ACTES SEMIOTIQUES

Perpetuum mobile: colour, sound and motion

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Abstract: The prison house of language, the penitentiary of print, as also the practices of precedent all encourage a degree of recidivism, of default repetition and so it not surprising that photograph and film are apprehended initially as being like texts and needing to the read. Visual literacy is frequently invoked as the desired state and method of looking and training the legal gaze. The point to be stressed is that in analytic and critical terms the image is secondary, requires careful "reading", and is assumed to be somewhat removed or unloosed from rational analysis. The visual figure is to be restrained or brought back from the "theatre of shadows" or sciography of cinema and dream, phantasy and hallucination. This article examines the use of film and photographs in a recent UK case to evince the resistance to images and the blindness of judges to the affective force of colour.

Keywords: image, text, colour, film, photograph, libel, Christian Metz, Gilles Deleuze

Résumé : La prison du langage, le pénitencier de l'imprimé, aussi bien que les pratiques de celui-ci, incitent à une certaine récidive (*recidivism*), à la répétition par défaut ; il n'est donc pas étonnant que la photographie et le film soient appréhendés d'abord comme étant des textes et nécessitant la lecture. L'alphabétisation visuelle est souvent invoquée comme l'état et la méthode souhaités pour regarder et entraîner le regard légal. Ce qu'il faut souligner, c'est qu'en termes analytiques et critiques l'image est secondaire, exige une « lecture » attentive et est supposée quelque peu éloignée ou déliée de l'analyse rationnelle. La figure visuelle est à retenir ou à extraire du « théâtre d'ombres » ou la sciographie (*sciography*) du cinéma et du rêve, de la fantaisie et l'hallucination. Cet article examine l'utilisation de films et de photographies dans une affaire récente au Royaume-Uni pour mettre en évidence la résistance aux images et l'aveuglement des juges à la force affective de la couleur.

Mots clés : image, texte, couleur, film, photographie, libel, Christian Metz, Gilles Deleuze

The libel claim made by William Alexander Spicer against the Metropolitan Police Commissioner was lost three times in the *Court of Queen's Bench* between 2019 and 2021. Spicer, described in the Particulars of Claim as a "respectable and widely-liked young man" was a student at *Kingston University* in South London (*Spicer v Commissioner for Police of the Metropolis* 2019).[2] On the night of March 31, the claimant was driving his car on Penrhyn Road in South London when the car in front of his, driven at a speed well above the 30 MPH speed limit, by one Farid Reza, hit and killed a Sports Science student Hina Shamin, who was crossing the street at a zebra crossing on her way to the library. Reza's car subsequently crashed but Spicer continued on without incident and parked some way off before he returned to the scene. Reza and Spicer were both charged with causing death by dangerous driving, and

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2 *Spicer v Commissioner for Police of the Metropolis* [2019] EWHC 1439 (QB) before The Honourable Mr Justice Warby.

causing serious injury by dangerous driving, contrary to ss 1 and s 1A of the *Road Traffic Act* 1988 respectively (*Spicer v Commissioner for Police of the Metropolis* 2021).[3] The Old Bailey jury found Reza guilty of both offenses and he was sentenced to five years and three months in prison. Spicer was acquitted of both charges, but the prosecution was allowed to add alternative counts of dangerous driving and careless driving (contrary to ss 2 & 3) and he was found guilty of the lesser of these two, careless driving. He received a fine and nine penalty points on his license.

On the day of the verdicts and sentencing, the Metropolitan Police Press Office published an article which begins: "two guilty of killing a woman while racing their cars. [Picture Hina Shamin] [1] Two men who raced their high performance cars along a street in Kingston, leading to the death of a young woman, have been found guilty by a jury" (*Spicer* 2021).[4] Two paragraphs later, the article states that Spicer was found not guilty of the two offenses but of careless driving. The libel action complained of the inaccuracy of the opening to the article, of harm to reputation and consequent effects of being shunned by *Kingston University* alumni, refused references by lecturers and being the subject of a campaign to have his degree removed. Central to the defense in the case was the truth of the article and as CCTV footage of the street where the accident occurred was available from local authority street cameras and from Kingston University cameras, the assertion of truth was eventually to be based on the filmic evidence that Spicer had been recklessly racing Reza at the time that Hina Shamin was run down.

In the trial court before Warby J, no images are reproduced and it is the textual veracity of the report that is treated as the sole issue, rather than the evidence of the CCTV footage. That said, a picture of Hina Shamin is incorporated by reference into the judgment, but is not reproduced. The linear text, the monochrome black letter of law, has priority over visualization of the event, and so the Judge concludes that read as a whole, it was impossible to view the claimant as defamed by the article: "Reading the article and headline together the reasonable reader would conclude that the headline was wrong" (*Spicer* 2019).[5] Omission of the picture is striking in its blatant evasion of the affective impact of the article. It eviscerates the emotional force of the opening line of the news item and their visceral augmentation by a photo-portrait of the "much-loved", family oriented, diligent and studious young female victim of a hit and crash occasioned by Farid Reza's dangerous driving. This raises the question, both semiotic and synaesthetic, verbal and visual, linear and lateral of the role of imagery in legal reasoning. The question comes to the fore in the appeal from Warby J's judgment, where colour, sound and motion, graphs and tables, are manipulated to legitimate the rejection of the claim and to finally dismiss the case as lacking both merit and morals. The images play a pivotal role but do not get their due. The point has been made before, of course, in terms of the priority of the legal text, the prison house of language, the dead weight of law's *littera mortua*, but seldom argued in specific detail let alone viewed in relation to an instant case, as will be the optical purpose of the ensuing ocular account of juridical occlusion.

The prison house of language, the penitentiary of print, as also the practices of precedent all encourage a degree of recidivism, of default repetition and so it not surprising that photograph and film

3 *Spicer v Commissioner for Police of the Metropolis* [2021] EWHC 1099 (QB) par. 9-11, before The Honourable Mr Justice Julian Knowles.

4 *Spicer* 2021: par. 11.

5 *Spicer* 2019: 7, column 2.

are apprehended initially as being like texts and needing to the read. Visual literacy is frequently invoked as the desired state and method of looking and training the legal gaze. As Spicer eventually involved CCTV film, it might be logical to turn to film studies, as some academics have suggested, to enable and facilitate a critical viewing. Here, however, one also encounters an element of conservatism, a propensity to look back so as to orient both prospect and progress. From early on one of the major tendencies of film theory and criticism was that of designating moving images as being like a language. The metaphor of film as a language came to dominate much of the semiotics of cinema. The best known and most rigorous proponent was probably Christian Metz, author of *Film Language*, who even in his *Psychoanalysis and Cinema* is captive to the Lacanian definition of an unconscious structured like a language. Thus, even though Metz productively distinguishes theatre and cinema and stresses the dream-like and hallucinatory character of the latter, analysis is nonetheless framed in terms of dream discourses, and rhetorical tropes, figures and colours extended from word to icon. Borrowing from Saussure and Barthes, Metz offers the following: "the metaphor-metonymy conception has the further advantage, which rhetoric obviously cannot provide, of having been formulated from the outset within the framework of a general semiology … extending beyond language and including images"[6] but nonetheless starting from and structured by the linguistic. Thus, Metz continues to argue that although cinema has no code that can be equated exactly with the language system, "cinematic codifications are related to a kind of grammar and a kind of rhetoric…" (Metz 1982: 219-220).[7]

The point to be stressed is that in analytic and critical terms the image is secondary, requires careful "reading", and is assumed to be somewhat removed or unloosed from rational analysis. The visual figure is to be restrained or brought back from the "theatre of shadows" or sciography of cinema and dream, phantasy and hallucination (Metz 1982: 74 and 109).[8] Until coralled and subjugated to prose the image is something of a threat. For Jean Mitry, in his retrospective preface to his collection *Semiotics and the Analysis of Film*, his principal achievement is noted as "I believe I was one of the first to argue that cinema is effectively a *language*" (Mitry 2000: IX).[9] He proceeds then to the analogy of cinema and linguistics, which are aligned "in that significations in both are essentially relational" (Mitry 2000: 135).[10] The influence of the structural linguist Saussure is evident throughout and as the literature of film criticism proliferated, filmic texts and discourses, syntax and grammar also escalated (Wollen 2019).[11] There are, of course, other approaches, filmosophies, theories of montage and movement, time and image, often lodged in art history and theory as much as cinema, but in juridical terms the visual depiction is measured in prose and valued quite regularly as worth a thousand words (Tushnet 2012: 125).[12] The "logocentric bias" of law propels the jurist to demand verbalisation of visualization and in so

6 Metz 1982: 219-20.

7 Metz 1982: 221-222.

8 Cf. Metz 1982: 74 and 109.

9 Cf. Mitry 2000: ix.

10 Cf. Mitry 2000: 135.

11 Cf. Wollen 2019 remains a useful overview of this genealogy.

12 The cliché is used as the title of Rebecca Tushnet, "Worth a Thousand Words: The Images of Copyright" (2012) 125 *Harvard Law Review* 683 (Tushnet 2012: 683); and in numerous judicial opinions, as for example in *Kochanski v. Speedway SuperAmerica, LLC*, 356 Wis.2d 1 (2014) where the Judge opines: "A picture says a thousand words and represents some of the best evidence. But if a picture says a thousand words, then a video speaks volumes".

doing rushes headlong into the reductive and optically truncated viewing of images as static depictions that can be essentialized in their referent (Boehme-Neßler 2011: 106).[13]

Based in tradition and in the case of common law *traditio* defined as oral, esoteric and often tacit, convention it is hardly surprising that textualism would be viewed as the norm to be followed both historically and analytically. The context for viewing is scriptural and images are at best subject to a diagrammatology. Eduardo Bittar makes the point extensively in his treatise on the topic, developing a method that moves from the semiotic confines of language to the *diagrammatic semiotic carré* or square to the plastic and pictorial (Bittar 2021).[14] His argument is that the verbal is always connected to the visual, to the body that speaks or the print that manifests and that figures of justice are always surrounded by verbal signs, texts, books and libraries. There is a semiotic mesh that includes a wild variety of distinctive figures, symbols, rites and signs. To this, the learned Professor adds that "the *image* has something to do with what the sign-verbal does not have, since it is able to function in a syncretic way … broadening the complex and perception of *aesthetic text*". He further notes that "it is certain that the image appears as something that creates strangeness to the culture of Law" (Bittar 2021: 90).[15] Even here, however, there remains an implicit hierarchy between verbal and visual signs by means of which the aesthetic becomes aesthetic text and subject "to the work of reading and decoding of meaning". What the semiotics of painting and of plasticity opens towards is an aesthetic sensorium and haptic space of improvisation that is epistemically autonomous, a heterotopia of sensible apprehension that in deleuzian terms forms it own plateau and rhizomatic system. What Metz termed the "imprisoning quandary" of the "said" determining the "saying", the book dictating the message of the film is more restrictive by virtue of the verbal binary, the opposition or indeed complementarity of restriction to dual forms of linguistic enunciation than by dint of the hierarchy between past and present tense, writing and speech (Metz 1974: 235).[16]

There is a reason for restraint which is that restriction to the verbal allows law historically to confine judgement and decision to text and presence (Barthes 1988: 92).[17] The rhetorical confinement operates in a manner similar to the unities of time, space and action in the closely aligned practice of theatre. What is critical, however, is not the incarceration in text and discourse but rather, as Bittar discerns, visual attention to what the verbal sign does not have. The legal maxim, *pro lectione pictura est*, the picture takes the place of knowing how to read, the image being the book of the illiterate, will continue to dominate the realm of law's senses unless emphasis is removed from lecture and reading and an equal force is given to visual epistemology and pictorial sensibility as independent modes of knowing, distinct both neuro-physiologically and epistemically. What matters, the issue, is that of the encounter, the event of apprehending an image, as living knowledge and as a mobile relationship across time and space. In place of restraint, diagram and dictations which draw encounter back to word and text, the concept of opening the image and opening to the image requires a sensible methodology of

13 Logocentric bias comes from Boehme-Neßler: 2011: 106, where he correctly prefaces the term with the Reformist slogan *sola scriptura*.

14 Cf. Bittar 2021.

15 Cf. Bittar 2021: 90.

16 Cf. Metz 1974: 235.

17 A point that can also be made in terms of the restraint of rhetoric, as analysed in Barthes 1988: 92. Originally published as "L'Ancienne rhétorique. Aide Mémoire" (Barthes 1970: 172) and also Genette 1982.

viewing that engages all of the senses in an affective and heuristic relationship with the mobility of the depiction, object, document, portrait, mask or subject of engagement. At issue in the increasingly imaginal relay of law is not only a remediation in fragments, viral relays, blog platforms, email and text messaged images but also the environment of socially mediated pictures. There is a shift to apprehension through viral networks that decentralise and fragment knowledge, innundating the videosphere with images that suspend the status of what appears between real and illusory: "The new epistemology of the network has transformed this experience of not knowing into the general basis for all action" (Vesting 2018: 455).[18] Uncertainty or an optimistic openness to the imaginal inundations of online networks generates an exponential acceleration. Knowledge always requires more knowledge, generating the *perpetuum mobile* of the internet and the manifestation of the unconscious in the imaginal forms of web relay and presence (Bottici 2014).[19]

The avenue of access, visibilisation on screen necessitates an openness to images, to the *videosphere*, to the affects and drives that it triggers. The classical maxim *ubi oculus ibi amor* –where there is an eye, there is love– translates into a dialectic of opportunity and stupefaction. The latter term derives for our purposes from the surrealist Louis Aragon who refers to the 'stupefying image' (*l'image stupéfiante*) as the passionate and unregulated imaginal conduit of infancy and the opium of adults (Debray 2013: 19).[20] It is in the latter sense of stupefaction, meaning to astonish and intoxicate, as well as to daze, stun and deprive of speech, that the lure and power of images resides. For Debray the image takes hold of the unconscious which, far from being structured like a language "is destructured like an album", a disordered atlas whose temulent confusion owes much to the unsettling of emotions and the lateral or rhizomatic roots of imagery in the visual archive of experience, the gallery of autobiography (Debray 2013: 17).[21] The image is a matter of sensible life, an encounter of a sensory kind, an apparition, whose history, as Debray has lengthily elaborated is that of taking hold of the entire person, of generating faith, within the Christian tradition, by "lighting the fire of the imagination" so that the subject "loves and follows" Christ, the Pope, the King, the Archbishop, President or Archepirate (Debray 2013: 68-69).[22] The power of the image resides beyond words in the obscure sciography of imaginal transmission and transformation of will. Mute eloquence is converted politically into efficacious stupefaction, an astonishment as also a compliant or pious reverie: "A thousand signs can attest to… the transfer of the most traditional religious vocabulary of piety into the domain of aesthetics: epiphany, vocation, ineffable silence, pilgrimage, together with the vibrato and lyrical effusions that are attached to them" (Debray 2013: 72).[23] Reconversion of the image from sacral to profane use, critical scrutiny of unconscious relays, of the emotive mnemonics and affective forces released by the imaginal in the *videosphere* requires learning to see in a more open and sensible fashion, to view stupefaction as the nascence of desire and so also as a critical opportunity.

18 Cf. Vesting 2018: 455.

19 On the imaginal, *see* Bottici 2014; and in a legal context, see Manderson 2018.

20 Cf. Debray 2013: 19.

21 Cf. Debray 2013: 17.

22 Cf. Debray 2013: 68-69. This theme is, of course, central to the oeuvre of Pierre Legendre, who elaborates famously upon love of the censor and desire and power. *See*, for example, Legendre 1998.

23 Cf. Debray 2013: 72. For more on stupefaction and the fetish, *see* also Sutherland 2015.

Despite the classical soubriquet of *ars iuris*, jurists from the early modern era onwards, influenced, as noted above, by the Reformist principal of textualism, were hostile to images and to all other superfluities, ornaments or paratextual instruments. Precedent is Protestant, a fact that is fairly obvious when the prerequisite of printed law reports is taken into account. For current purposes the threat that the image poses leads to a species of looking away in which the legal gaze seeks to see through the picture and to view a beyond of the image in the imagined real that is putatively depicted. In evidential procedure, it is only if the form and matter of the photograph or less frequently film clip can be discarded as nothing other than what it represents, that it can be admitted into the gallery of the legal. Returning to *Spicer v Commissioner of the Metropolitan Police*, and the first instance decision, we can note the incorporation of an image from the Police Press release that was in issue in the libel litigation (*Figure 1*). It is assigned to the Appendix, a position of minority and incident but acts as a trigger for a lengthy judicial digression in which Justice Warby "would like to commend Miss Shamin's family for their dignity throughout the trial" and then follows this with an impact statement, quoting Hina's father, Shamin Khan saying "On the day Hina died, a part of me died with her". Much more emotive description of loss follows: "the day she was born was the happiest day of my life… Hina was a delightful child… a compassionate and selfless woman… She loved her family and her family loved her… Not a day has passed without my wife crying. The upset has caused her eyesight to suffer and she has been diagnosed with glaucoma. She is truly heartbroken… now our last memory of Hina is of seeing her in a coffin at our local mosque" (*Spicer* 2019).[24]

Fig. 1. Metropolitan Press Release photoportrait of Hina Shamin.

The photoportrait is far from incidental or mere appendage but rather would appear to make Hina the heroine of a libel trial which legally is concerned only with whether the Press release is defamatory of the claimant. Hina, the victim of an accident in which a third party, Reza had run her over, becomes the star, the model student, the passionate professional, the upstanding citizen who was mown down. The photograph shows a well-groomed, sparky young woman in Western dress. Full frontal, staring directly at the camera with large dark eyes and full lips, she is assimilated, fashion conscious, sexy. A gold chain around her neck suggests affluence, while the style of the portrait is reminiscent of the movie *The Third Man*, the background being tilted 75 degrees, giving a sense of both talent and

24 *Spicer* 2019: pars. 25-31.

sophistication.[25] Hina's shoulders playfully mimic the angle of the background. It is as if she is gold, which is certainly the purport of the judicial appendix. A tragedy has occurred and whether relevant to the determination or not, consciously or more likely unconsciously, the referenced image looms large over the affective force of the decision and its justificatory argument. William Spicer, who was too close to the accident, who was driving carelessly, is by implication responsible and so is justifiably chastised by having his reputation destroyed and is punished again by the Court, which holds that he has not been defamed but rather deserves the description and designation provided in the Press Release.

It is equally symptomatic that there is no photo portrait of William Spicer, who is of African descent, despite the fact that he is the subject of the report and of the trial. Nor is there any picture of Reza, who is the one who was convicted of the crime that caused the death of Hina. There is no equality of images but rather in this instance a hierarchy of the visual that includes Hina and excludes William and Fared despite the greater relevance of the latter two to the issue on trial. It is perhaps for this reason that the appellate Judge Knowles reverts to the veneer of visual proof in a lengthy and image filled judgment that prioritizes graphs and diagrams as well as the CCTV footage of the street at the time of the accident. Recall that the Press Release begins by stating that two people are guilty of killing a woman while racing their cars, while the jury held that the Claimant was not guilty of the offenses charged but of the substituted offense of careless driving. The bulk of the decision, which runs to 379 paragraphs, is concerned with the legal question of whether the report can be justified as "true and accurate". The question of whether the report was substantially true was litigated on the basis that the "sting" of the libel, the defamatory imputation that William was "racing and showing off" in such a way as to cause the death or serious injury occasioned to Hina, and so lower his reputation in the eyes of "right-thinking people generally". As the language of the *Defamation Act* and relevant case law indicates, however much the courts may clothe them in the language of objectivity, these are questions of impression, of what seems to be the case, of appearances and so also of vision.

As the entire sequence of events has been captured on film by CCTV cameras belonging to the local authority and to *Kingston University* there is certainly a sense in which seeing what happened could contribute to determining how right-thinking people would view the events to which the Police report refers. Whether these images could show William racing or showing off is a slightly more complex affective decision, particularly as the one witness referenced as being shocked by the speed of the cars, Ms Jones, could not see who was driving them (*Spicer* 2021).[26] Intriguingly, although the Court does not note this, the picture in which the witness is shown viewing the cars depicts only a flash of bright light, indicative perhaps of being astonished, dazzled or blinded by speed (Fig. 2.1). Justice Knowles is not however reproducing this image to give any direct sense of performative glibness, arrogance or insouciance, but rather to provide a chorography of the events. This can lead to a first question. The filmic footage is a live digital relay of the vehicles in motion, but the judgment reproduces still images. Where speed and so time is of the essence, the pictures are taken out of time and reproduced as stills in the judgment. Although film has been hyperlinked to decisions, most famously in the *US Supreme Court* case *Scott v Harris*, this is not done here. One can only conclude that objectivity might, in the view of

25 The Third Man (Dir. Carol Reed, 1949).
26 *Spicer* 2021: par. 292.

Justice Knowles, be diminished by live footage, by sound and motion. The passage of two cars, which is to be judged by their appearance of racing and showing off, is to be decided without seeing them in either facet of commotion.

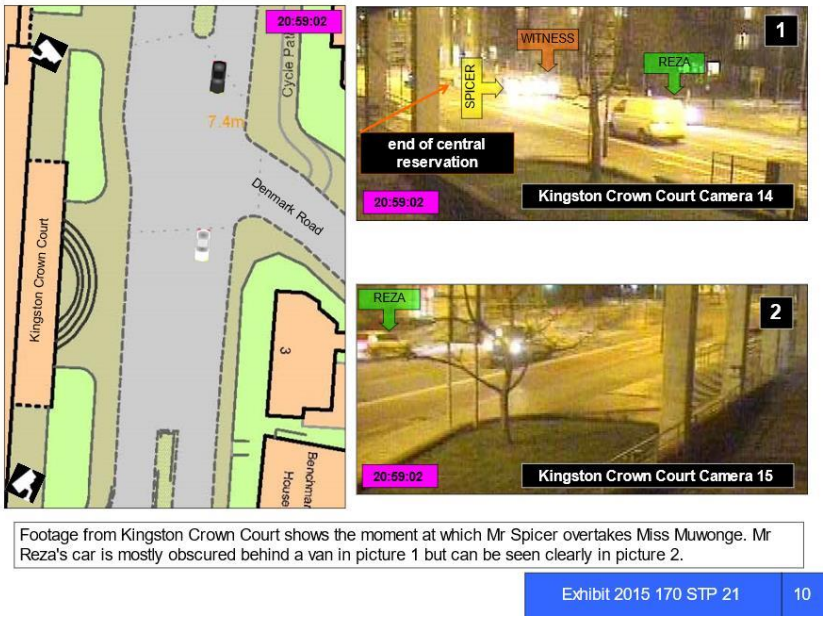

Fig. 2. CCTV footage of placement of witness and vehicles on Penrhyn Road.

In Protestant fashion, the reduction of the live event to still photographs and the diagrams of the appositely named Dr Ford, deprives the viewers of key elements of apprehension. Sound, motion, atmosphere and the pixellated blurr of speeding footage are all excised from the determination. It is not, in the argot of film criticism, an accurate viewing, indeed it is no viewing but rather excision or, for Freudians, castration of the scene. Sensory deprivation dominates the judgment as if seeing the event in the candle-less darkness of the cranium is preferable to exposing the eye to the sting of witnessing the purported race and showing off. As it is imputation and sting, bane and antidote, right thinking perceptions of what is substantially true that are manipulated as the criteria for assessing whether there has been serious damage to reputation, the live scene might well provide the micro-ontology of images that will decide the outcome. Such at least would be the perspective of art criticism and of filmmakers and cineastes. All images are in motion historically and in relation to the living viewers that they constitute as subjects. To still the image is to kill it, in that anachrony is anachronistic, still life is death (Didi-Huberman 2018).[27] Justice Knowles, however, is more cautious as to what the precedent will represent visually.

The initial device of the judgment is what can be termed diagrammatological (Bigg 2016).[28] There is a telematics read out from William's car and Dr Ford, by apposite appellation at least, an expert in

27 On the inherent socio-historical movement of the image, see especially Didi-Huberman 2018; and on openness and opening, Didi-Huberman, 2004.

28 For fear of being accused of originality, I will note that I am taking the concept of diagrammatology from Charlotte Bigg, "Diagrams", in Bernard Lightman (ed.), *A Companion to the History of Science*, Oxford: Wiley Blackwell, 2016 (Bigg 2016), where she notes of linear forms of drawing and mapping that they are "less obvious, or less obviously visual, types of scientific two-dimensional representations". For more on diagrammatic thinking, *see* Sybille Krämer & Christina Ljungberg (eds), *Thinking with Diagrams*, Mouton: de Gruyter, 2016 (Krämer, Ljungberg 2016).

vehicular transport, provides "useful" graphs of the speed and bouts of braking of the vehicle during its exodus from a roundabout where Farid Reza had overtaken it, down Penrhyn Road and past the scene of the crash and crime. Twenty seconds of travel are captured graphically with ascending and descending lines of trajectory, braces, arrows, coded letters and numbers along with commentary (Fig 3).

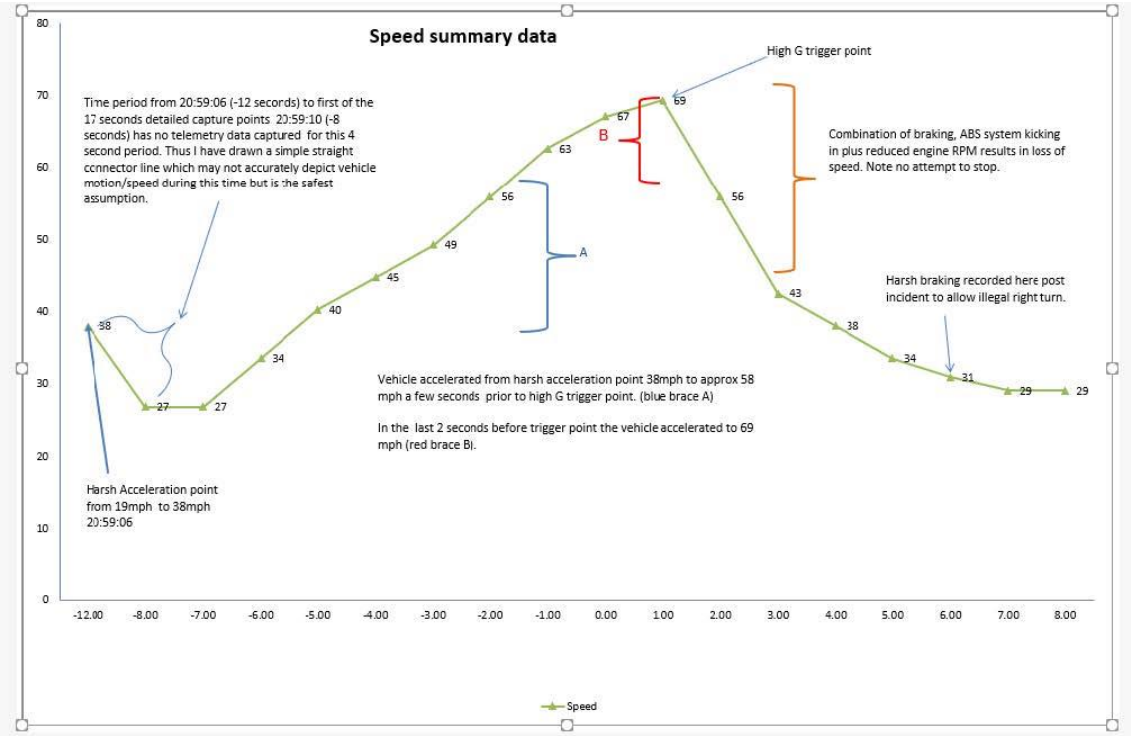

Fig. 3. Dr Ray Ford's diagram 4(c)

The vertical axis shows mph, while the horizontal axis marks the time in seconds. The graph is presented as data, although admittedly this has to be interpreted by Dr Ray Ford and his counterpart wizard of locomotion, Dr Chaz Dixon. Science is introduced into the equation, but it is not only science, it is a picture with colour, arrows, braces, as well as a coda that references "harsh acceleration" and a highly suggestive trigger point, as if William had shot someone. To this the question of colour has to be added as well. The green line, marked by light blue, aquine and unthreatening arrows and a brace, crash at the very top of the line, at the visual pinnacle of the trajectory into a threatening, code red, blood coloured brace that is labelled "High G trigger point". Gangster territory that then descends under the warning orange brace to the conclusory comment "Note no attempt to stop".

Even in relation to the graph shown, the colour and comments, figures of braces and directive arrows all break the epistemic purity of the Idea, and introduce a visual form of knowledge, a sensible dimension into knowing in its incompleteness. The diagram requires an aesthetic paradigm and visual epistemology that subverts the canonical forms of legal knowledge. The graph is diverse, multiple, impure, and in that pollution or burst of colour, impacts in ways that have to be approached via a theory of affect, and imagination (Didi-Huberman 2018: 3-5).[29] What is shown as the pinnacle and zenith of this axis of evil –or more accurately, as found by the jury, this careless driving– is the blood red of a trigger point and killing, as if it were William, and I insist on first names because Hina, her father and

29 On the aesthetic paradigm and the atlas, *see* Didi-Huberman 2018: 3-5.

the experts all receive this intimacy, who had run over the fated victim of Reza's driving. The circle closes in, the Claimant is boxed into a rectangular graphic quasi-scientific representation of his guilt. The data is presented in the dative case, to and for William, and clearly conveys much more than simple numbers. The graph is graphic, presenting what early modern lawyers would term *vividae rationes* for decision and in consequence incorporates an aesthetic and affective impetus into the mode of viewing what is represented.

Fig. 4. CCTV footage stills and diagram from *Spicer v Metropolitan Police*.

A similar analysis or more properly viewing can be directed at the various representations of the accident from bus and local authority cameras and faced by a colour schema or in Kant's phrase "productive imagination" of the event that killed Hina. Neither the photographic stills, nor the map of the street can be viewed without taking account of the directional affective scopic character of the colours, nominate arrows and the collision of pixels creating a blur effect in the stills. The visual images steal the show, attracting the eye and luring the mind to the material presence of the scenes that are captured and the affects invoked by their various representations of accelerated death, of speed, persons, vehicles and the community of the urban night where these encounters and viewings took place, where the tragedy unfolded. The case is purportedly about the accuracy of the verbal description of Spicer's guilt, but the images invoke a different medium and optical composition in which words are simply accessories. Although presented as a simple and logical diagraming of the locations, proximities and speed of the vehicles "racing and showing off", the visual or more properly diegetic ark of the judgment has a very different affective impact to the verbal narrative or purported calculus and proof of the disapprobated vehicular activities and subjective state of the driver William Spicer as reported in the potentially libelous release by the Metropolitan Police Press office.

Where Greimasian semiotics would differentiate the *chromatic* from the *eidetic*, for Peirce colours are most symptomatically *icons* derived from the bodies of the objects or here persons described. For the art historian Didi-Huberman the significance of colour is that of creating a distinct field of representation in which it is not the absent bodies that are depicted –figures or indeed faces could easily

have been reproduced– but rather geometric shapes and patches of colour with arrows of direction painted on them (Didi-Huberman 1995: 19).[30] The colour and figures tell a story that the words cannot relay. In the view of Judge Julian Knowles the pictures and illustrative schemata demonstrate a race and showing off although this is for him a question only of speed, of acceleration and braking with the addition of Spicer's illegal right turn and parking some way from the scene of the accident before returning. What is important is that while the words and the descriptions purport to represent and designated the absent actors in the narrative, at night, on Penhryn Road, what is present in the judgment is a set of colour images and their coda. What is most present in the judgment is thus the pixellated blur of the second frame of *Figure 4* and the coloured rectangular figurations. The purple pen of the time stamp, marking the equivalent of royal decree or here the temporal letter of the law, and then the rectangles with arrows in yellow, green and red. The yellow, always yellow for Spicer must also be accounted. The colour of cowardice, of chicken and of straw, as in a straw claim, are not far from this peculiar visual choice. in tandem and confluence these are the vivid reasons *–vividae rationes–* of the decision and merit close scrutiny in their optical presence.

The case starts with the incorporation of the photoportrait of the victim of the accident, as discussed above, as appearing deserving of protection and deep mourning according to the first instance judgment. The sassy, Westernised, picture of the good daughter and exemplary student on her way to professional status and a career inaugurates the dispute and the judgment in visually dramatic mode. The Police website also carried another photograph of Hina (*Figure 5*) which merits viewing. Here the accessories of style and of beauty are even more evident.

Fig. 5. Portrait of Hina courtesy of Metropolitan Police Press Office

The bright red of Hina's lipstick, the hint of a smile, the large seductive eyes caressing the camera, the fur stole are brightened by the bright red patch of colour from the bus behind her. The patches of terra rosa, the repetition of this regal hue carries the portrait into presence and also bears with it the full symbolic force and historical as well as affective power of the colour. The red letters of law become the red lips of Hina's labial hue and in this case the tone and tint are carried from the initial mask or painted face into the judgment imagery.

30 Cf. Didi-Huberman, 1995: 19.

What is present in the judgment is a visual conversion of the portrait in the mysterious pictorial materials of the CCTV footage laid to rest, mortified in stills. As Didi-Huberman proposes, the enigma of colour is that it is the specifically pictorial matter of the image but also takes it out of time, disfiguring here the diagram with purely visual marks that do not purport to represent the actors but simply to provide colouration and indication of a name. The tincture of crimson, the patches of colour are "a way of naming those zones, those moments … where the visible vacillates and spills into the visual. It is a way of naming the cursed part of paintings, the indexical, nondescriptive, and dissemblant parts" (Didi-Huberman 1995: 9).[31] The materiality of the colours opens the image up to the play of associations, and in Freudian terms condenses and displaces, linking the figure to a series of networks and the visual archive, the gallery of renderings of tints, tinges, blushes, intensities, luminescence and irridescence. Didi-Huberman's discussion of red takes place in relation to the religious depiction of Jesus Christ and Mary Magdalene in *Noli me tangere*. Here the blotches of red, in his interpretation, have a theological import as subtle yet effective signs of Christ's stigmata, marks of the genesis of knowledge in the piercing of the body, the opening of the interior to the exterior: *videbunt in quem transfixerunt* being the Latin tag: they see inside him whom they pierce.[32] To open you have to puncture, wound and here destroy. Vision is precipitated by opening and must bear its consequences in materiality.

The figure of red, of blood, marks the opening of the eyes of the judgment and carries vivid visual associations of a node of energy, a condensation or intersection of various optical knowledges that gain force and expression in the colour. The visual intimation of blood is linked in early modern law to printed law books in which red letters, cardinal flaming type would indicate universal norms, most usually in the modality of Latin maxims or other dogmas (Didi-Huberman 2007: 49).[33] The significance of law's red letters bequeaths to the colour the representation of the divine wound, the generative force of the Christian religion, as well as the promise that opens onto another life. There is nothing innocent in the use of the sanguine hue and thus when in *Figure 4* we see flaming red marked Hina in both the stills and the diagram it is an optical allusion, an ambulation of the eye towards her wounding and her death. Hina was crushed, her bones broken, her life taken, death occasioned and here her case is opened up and entered into by means of these digital daubs of colour, the materiality and presence of blood in the images and the judgment.

The use of video stills from the CCTV footage already connotes mortality. Still life is death, the memorisation and memorialisation of presence past, a commemorative art and visual shroud, which the pictures here mimic by stopping the very speed that is purportedly the issue under consideration and judgment. The race is stilled, the speeding is stopped, frozen as in its death mask in a two-fold process. First, is the optical stasis in which the excised photographs show only stationary images and in the second and third fames of *Figure 4*'s footage, there is a pixellation of the pictures, a lack of quality of optical capture that so undermines their visual referents that a colour diagram is placed beside them. Second, there is there is the freezing of the images in the text, their incorporation and reduction to diagrams and then to the tangential deliberations, the reduction to abstractions in the judgment. Here

31 Cf. Didi-Huberman 1995: 9.

32 A point discussed in detail in Didi-Huberman 2007: 49.

33 On the common law status of maxims, see Edward Whitehouse, Fortescutus illustratus, *or a Commentary on That Nervous Treatise* "De laudibus legum angliae" (London, 1663), p. 126 et seq.

the primary issue, the death knell or kiss of the spider, is that the images are never discussed or commented on as depictions. The diagrams of Dr Ford are “most useful” but the actual pictures, with colour inserts are deemed and presupposed to be nothing more than self-evident confirmations of the diagrams indicating position and speed. There is no mention of the insertions, nor of the colours, nor of the opening and affective character of these carefully selected and vividly doctored depictions. The images are already undressed and overlooked by the diagrams inserted in adjoining fashion. Then they are entombed in the text, laid to rest as unremarked evidences of the eye, presumably on the assumption that all eyes see the same.

By way of conclusion, the metaphor of blind justice, the veiled face of *Justitia*, and here the linear abstraction of print, is a theological remnant and epistemic obstacle to the openings and possibilities, the opportunities and democratization of the eye that remediation of law offers. As it stands, or more accurately, as they lie dead in the reported decision, the images in *Spicer* are drained of colour and of blood and laid to rest immobilized in the text. They become abstractions, accidents of diction, petaline ornaments to reason, blotches seen in passing in the course of reasoning a decision. This generates a double irony. On the one hand, the case concerns a published libel, a Metropolitan Police Press Office release which in word and image appears to accuse William Spicer, a young man of colour, of African descent, no picture provided, of slaying Hina Shamin, whose eidetic image and funeral mask is emblazoned in the Press report. Rather than staying with and limiting judgement to the verbal aspersions and their impact on reputation, the stuff of the law of defamation, the Judge seeks to legitimate his conclusion by showing that Spicer was showing off and that the statement that he was racing was substantially true, fair and accurate. Justice Julian Knowles appears to feel strongly that Spicer merits the implication that he is a danger, reckless, a show off and a killer. Heavy sentiments gain their representation in the blood red in the text.

The second irony is the chasm between what is said and what is shown, word and image. The aspects of the imagery that have been scrutinized in this essay are entirely overlooked in the judgment. They receive no discussion and so form an apparently unconscious relay of affect, a colourist sledgehammer wielded in the dark. In remaining unaddressed, resident in the realm of the juridically obvious, as indifferent features of objective representations, the vivid tinctures of the codicils to the images perform an aesthetic and affective yet mute role in the delivery of judgment and the *rendering* of justice. The visual apparatus of the decision carries an unexamined optical force and is relayed in significant measure by liminal ocular figures whose impact both prejudges and legitimates the textual decision that surrounds them. None of which is intended to intimate that Justice Julian Knowles knowingly subverts the logic of his written reasons. It is rather that the visual apparatus of the judgment performs a much more varied and complex set of tasks than the diagrams and textual explications consider. Despite the deliberated reasons for decision and in the face of the graphic representations of speed and stopping, the imagery and colours relay another scene of judgment which is not necessarily aligned to the textual deliberations. Blood red and fickle yellow play out a drama of guts and guilt, viscera and villainy that seems then, moving from visual to verbal, to determine and buttress the somewhat laboured legal reasoning of the case. This, recall, by dint primarily of loquacity and divagation, manages to conclude that the Police have not defamed the Claimant when stating as a headline that he is “guilty of killing a woman”, when a jury had definitively found that he was not. Inflaming the release with photo

portraits and then link these to the initial judgement in the case, followed by an appeal which reproduces and colours film footage in consonnant hues and markets of death weights the decision against the Claimant and transmits by shark aesthetic a tumescent sense of a separate event as if it were the scene of the instant report and judgment.

In sum and drizzle, there are certainly reasons of policy and of circumstance that may well justify the rejection of the appeal. The "as if" or imaginative fiction of the fact that Spicer could well have run a pedestrian down, that he drove too fast, is a motor factor. So too the horror of Hina's death which is encapsulated with unconscious force in the red rectangles. One can also note that the Claimant had already successfully sued a newspaper in defamation for damages. His reputation might not have been too great in the first place and he could have been shunned and refused references for other or additional reasons. None of these suppositions, however, does anything to explain or equalize the juristic utilisation of colours and braces, arrows and indistinct pixels to differentiate the *dramatis personae* in very different and far from egalitarian visual relay. In the end the implicit visual judgment, the arrows, triggers, ascending and descending lines, the chaotic blur of the video capture of the moment before impact, the yellow that seems to produce or at least be too proximate to the red, all chronicle a judgment before it is told.

Conclusions

Despite the habitude and familiarity of omnipresent cameras, iphone lenses, chest cams, and further visual relays, the imaginal character and scopic form of everyday life, quotidian politics, and days in court, the image remains a juridical enigma. In the terminology of roman law, the image is *aenigma iuris*, a forgotten or in our case overlooked visual reference to absent and unravelled sources. The common lawyers referred to law's *vividae rationes*, lively figures and animated reasons for deciding, but in both cases the specifically juristic meanings and optical force of visual transmission of norms has fallen into desuetude or is lost. Law may not be blindfolded but it all too often acts blindly, unsighted and unsettled by the most immediate and affectively effective relays of the encounter being staged so as to be judged. Certain protocols of viewing, optical criteria of scopic force and accession to the affective and inventive role of depictions in decisions need to be devised.

An initial criterion has to be acknowledgement of an increasingly imaginal quality of law. As the simple number of images reproduced or incorporated by reference and hyperlink into common law judgments proliferates, recognition of their material presence is required. This is a question of acceding to the materiality of pictures, their ocular insistence as manifested in their inclusion in text and deliberation. Here, as excavated above, it is a question of staying with the image, of recognizing not only its importance but also its pre-conscious force in "imagining" the scene of encounter, the event, that is re-staged in the juristic form of trial. The old juristic maxim *pictura est veritas falsa*, the image is a false truth, should at the very least alert the viewer –specifically *not* the reader– both to the indexicality of the depiction and to the consequent necessity of staying with what is viewed and entering the anachronic and affective site of ocular intervention and transmission.

The second criterion is that of relevance in both evidential and propulsive senses. Here it is a matter of acknowledging the event of the image, the materiality of presence as it filters both perception and judgment. The relevance of what is viewed in the medium of film, CCTV footage, camera capture in its diverse forms and specifically its sound, colour and motion. Borrowing from art theory: "The

challenge in this perpetually moving experience of the visible and what it can teach us, consists in not reducing its complexity, of not enclosing what we experience in the realm of the sensible".[34] To consider annotated stills extracted from film footage as direct evidence is a double error. First it immobilizes the image and isolates it, removing it from its own socius and history, from its incompleteness, rhizome and archive which moves and changes over time. It also objectifies and particularly in legal contexts removes the subjective dimension, ignores the affects triggered, the sensibilities awakened, the trammels, tendrils, rhizomes of the visual experienced over time.

It is necessary to return to the judgment of the senses and the classical, if opaque sense of the judicial eye as a carefully choreographed instrument of judging. The juristic apprehension, viewing and encounter with the corporeality, the colours, sounds, movements, atmospheres and environments both faced and staged for trial, is performed precisely to produce affect and effect. Viewing constitutes the subject that looks and that subjectivity exists in relation to and by virtue of the image that is viewed. Without the image, the viewing subject disappears, lines of sight and avenues of apperception are closed when the downcast eyes or penthouse lids are shut. Other images, internal senses displace viewing and it is ocular memory or optical phantasm that then plays a larger role in scrutiny of missed encounters. In our case, what Justice Knowles knows is in the main hidden in the visual excisions, stopped in the immobilizations of sight, crashed by the cutting of the mobile footage. The enigma is precisely the excess of affect, the surplus of the visual and the wealth of the senses that view, the full panoply of skin, lens and retina, sound and smell, flush of blood, flow of air. In sum and stream, the footage in our case created a wholly different scene of judgement, a heterotopic space of affect and subjectivation. The jury and then on appeal the judge, and finally the viewers of the reported decision, become drivers, charioteers, racers, pedestrians, serial members of bus queues, passersby, and voyeurs all.

Bibliography

BARTHES, R.
1970 « L'Ancienne rhétorique. Aide Mémoire », *in Communications*, n° 16 ; trad. "The Old Rhetoric – an *Aide Mémoire*", *in The Semiotic Challenge*, Farrar, Strauss, Girous, 1998.

BIGG, Ch.
2016 "Diagrams", *in A Companion to the History of Science* (Bernard Lightman, editor), Oxford, Wiley Blackwell.

BITTAR, E. C. B.
2021 *Semiotics, Law and Art: between Theory of Justice and Theory of Law*, Heidelberg, Springer.

BOEHME-NEßLER, V.
2011 *Pictorial Law. Modern Law and the Power of Pictures*, Berlin, Springer.

BOTTICI, Ch.
2014 *Imaginal Politics*, New York, Columbia University Press.

DEBRAY, R.
2013 *Le Stupéfiant Image : de la grotte Chauvet au Centre Pompidou*, Paris, Gallimard.

DIDI-HUBERMAN, G.
1995 *Fra Angelico: Dissemblance and Figuration*, Chicago, University of Chicago Press.
2004 *L'Image ouverte*, Paris, Gallimard.
2018 *The Eye of History: when Images Take Positions*, Boston, MIT Press.
2018 *Atlas, or the Anxious Gay Science*, Chicago, Chicago University Press.

34 Huberman, *The Eye of History*, 2018 xvi.

GENETTE, G.
1982 “Rhetoric Restrained”, *in Figures of Literary Discourse*, New York, Columbia University Press.

KRÄMER, S. ET LJUNGBERG, Ch. (eds)
2016 *Thinking with Diagrams*, Mouton De Gruyter.

LEGENDRE, P.
1998 *Le Désir Politique de Dieu: étude sur les montages de l’État et du Droit*, Paris, Fayard.

MANDERSON, D.
2018 “Introduction: Imaginal Law”, *in Law and the Visual Culture: Representations, Technologies, and Critique* (MANDERSON, Ch., ed.), Toronto, University of Toronto Press.

METZ, Chr.
1974 *Film Language: A Semiotics of the Cinema*, New York, Oxford University Press.
1982 *Psychoanalysis and Cinema: the Imaginary Signifier*, London, Macmillan.

MITRY, J.
2000 *Semiotics and the Analysis of Film*, Bloomington, Indiana University Press.

SUTHERLAND, K.
2015 “Marx in Jargon”, *in Stupefaction: a Radical Anatomy of Phantoms*, New York, Seagull Books.

TUSHNET, R.
2012 “Worth a Thousand Words: The Images of Copyright”, *in Harvard Law Review*, n. 125.

VESTING, Th.
2018 *Legal Theory and the Media of Law*, Cheltenham, Edward Elgar.

WOLLEN, P.
2019 *Signs and Meanings*, London, BFI.

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