

The Aesthetics of Legal Process (the sight/site of justice)

Dorit Cypis
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As an artist and a mediator I am interested in integrating strategies from both disciplines to expand understanding of the judicial system as it exists in the United States and specifically in California. To do so, I look back a few years to a time where I encountered the judicial system first as a citizen and pursued a critical investigation of it as an artist. My personal text and video archives of the aesthetic investigation, titled *The Visceral Viewer and the Court*, is here mined to process, critique, and evaluate a critical relationship to legal process.

Jury Duty

In early 2000 I was called for Jury Duty in Los Angeles, California. I dutifully came to court and when called, attempted to answer all questions posed to me by the presiding Judge. The pre-determined questions rolled predictably and my answers were not memorable nor very distinguishable from previous prospective jurors before me that day. The curve came when I was asked if I had previous experience in a court case. My answer was that I had acted as an Expert Witness for the Defense in an obscenity trial held in Winona, Minnesota back in 1990. Surprisingly the Judge asked me not what my specific role was in the trial, but, what the obscenity content had been. I tried to explain a very complex story which included information on the historical time period of that time, i.e. the US Congress setting tight regulations over the National Endowment for the Arts over its funding of individual artist projects, a public questioning of “average community standards” as named in the Miller v California precedent obscenity court case of 1972, and fundamentalist right-wing groups obstructing gay rights ordinances across America in the 1980’s. This simple question had a complex answer, when context is considered.

The Judge became irritated with my laying a human context and finally called out, “That’s all fine, fine, but, can you wipe your slate clean for this trial?” My answer further perplexed him, “I don’t think anyone can “wipe their slate clean” sir, not even you, as our identities are a subjective conglomerate of our pasts as well as our present”. I was then examined and cross examined by the Prosecution and Defense attorneys with a litany of questions on my point of view. The questions seemed to be getting nowhere, perhaps deserving a dialogue rather than adversarial examination. I offered that this process was the wrong context for unraveling our difference. The Prosecutor interrupted to ask “What’s wrong with this contest?”. “I said CONTEXT sir, not CONTEST”. Again he only heard “contest”. By this time I was in agreement with him, “You’re right sir, this process is wrong because this is a CONTEST!”

A comedy of errors, not listening, competition and gamesmanship had been named. The Judge called both attorneys to the bench, conferred, all left the courtroom for his chambers to continue conferencing, returned and dismissed me from the jury pool. As I was leaving the courtroom the Judge called out to me, "But you have to admit, this is the best justice system in the world." Surprised by his remark, again, I considered his point and turned back towards him, "Sir, honestly, I have not done the research to have an opinion on your position, but I'll get back to you."

I was deeply affected by my encounter with this court. What exactly was the court's intention in questioning me in a manner which seemed so unconscious and anxiety ridden? What were the interests behind the positions? Why did they seem so threatened by me? Why did the exchange between us feel so forced and exhausting? As a lay person, I felt accused and reprimanded rather than acknowledged and met. Why?

Curriculum Development

I spent the next 2 years, 2001-2002, developing and directing curriculum at three institutions of higher learning, the California Institute for the Arts, the Fine Art Department at the University of California, Irvine, and the San Francisco Art Institute, where Undergraduate Bachelor of Fine Art students would investigate the Visual Culture of the California Superior Courts. I made connections first with the Superior Courthouse of the City of San Fernando and proposed to them to allow me to conduct a semester long seminar/lab in the courthouse.

Students would interview all levels of courthouse staff, from judges to bailiffs, sheriffs to court reporters, clerks to secretaries, witness hours of court proceedings of civil and criminal cases, study readings on how to assess environment, architecture, signage, interior design, fashion and public interface. We would critically "read" the visual culture of the courthouse to add layers of cultural context to the procedural structure of the justice system. We would then develop art works reflecting on what we learned and present these works at a courtroom in each respective courthouse.

The other two Superior Courthouses, visited in 2002, were the Harbor Justice Center, Newport Harbor, and the San Francisco Superior Court. Each time I made the proposal to each respective Courthouse Public Relations office, I was met with full enthusiasm, support and collaboration.

The following, taken from the original project proposal I wrote, describes what is meant by the aesthetic discipline called Visual Culture:

Visual experience exists in everyday life. Images, whether art, film, TV, advertising, religious relic, architecture, internet, etc., are not held as unique and autonomous, rather they exist in shifting relationships to the complex, layered, wider culture to which they belong. Vision and the visual world are packed with meanings that are

encoded with history, stereotyping and power relations, while at the same time they are tied to the immediate social, physical and aesthetic surroundings.

“The visual must be interpreted through "an entire world of inter-textuality in which images, sounds and spatial delineations are read onto and through one another".

One of the most important issues cultural studies has taken on is to provide a “hands on” application of the epistemological shift which Gaytri Spivak has characterized thus “It is the questions that we ask that produce the field of inquiry and not some body of materials which determines what questions need to be posed to it.” We have affected a shift from the old logical-positivist world of cognition to a more contemporary arena of representation and of situated knowledges”

Irit Rogoff, **Studying Visual Culture**

*The **Visceral Viewer** insists on including the subjectivity of the viewer. Who is looking? From where does one see? The viewer alters what is seen by his or her seeing. How does the object of sight mingle with the viewer's psyche, memory, dream, fantasy, body? Here the objective and the subjective slip through each other's skins, forming something new...a mingling of seer and seen. Meaning is relational, situated in a context of time and space.*

*The **Visceral Viewer** aims to broaden our awareness of how "to see" the worlds around us in their complexity, to decipher meanings, to be more conscious of ourselves and of others, to comprehend and allow for diversity and differences between us, to make responsible choices.*

This project utilized a process oriented approach weaving theory and practice, building form as needed. Students were given the space for creative and exploratory thinking and expected to actively participate throughout. Alongside readings and journaling students were led to explore the private and public urban sites of each Superior Court House, to actively interact with their visual experience of the courthouse, exploring the multiple social communities while learning to witness how the subjectivity of their sight informs what is seen, experienced, and interpreted.

Our goal was for each student to present final art projects at a courtroom within the Courthouse, critically reflecting on Legal Process and to invite all the court professionals we had interviewed as audience. The presentations were to be in the form of photographs, drawings, text, sculpture and performance. This was a unique opportunity for the student artists to communicate back to the very people they had been exploring and to encourage dialogue between two separate communities, artists and justice professionals.

To prepare the students I developed aesthetic strategies to break down the complexity of “seeing”, to reveal layers of cultural codes and subjectivity, guiding students to recognize their identities through critiquing how they were seeing what was outside of them. We normally think of seeing as simple and take for granted the experience. We assume that what we see is self evident and is there to

be seen in this same way for all. We assume that what we see is the truth. In actuality, seeing is a very complex act, physiological, psychological, social and emotional. Our deeply held cultural beliefs are evident in how we see, as are our personal experiences and memories often held as emotion in our bodies and projected onto the object or person of our sight. We often believe we are seeing what is before us when in actuality we are seeing our assumptions, reflections of ourselves.

Strategies of Perception

To unpack how we see, I developed the *Seeing Triangle* where 3 dominant and simultaneous aspects of seeing are separated so that we may better recognize our experience of each one. Each of us may have a dominant way of seeing, formally, perceptually or experientially, but in fact all three aspects are occurring unconsciously. The *Seeing Triangle* helps us unpack and recognize how we each see from a subjective position and distort what is before us.

Seeing triangle : interrelated ways of seeing

For example

- a. place a chair before you and call out what you see first only as ocular, then as perceptual, then as experiential...
- b. place a person before you and repeat the exercise...

The levels of psycho-cultural complexity held in our seeing becomes evident when the object of one's sight shifts from an object to a person. How we hold personal experience within is layered with multiple social codes.

The 3 aspects below are inter-dependent one informing the other.

1. ocular – mechanical and formal aspects
 shape, mass, volume
 colour, texture, line

2. perceptual - cultural beliefs, judgment aspects
 value, morals, likes
 dislikes, contrasts

3. experiential - visceral, emotional, somatic aspects
 pain, pleasure,
 memory

Identity as Interior and Social

Students learned to identify how identity, traditionally believed to be uniquely attributed to external social codes, is complicated by aspects of our interiority that contribute in defining who we are and who we assume the other to be.

Interior

Myth
Memory
History
Fantasy
Dream
Family
Desire

Social

Race
Class
Gender
Ethnicity
Sexuality
Age
Physical/Mental Ability

The cultural qualities on the right are what typically signify identity. One may be able to “see” these qualities and therefore assume knowing something of the other. The qualities named on the left are not visible on the surface yet potently drive identity from inside. Variables of interiority and culture inform each other and cannot be stripped from each other. Who then is before us? Can we assume we know who we are looking at? How do the more numinous aspects of subjectivity move with, wrap around, slip through the social poles?

Preconceptions

Students were asked to write on the preconceptions, beliefs and opinions they held about the justice system and legal process in order to recognize the layers of meaning they carried with them before ever engaging in direct interaction with the courthouse. The following excerpts are good representative examples of first impressions held by most of the students I worked with over the 2 years period.

Not perfect; not always fair. Controversial. Unanimous decision. Death sentence/life in prison. Tried as an adult. Alibi. Context of situations. The guilty can end up innocent and the innocent can end up guilty. “order in the court”. “The truth, the whole truth and nothing but the truth, so help you God”. Appeal. Contest. Appellate court. The Judiciary branch of government defines, explains, translates the law. The Constitution is the supreme law of the land. Trial by impartial jury. Objection! Sustained! Over-ruled” “I will have you held in contempt”. Exhibit A. Bailiff. Bail, probation, good behavior. Bail bonds. 1st degree murder. Judge Wapner, Judge Judy, Judge Joe Brown, Judge Mills Lane.

Chuck Suntalus, UC Irvine

Why do we feel anxious when in the presence of the law even if we are not guilty? Why do we feel nervous when we are not even part of a situation and we know that we are not doing anything wrong? Is it necessary to be afraid of the law and its authority? Is that why it works? What is the purpose of the justice system? Justice is blind. Sometimes it doesn't seem that way. Should justice be blind? Everyone is in such different situations; no factors are the same. Is it possible to judge and still have equality? You cannot judge equally because you can't separate yourself from your beliefs. What role do politics play in justice and punishment? What role do money, sex, gender, age, etc. play in someone's fate? Should people receive equal punishments for the same crime? Or should social background, childhood, mental illness, etc. be considered when determining someone's punishment?

I am curious about the idea of freedom, DNA testing, violence against inmates, drugs and crimes committed within the penal system, rehabilitation, luxuries in prisons, plea bargains, and parole. These are all things I know of because of the media. I would like to know how they work in real situations. How does living in a prison change someone? What is the rehabilitation rate? Is it successful? Is there a way to help people? Is it a matter of money, staffing, laws? It seems like it is so hard to change the system. There is so much history in laws. That is good but it means that the bad things which need to be changed quickly often stay the same and they are very slow to change.

Jennings Waterhouse, UC Irvine

I've often wondered how one can redeem a man found guilty when he feels no guilt? The whole innocent until proven guilty thing is ideological banter. My uncle, great-uncle, and aunt all worked for law enforcement and they never believed in innocent until proven guilty. In fact, it was the other way around...guilty until proven innocent. Not to say that their attitude reflects everyone else's, but it does make me wonder. I wonder how the judges see it and if they can ever be unbiased? Seemingly, no. How can one rid him or herself of past experiences? So is a case ever really fair?

Marlene Collazo, San Francisco Art Institute

The justice system, the court system, the structured system that defines and regulates behavior, seems to be an illusive system that contains some people and ejects others. The idea that the court is completely of the public because it serves the public...yet, to me, it it's a private, illusive space...based on fragments and abstractions. The courthouse is a symbol of fear, of ultimate authority where fate is divided, characters are solidified, sterile, cold, cross examining, where secrets are exploited and shamed. Ultimately, it is a system that rules my existence, through social contract...yet, I really have no idea how and what makes the system function.

Rachel Pascua, San Francisco Art Institute

Control is a huge issue. If control is lost, the court system is lost. But with control comes ego. With ego comes injustice.

Raymond Law, UC Irvine

Questions were then developed by the students through which to explore the visual culture of the courthouse.

INFORMATION & EXPECTATIONS

1. How is the justice system language made accessible to the public?
2. Why are students not educated at school about how the justice system works?
3. How is the daily court procedure disseminated to the public who come into contact with it?
4. What are your expectations of the public when they come into contact with the court?
5. What should the public expect of court officials when they come into interaction.

COURT PROCEDURES

1. Who comes to watch the court proceedings?
2. Why is the public allowed to be at court hearings? Who established this?
3. How is the jury selected, and how do you ensure that they are unbiased?
4. How do we know that the judge is unbiased?
5. What are the rules and regulations during a trial for the jury?
6. What is the relationship between the jury's verdict and the judge's sentencing?
7. Can a judge overrule a jury's decision?
8. Was there ever a time the jury never reached an agreement? Explain.
9. Why aren't there juries for small claims cases? Is this fair?
10. (lawyers) Why are you able to use past and present records for a current case?
11. How much interpretation can the judge have with the law?
12. Are the security guards really qualified?
13. How has technology affected how cases are handled?

ENVIRONMENT

1. Who designs courtroom architecture, spatial configuration and furniture? Why this style?
2. Who chooses the visual signs, text, and artwork around the courthouse and courtrooms? Why these?
3. Why are some windows barred and others not?
4. Are courtroom architecture, furniture and signs uniform throughout the state?
5. What is the purpose of courtroom formality and authority?
6. What is the hierarchy behind the seating structure of the courtroom?

COURT PROFESSIONALS

1. How do justice professionals avoid their own opinions and circumvent their subjectivities?
2. From the court professional's point of view, what does not work within the justice system?
3. From the court professional's point of view, why did you choose this job?

COURT STRATEGY

1. Why do the inmates wear jumpsuits that are orange?
2. How does dividing the audience affect the interactions between the prosecution and the defense?
3. How is the court's strategy of making the public feel intimidated in the court affect the trial?
3. If you're innocent until proven guilty, why do you have to go through lockdown? i.e., you're treated like you're guilty
4. Are judges and lawyers treated differently when they break the law, than the general public.
5. Why is it that celebrities seem to have different trials than the general public?
6. (from the point of view of someone on trial) Why is it more effective to attack the system from the inside rather than from the outside?
7. Have you ever had a defendant who did not respect the symbols of the court? (what happened)
8. What is the history of the judge's black robe?

POPULAR MEDIA

1. Are the television courtroom dramas (like Judge Judy) held in actual courtrooms?
2. How much of media representation of the court system is true. Do you resent it or agree with it?

At each of the 3 Courthouses the students were then taken on elaborate guided tours where their questions could engage every facet of the building from the public spaces to the private spaces, including the sheriff's quarters, the lock-up area, judge's quarters and administrative offices. Students were allowed to interview anyone they wished to, take photographs and audio recordings, spend time sketching or moving furniture around. One student was taken under the wing of a senior level judge for a full day, another was permitted to do a photo shoot in a dark courtroom.

Art of Engagement

The following are some examples of what the students from California Institute of the Arts did for their specific and in depth study of the San Fernando Superior Courthouse:

Nick Trikonis

reading the personal objects and photographs on a Bailiff's desktop to humanize the person who in public hides his personality behind a uniform:



wedding and choir photos



the Bailiff's personal passion

Lisa Harrison

Who is the person behind the professional role playing?.....Court professionals photographing each other and sharing their personal passions



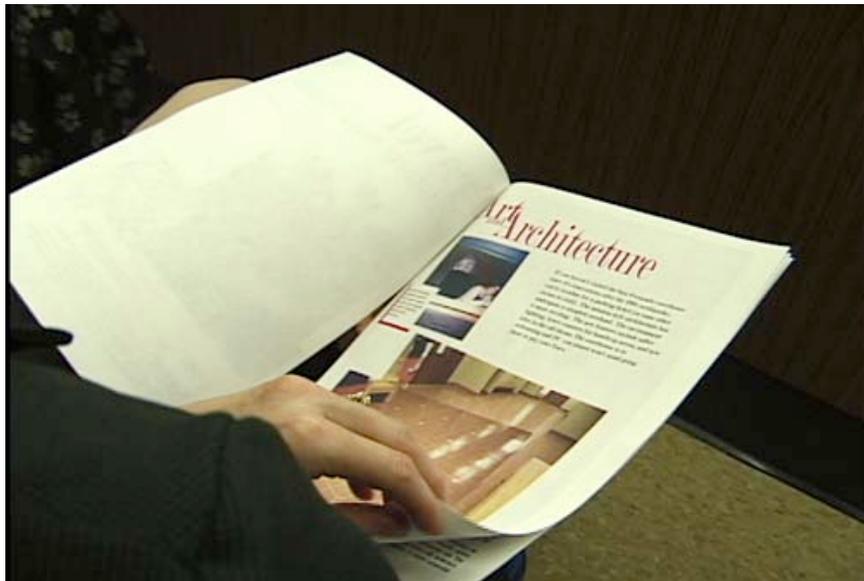
Judge McLoughlin, presiding Chief Judge



court staff

Kelly Smith and Georgina Gomez

a mock up of a popular young woman's magazine featuring courthouse culture, mixing fact and fiction.



Leah Klinge

deciphering the colour scheme of the prisoner lock-up area through a popular culture reading...”Ralph Lauren” versus “Martha Stewart” colors. Why is the lock-up area primarily painted a dark teal? Where else would this color be typically found... in a bedroom, according to Ralph Lauren.

*Jesse Frisk*

deciphering the text signs used in the prisoner lock-up area.

K... keep away from this prisoner

K-4...the number after K corresponds to the code of the crime.

LA Court Fish...the person arrested has not yet been summoned to appear in court...not yet added to the system. The defendant symbolizes a fish swimming upstream against the current of this new environment, waiting to be processed.

Greenlight...someone who has a hit out against his life

288...a child molester

juvi...a juvenile

PHP Black...a jail north of LA/African American

These codes exist as magnetic signs to be placed on metal cell doors like twisted refrigerator poetry. Behind the cell door is a human being broken down into codes...now a body without individuality. The person’s history, ethnicity, race, gender become stereotypes. There is no person, only codes. Through these codes, the court agents maintain a safe distance with the prisoner, dehumanizing their interactions, desensitizing themselves from any compassion or empathy. But these prisoners are formally still innocent as they have not yet been proven guilty. How do these magnetic words force a judgment of guilty through their dehumanizing qualities?

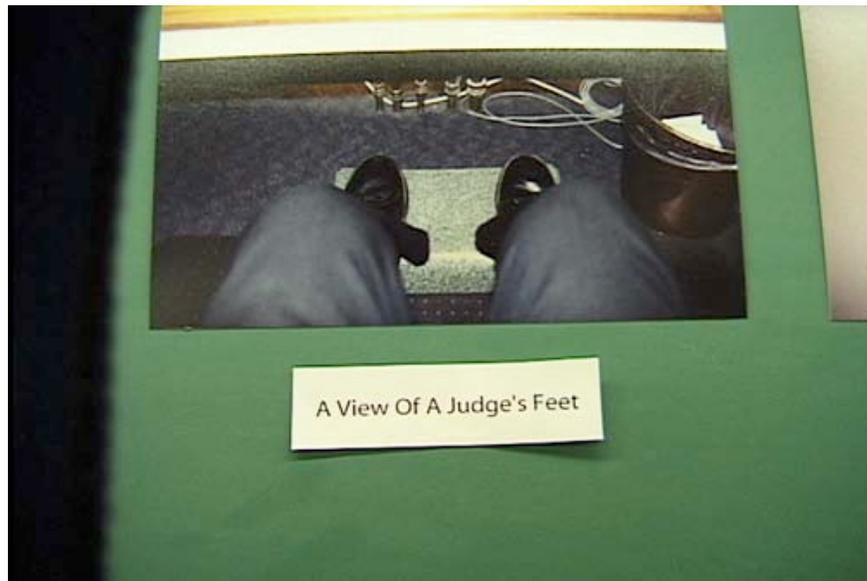


photos of door texts

Cade Hollabough

a presentation of the judge's "perspective", after spending a day with a Superior Court judge trying a capital punishment murder case.





What became hard to reconcile was the relationship between the procedural aspects of the Judge's process versus the human content of the murder trial. While decor and procedure were cool and formal, the content of the trial was highly emotional, even unfathomable. The photos of the Judge's external perspective showed absolutely nothing of his internal process. This gap became highlighted when photos of the murder victim were circulated in the courtroom. No emotion. How do courtroom professionals reconcile this gap?

Mia Burtolussi

a photographic series of courtroom women's fashion based on the television personality Ally McBeal. The courtroom clerk told me that the women lawyers these days all look like they want to be Ally McBeal, as their skirts have gotten shorter and shorter.



Photos of a theatrical scenarios created by the students in a courtroom.



Judges listening to the students



*Court personnel engaging with the students,
San Fernando Superior Courthouse*

The students, one by one, revealed the inner workings, interests and subtexts of the court and of its personnel through inventive aesthetic strategies. Using photography, performance and text the students deconstructed the courthouse surroundings, including its interior design, signage, fashion, and staff demeanor to reflect back hidden workings of the courthouse. The audience of judges, bailiff, sheriff, clerks, lawyers and administrative personnel were intrigued and engaged by this reflexive process. They seemed to relax their outer cool demeanors and open into a deep engagement with the students. It was as if they had never before seen themselves.

At the Harbor Justice Center, students from UC Irvine were taken through the same process and proposed the following explorations:

Sally Bucher

Video the various signs and strategies contrasting between a courtroom and a church which both teach compliance. I compare and contrast the ways in which the Court and the Church inscribe their ideals and values within each building aesthetic.



the Seal of Justice and the Christian Cross.

Vivian Tam

Design a hybrid courtroom based on Western and Eastern architectures. As Orange County has a 12.5% population from a diversity of Asian countries, the court, as a public space, should reflect this diversity.



Courthouse as an open air pavilion.

Jamie Yu

Digitally rearrange the interior design of the courthouse to exaggerate signifiers of power. The judge's bench grows in height to architecturally signify ultimate power.



Raymond Law

Exaggerate the gaze in a court room, all eyes are on the witness. Courtroom architecture is designed for extreme scrutiny.

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Ilyoung Bang

Lawyers' demeanor often seem like a staged fight. Courtroom as boxing ring...exaggerating the court drama into spectacle.



Julianne Bernard

Reveal the order of the courthouse by adding subtle detail to the décor. Add a welcome door mat in front of the main door to make the courthouse seem more hospitable.



Laura Camarena

Shift the symbolic image of a judge from impersonal cool to engaged hot...celebrate his birthday.



Judge Glass, presiding Chief Judge, Harbor Justice Center

And finally, in the summer of 2002, students of the San Francisco Art Institute were given permission to act out a fictional court case in one of the courtrooms at the San Francisco Superior Courthouse. The students wrote a script titled, "Forgotten Evidence", a parable about legal process.



“The case before us is an inquisition of forgotten evidence in a civil case between two forces of culture, “The People” vs. “The People”, those who believe without questioning versus those who question without believing.

To the Jury....this court will not ask questions about your identities, not your name, occupation, age, marital status, etc. This court accepts each of you as juror, neither more nor less biased than another prospective juror. This court accepts that we each are biased and accepts this as a human quality. This court, rather, ask you and guides you to reflect upon yourself even as you are asked to reflect upon others. From where do you see what is before you? How are you implicated in what you see, feel, think? Where does justice lie?

May we proceed. Clerk please swear in all those present.

All parties please rise. Raise your left hand and place your right hand over your heart. Feel your heart beat....”

Forgotten Evidence, like the artworks presented at the 2 previous courtrooms, represented questions the students had which are utterly human questions...who am I to you and who are you to me...questions, which in their intimacy, cannot be answered by the justice code. The students had a hunger to uncover these, to insert an ethics of intimacy into what they perceived as a context where all too often our humanity is denied.



Presiding Judge and staff as jury, San Francisco Superior Court

In each of the 3 courtroom contexts, we were met with enthusiasm and relief, like a long sigh of recognition at what can not be overlooked, our humanity.

Thank-you to Nicholas Mirzoeff, editor, *Visual Culture Reader*, Routledge, 1998