps into the domain of law. In Avi Stachenfeld and Christopher Nicholson's piece, *Blurred Boundaries*, we see a convergence of law and popular culture in the increasing use of sophisticated litigation tools such as legal videos and computer graphics that emulate familiar televisual styles of communication and persuasion. A similar convergence can be seen in the assimilation by trial lawyers of cinematic storytelling styles. This is apparent in defense attorney Jeremiah Donovan's closing argument to a jury in a complex criminal case as described in Philip Meyer's article, *Desperate For Love II*. We witness a similar blurring of boundaries between legal and popular storytelling in the transformation of notorious trials into televisual "media events" as described in John Fiske's *Admissible Postmodernity*, and in the transformative impact of the visual media on justice when real cases are subjected to cinematic, entertainment-driven conventions of "truth" or "reality," which is described in Charles Musser's *Film Truth and The Law*.

2. How Law Contributes to Popular Culture

Suzanne Shale probes further the intermingling of law and popular culture by closely examining the discrete demands of the mass media in the context of writing a trial movie based on real life events. Specifically, Shale examines “how knowledge of law moves from the legal to the popular domain, how the dramaturgy of the law itself influences popular culture, and, further, how the conventions of popular culture form the structure of popular legal knowledge.”²⁵ In the course of her analysis Shale notes the distorting effect that the media have on law, legal ideas, and legal ideals. Paul Bergman observes a similar distorting effect in his contribution, *A Bunch of Circumstantial Evidence*. According to Bergman, movies often exaggerate the value of direct as opposed to circumstantial evidence at trial. Bergman contends that screenwriters are mirroring a deep popular craving for certainty that expresses itself in the widespread, but false, belief that eyewitness accounts are inherently more trustworthy than indirect physical evidence.²⁶ In this way, Shale and Bergman strike an important critical note, alerting us to the perils that accompany a convergence between legal and popular cultural norms and storytelling conventions.

3. How Popular Culture Judges the Law

A third category of topics in the field of law and popular culture describes how popular cultural representations interpret and assess legal reality. In this respect, popular culture may be viewed as a valuable source of insights concerning current and historic legal norms and practices as well as a critical source of alternative normative possibilities and ways of thinking about law, lawyers, and conflict resolution in society. For example, in the last symposium contribution, *Cape Fear: Law's Inversion and Cathartic Justice*, I use a comparative analysis of the popular original film version of *Cape Fear* and Martin Scorsese's remake thirty years later as a cultural barometer indicating a significant shift in deep cultural beliefs about the relationship between law and violence and the meaning of justice in society.

25. Suzanne Shale, *The Conflicts of Law and the Character of Men: Writing Reversal of Fortune and Judgment at Nuremberg*, 30 U.S.F. L. REV. 991, 994 (1996).

26. This distortion effect provides a useful illustration of how common sense beliefs and cognitive styles shift over time. For example, the current popular cultural preference for direct, as opposed to circumstantial, evidence contrasts sharply with the strong preference in the later eighteenth and nineteenth centuries for circumstantial evidence over direct evidence. It was the latter that the public scorned then. ALEXANDER WELSH, *STRONG REPRESENTATIONS: NARRATIVE AND CIRCUMSTANTIAL EVIDENCE IN ENGLAND* at ix (1992). As Welsh notes: “‘Circumstances cannot lie!’ was a brag sometimes heard at the close of the eighteenth century—and no doubt it spoke volumes of the braggars’ opinion of other people, who might lie.” *Id.* at 7.

Conclusion

What new directions law and popular culture studies may subsequently take, and what new insights it may provide along the way, rests in the hands of those who enter into dialogue with the contributors to this symposium issue and with others who share the belief, as I do, that this work deepens our understanding of law in contemporary society.

