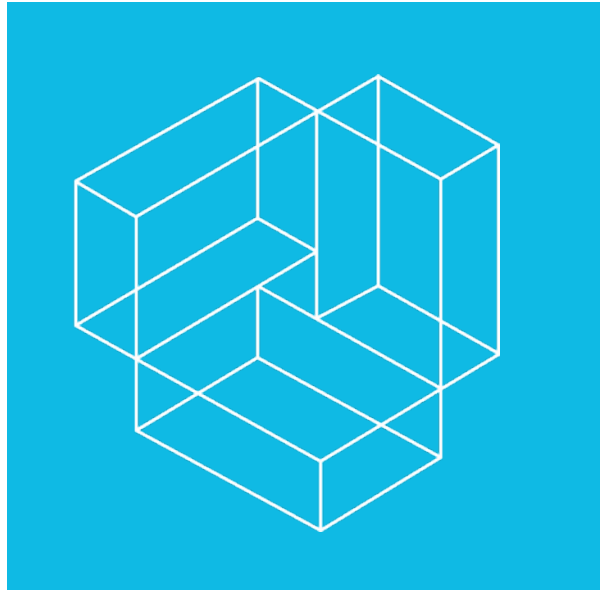# picturing truth

Law, Truth & Visual Images

DREXEL UNIVERSITY
Thomas R. Kline
School of Law

About Picturing Truth:

Photographs, video and data representations serve vital functions in legal decision making. The law often treats images as static, self-evident objects, interpreted as if their meaning is singular and authoritative. In contrast, a significant body of multidisciplinary scholarship does not treat meaning as fixed. Multi-disciplinary scholars use different methodologies to explore the use, reliability and interpretation of visual information. For example, some contend that representative images consist of constructed meanings based on ways of seeing, communal symbols and collective communicative activities. Others are engaged in the problems inherent in using visuals to represent real-world events. In an era where the concepts of truth and post-truth are under examination, understanding how visual images convey information has become more valuable than ever.

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Program

11– 12:30 Visual Interpretation and Multiplicity of Meanings

Catherine Zuromskis, PhD (RIT)

Christina O. Spiesel (Yale Law)

Ariella Aïsha Azoulay (Brown)

Moderator: Amy Landers

12:30–12:40 Break

12:40–2:10 Reading Images within Visual Cultures

Katherine Biber (University of Technology Sydney, Aus)

Jeanne Fromer (NYU) and Amy Adler (NYU)

Julianne Newton (Univ. of Oregon)

Moderator: Jordan Fisher

2:10–2:20 Break

2:20-3:50 Emerging Issues- Looking Forward

Siwei Lyu, Ph.D (Univ. of Albany, SUNY)

Amanda Cox (USAFacts)

J. Scott Babwah Brennen (UNC-Chapel Hill)

Moderator: Sarah Burstein

3:50–4:10 Break

4:10–5:40 Attendee Presentations

Presentation of a selection of attendee scholarship and expert comments on the same.

5:40–5:45 Concluding Remarks

Speaker Profiles

[Amy Adler](#), the Emily Kempin Professor of Law at New York University School of Law, is one of the pioneering scholars of art law in the U.S. She teaches Art Law, First Amendment Law, and Feminist Jurisprudence at NYU Law School, and lectures about these topics to a wide range of audiences in both art and law. Her recent scholarship includes a series of articles about Art and Free Speech, as well as a series of articles about the misfit between intellectual property law and artistic expression, focusing on problems of fair use, authenticity, and moral rights. Adler also acts as a legal consultant to the artist Richard Prince.

Adler graduated from the Yale Law School, where she was a senior editor of the *Yale Law Journal*. She graduated *summa cum laude* from Yale University, where she was elected to Phi Beta Kappa and where she received the Marshall Allison Prize in the arts and letters. Adler clerked for Judge John M. Walker Jr. of the US Court of Appeals for the Second Circuit.

At "Picturing Truth," Adler and Jeanne Fromer will present "Memes on Memes and the New Creativity," an article co-authored by Adler and Fromer.

Summary of Adler's and Fromer's presentation:
Memes are the paradigm of a new, flourishing creativity. Not only are these captioned images one of the most pervasive and important forms of online creativity, but they also upend many of copyright law's fundamental assumptions about creativity, commercialization, and distribution. Chief among them is that copying is harmful. Not only does this mismatch threaten meme culture and expose fundamental problems in copyright law and theory, but the mismatch is even more significant because memes are far from an exceptional case. Indeed, memes are a prototype of a new mode of creativity that is emerging in our contemporary digital era, as can be seen across a range of works. Therefore, the concern with memes signals a much broader problem in copyright law and theory. That is not to say that the traditional creativity that copyright has long sought to protect is dead. Far from it. Both paths of creativity, traditional and new, can be vibrant. Yet we must be sensitive to the misfit between the new creativity and existing copyright law if we want the new creativity to continue to thrive.

[Ariella Aïsha Azoulay](#), a Professor of Modern Culture and Media at the Department of Comparative Literature at Brown University, will present " 'He is my ancestor' argues Tamara Lanier, not a museum asset."

Azoulay is a professor of Modern Culture and Media and Comparative Literature, film essayist and curator of archives and exhibitions. Her books include: *Potential History – Unlearning Imperialism* (Verso, 2019), *Civil Imagination: The Political Ontology of Photography* (Verso, 2012), *The Civil Contract of Photography* (Zone Books, 2008) and *From Palestine to Israel: A Photographic Record of Destruction and State Formation, 1947-1950* (Pluto Press 2011). Her films include *Un-documented: Unlearning Imperial Plunder* (2019),*Civil Alliances, and Palestine, 47-48* (2012). And her exhibitions include *Errata* (Tapiès Foundation, 2019, HKW, Berlin, 2020), and *Enough! The Natural Violence of New World Order*, (F/Stop photography festival, Leipzig, 2016).

[Katherine Biber](#), a Professor in the Faculty of Law at University of Technology Sydney, Australia, is an historian, criminologist and legal scholar. She teaches and researches the laws of evidence. One strand of her work explores visual evidence, photography and creative cultures. Another strand examines histories of evidence and criminal procedure.

For her presentation at "Picturing Truth," Biber will speak about evidentiary images. Visual representations have always had an evidentiary role. Whether maps, diagrams, charts, drawings, photographs, moving images or paintings, there is a long legal history of visual materials having been tendered to resolve disputed facts. Whilst there is a jurisprudence of each of these visual forms, cameras and their successor technologies have now dominated law's visual field. This presentation traces the emergence of a visual jurisprudence, centered around criminal proceedings, enabling us to begin to understand the probative value of images.

Biber is author of the books *Captive Images: Race, Crime, Photography* (2007) and *In Crime's Archive: The Cultural Afterlife of Evidence* (2019). She is co-editor of *Evidence and the Archive: Ethics, Aesthetics and Emotion* (2017) and the forthcoming collection Law's Documents: Authority, Materiality, Aesthetics (2021). She is co-editor in chief of the journal, *Crime, Media, Culture*. She has produced several audio documentaries from her research, most recently "The Last Outlaws" (available on Spotify, Apple and https://thelastoutlaws.com.au/). She is currently writing a legal history of Jimmy Governor, Australia's last outlaw.

[J. Scott Babwah Brennen](#) is the senior policy associate at the Center on Technology Policy at the University of North Carolina where he leads the Center's work on online expression, misinformation, and political advertising. Before joining the Center on Technology Policy, Brennen was senior policy associate at the Center on Science & Technology Policy at Duke University. Prior to Duke, he was a research fellow at the University of Oxford, where he led research for the Oxford Martin Programme on Misinformation, Science, and Media, which examined the interplay between media change and misinformation about science, technology, and health.

At "Picturing Truth," Brennen will discuss findings from a recent article that provided one of the first analyses of visuals in misinformation concerning COVID-19. The article identifies three distinct functions of visuals in pieces of misinformation about COVID-19: how visuals illustrate and selectively emphasize arguments and claims, purport to present evidence for claims, and impersonate supposedly authoritative sources for claims.

Brennen completed his doctorate in media and communication at the Hussman School of Journalism and Media at the University of North Carolina at Chapel Hill in 2018. Before pursuing his doctorate, Brennen received an MA in mass communication from the University of North Carolina at Chapel Hill and a BA in chemistry from Grinnell College. His research has appeared in a number of publications including *The Annals of the American Academy of*

Political and Social Science, International Journal of Press/Politics, International Journal of Communication, Communication Theory, Journalism, Journalism Practice, and Science in Context.

Amanda Cox was the data editor at The New York Times until early 2022 when she joined USAFacts. She is a nationwide expert on the visual presentation of data. Some of her most memorable and informative works allow for the presentation of truth, nuance, and uncertainty. Cox joined *The New York Times* graphics department in 2005. From 2016 to 2022, she was the editor of The Upshot section, which offers an analytical approach to the day's news. Cox obtained her Master's degree in Statistics at the University of Washington and is a 2002 graduate of St. Olaf College.

Jeanne Fromer, a professor of law at New York University (NYU) School of Law, specializes in intellectual property, including copyright, patent, trademark, trade secret, and design protection laws.

She is a faculty co-director of the Engelberg Center on Innovation Law & Policy. In 2011, Fromer was awarded the American Law Institute's inaugural Young Scholars Medal for her scholarship in intellectual property. She is the co-author, with Chris Sprigman, of a free copyright textbook, *Copyright Law: Cases and Materials*, which is in use at over 40 law schools around the world. Before her time at NYU, Fromer served as a law clerk to Justice David H. Souter of the U.S. Supreme Court and to Judge Robert D. Sack of the U.S. Court of Appeals for the Second Circuit. She also worked at Hale and Dorr (now WilmerHale) in the area of intellectual property.

Fromer received her JD *magna cum laude* from Harvard Law School, serving as articles and commentaries editor of the Harvard Law Review and as editor of the *Harvard Journal of Law and Technology*. Fromer earned her BA *summa cum laude* in computer science from Barnard College, Columbia University. She received her SM in electrical engineering and computer science from the Massachusetts Institute of Technology for research work in artificial intelligence and computational linguistics and worked at AT&T (Bell) Laboratories in those same areas. Fromer was a visiting professor at Harvard Law School and Stanford Law School, and she also previously taught at Fordham Law School.

At "Picturing Truth," Fromer and Amy Adler will present "Memes on Memes and the New Creativity," an article co-authored by Adler and Fromer.

Siwei Lyu is a State University of New York (SUNY) Empire Innovation Professor at the Department of Computer Science and Engineering, the Director of UB Media Forensic Lab (UB MDFL), and the founding Co-Director of Center for Information Integrity (CII) of University at Buffalo, State University of New York. Lyu is a pioneer and an internationally

renowned researcher in Digital Media Forensics. As a leading expert on DeepFakes, he testified at the U.S. House of Representatives Hearing on online imposters and disinformation (September 2019), and the New York State Senate Hearing on protecting consumer data and privacy on online platforms (November 2019). He has also served as an expert witness in court at New York City and Cincinnati for cases related to the authenticity of digital images. He chaired the Scientific & Technical Review Panels on Image Authenticity for the Organization of Scientific Area Committees for Forensic Science. Lyu is a Fellow of The Institute of Electrical and Electronics Engineers (IEEE).

Recent years have witnessed an unexpected and astonishing rise of AI-synthesized fake media, thanks to the rapid advancement of technology and the omnipresence of social media. Together with other forms of online disinformation, the AI-synthesized fake media are eroding our trust in online information and have already caused real damage. It is thus important to develop countermeasures to limit the negative impacts of AI-synthesized fake media. In his presentation, Lyu will highlight recent technical developments to fight AI-synthesized fake media, and discuss the future of AI-synthesized fake media and their counter technology.

Julianne Newton is the director of the Communication and Media Studies Doctoral Program and a professor of Visual Communication in the School of Journalism and Communication at the University of Oregon.

An award-winning scholar and educator, she has worked as a reporter, editor, photographer and designer for newspapers, magazines, electronic media, and organizations. Her research applies ethics and cognitive theory to the study of visual behavior, focusing on visual journalism.

Newton's presentation will be titled "Visual Truth: Do We Know It When We See It?" In it, she will explore the role of visual truth-seeking in individual and collective decision making in everyday life and professional practice. Determining what is true through visual means is fundamental to survival, rooted in the surveillance function of human perceptual systems and manifested in the range of witness forms that extend our vision instantly and globally through today's digital media. Yet we know that establishing a "visual fact" is often problematic and draws upon perceptual and meaning-making processes that lie beyond conscious awareness.

Newton is author of *The Burden of Visual Truth: The Role of Photojournalism in Mediating Reality* and co-author (with Rick Williams) of *Visual Communication: Integrating Media, Art and Science*. Recent work includes chapters on visual ethics in the *Handbook of Media Ethics* (Wilkins & Christians), *Handbook of Visual*

Communication (Josephson, Kelly & Smith), *Routledge Companion To Journalism Ethics* (Price, Sanders & Wyatt), *The Handbook of Global Media Ethics* (Ward), and *A Companion to Television* (Meehan & Wasko). She joined the University of Oregon faculty in fall 2000 after serving 15 years on the faculty of The University of Texas at Austin and two years at St. Edward's University.

Christina O. Spiesel is a senior research scholar in law and an affiliated fellow in the Information Society Project at Yale Law School and an adjunct professor of law at Quinnipiac University School of Law. Her presentation will be titled "How To Have 'Thinking Eyes' In The Law" and will emphasize the breadth of the horizon and visual truth telling as general skills needed by lawyers to practice in this new world so full of pictures.

Becoming a specialist in the visual as it relates to law was a logical outgrowth of a set of educational experiences, professional practices, and participation in the life of more than one community. As a visual arts professional, Spiesel knows how things are made. As a participant in software development early in its leap from labs to consumers, Spiesel learned how the digital works. From nine years of public service in city government, Spiesel learned how the sauce of policy is developed and served. And from the Initiative for Public Interest Law at Yale Law School, she learned how law professors and their students think. By 1998, Spiesel was ready to offer the first version of what became "Visual Persuasion in the Law" in 2000, which she has been teaching annually at Quinnipiac University School of Law. Spiesel has also been affiliated with the Yale Law School Information Society Project for its 25 years where she keeps up with evolving tech law problems. Her writing has bridged the visual, the law and its technologies since. Her book *Law on Display* (New York University Press, 2009), written with co-author Neal Feigenson, was the first to systematically explore the visual turn in the law and legal practice. She has also put theory into practice acting as a visual consultant on legal cases involving medical malpractice, negligence, counterfeiting, alteration of visual evidence, and a criminal appellate matter.

She was educated at Shimer College and the University of Chicago, both of which trained her to be an interdisciplinary scholar.

Catherine Zuromskis is an associate professor of photography and visual culture at Rochester Institute of Technology, where she teaches courses in the history of photography, contemporary art history, and visual culture.

Drawing on her expertise in histories and theories of photography, Zuromskis's presentation will explore the conflicted status of photographic truth. Drawing on

examples from a range of photographic genres, she will demonstrate the various ways that photographs can misrepresent what they depict, and discuss how and why our cultural belief in photographic truth is so tenacious.

Zuromskis is the author of *Snapshot Photography: The Lives of Images* (MIT Press, 2013), and *The Factory* (La Fabrica, 2012) the catalog for the exhibition *From the Factory to the World: Photography and the Warhol Community*, which she curated for PhotoEspaña 2012. She is also a co-editor of A Concise Companion to Visual Culture (Wiley Blackwell, 2021). Her writings on photography, film, and visual culture have appeared in *Afterimage, Archives of American Art Journal, American Quarterly, Art Journal, Criticism, Los Angeles Review of Books, Photography & Culture, The Velvet Light Trap*, and various edited volumes.

She has a PhD in Visual and Cultural Studies from the University of Rochester, an MA in Art History from SUNY Stony Brook, and a BA from Harvard College.

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