

Making a 'Case': Applying Visual Sociology to Researching Eminent Domain

Brian Gran

INTRODUCTION

In Lakewood, Ohio, Jim and JoAnn Saleet stood up to City Hall in a fight against an attempt to 'take', by *eminent domain*,¹ their family home (see Figure 35.1) (Harden, 2003; Leung, 2004). The beautiful house had been labeled 'blighted' by the city but visual evidence, including photographs in newspapers and a broadcast by the television program *60 Minutes*, was crucial in Lakewood's decision to back down, giving up the attempt to take the property.

An eminent domain application in Connecticut, on the other hand, made its way to the US Supreme Court. In an infamous decision, the court decided against the home owners. Visual evidence in this case, *Kelo v. City of New London* (2005) (herein *Kelo*) failed to prevail in establishing the right of eminent domain. Suzette Kelo's home was located in a middle-class, safe neighborhood in New London. In its decision in this case, the US Supreme Court ruled that a city

government could use eminent domain law to take and sell Suzette Kelo's house to a private developer in the hopes of achieving higher tax revenue from redevelopment (see Figure 35.2). *Kelo* stands for the proposition that the government can legitimately force a family to sell their home to a private entity that promises, but cannot guarantee, economic development and tax revenue. That recent interpretation of eminent domain law was regarded as a significant departure for eminent domain law.

Less than 5 years after the Supreme Court made the *Kelo* decision, the Pfizer Corporation (Pfizer), which had promised to build on the site where the Kelo home (and others) had been, withdrew their presence from New London. Now, the area where the Kelo home once stood can now be characterized as blighted (see Figure 35.3) (McGeehan, 2009).

In this chapter I will show how visual evidence, as depicted by a photograph, has been important in a variety of legal cases.



Figure 35.1 Exterior of Saleet home, Lakewood, Ohio. *60 Minutes/AP*

Visual sociology can be an effective approach to showing that the *Kelo* case did not result in a watershed change in socio-legal relations. Neither *Kelo*, nor the Saleet case, resulted in a *fait accompli*.

Cases are essential to the work of lawyers and social scientists, but the definitions of what cases are differ. Lawyers must often prove a case for their client to win. A social scientist studies a case to answer a research question. But what is a 'case'? In studying what a case is, social scientists and lawyers can learn from each other, and by applying sociological notions of what a case is, visual sociology can be used effectively to document different types of cases as they move from one type to the other.

This chapter will first consider sociological case studies. It will then contrast these discussions with the ways that lawyers understand what a legal case is generally, and then focus on eminent domain cases specifically.

Applying visual sociology approaches, I will identify important changes in eminent domain over the last 150 years, with uneven results, and I will use US eminent domain laws to argue that visual sociology can contribute to discussions of what a case is in important ways.

AN OVERVIEW OF VISUAL SOCIOLOGY OF LAW

Social scientists have long made important contributions to studies of law, legal systems and structures, legal actors, and other issues of law and society (Tocqueville, 1835, 1840/2004; Weber, 1922/1978; Black, 1976; Cotterell, 1999; Deflem, 2008), as have visual sociologists more recently (Preston, 2001; Margolis, 2004). Visual sociologists, in particular, are in a unique position to help



Figure 35.2 Exterior of Kelo home, New London, Connecticut



Please
provide figure

Figure 35.3 Former location of Kelo home, New London, Connecticut. Maria Bernier

identify the 'public use' aspects of eminent domain, an element of great social and legal contention (Rutkow, 2006).

Visual sociology can be used to document socio-legal change, including failures of law. Changes in legal practices and inconsistent applications of law have fascinated sociologists since the work of Max Weber. In his study of socio-legal change, Weber (1922/1978) wrote that modern law produces stability and calculability, important ingredients to capitalism. Since Weber's thesis, sociologists have examined whether and how a change in law will produce a change in a socio-economic system (Boyle et al., 2001; Polletta, 2001).

Visual sociology is remarkably well suited to studies of social change (Harper, 2001; Rieger, 2003). Anthropologists as well as lawyers have turned to visual evidence to study socio-legal change, notably Richard Sherwin (Sherwin, 2007; Sherwin et al., 2007). Visual sociologists have sought to understand the meaning of photos, videos, and other visual data through study of their making and distribution, their interpretation, and their impacts. One valuable approach to visual analyses is to study photographs as a means of documenting socio-legal change. In his historical study of compulsory boarding school education imposed on Native American children around the turn of the twentieth century, Margolis (2004) showed how federally-mandated policies were attempts to discipline and monitor the ways that Native Americans lived and were intended to produce 'changes in the soul' (75). Margolis, using archival photographs and other historical documents, showed how education practices and laws at that time represented formal exertions of power and control.

In her book *Moving Politics*, Gould (2009) used photos to document the importance of human emotion for the work of social activists challenging the legal status quo. In her study of ACT UP,² Gould presented photographic evidence of activists challenging

laws by demonstrating at political conventions and in front of the US Supreme Court and the White House. She analyzed photographs published in magazines that were intended to encourage members of a gay community to fight back against discrimination and physical violence (Gould, 2009: 411). The militancy of ACT UP activists did produce changes in law and improved understanding of people's rights to health care, but Gould's visual study also showed the importance of emotions for sustaining a social movement like ACT UP. Riis's (1890/1971) study *How the Other Class Lives* and Lorraine Hansberry's (1964) *The Movement* functioned in similar ways.³

In contrast to attempts to change the law, visual sociologists have also used visual data to show ways that social actors can attempt to sidestep laws. Working with photographer Ovie Carter, Duneier (2000) used photographs to show how sidewalk vendors go about their everyday work in the face of formal and informal social controls designed to prevent sidewalk vending. One picture, for instance, shows a sidewalk vendor rummaging through people's garbage, which is a Class E misdemeanor (among other municipal violations), in the hopes of finding goods to sell (Duneier, 2000: 151). While police officers and other government officials inconsistently applied laws to the vendors, the vendors developed approaches to sidestepping law, even when they sold illegal paraphernalia. While setting up their tables in illegal locations, vendors realized police officers had more pressing issues to deal with; they also knew, however, that if they did not 'respect' the officers, their tables and goods might be confiscated (Duneier, 2000: 261).

Visual sociologists have also studied how photographs and video of the laws failure can trigger social disturbances. After a jury returned 'Not Guilty' verdicts for the police officers charged with the beating of Rodney King in Los Angeles in 1992, heightened awareness through newspaper accounts,

as well as repeated airings of video taken during King's beating on TV news channels, were important ingredients contributing to public outrage and played a role in the Los Angeles riots of 1992. A particularly interesting piece of visual research (Goodwin, 2002) showed how the jury was swayed by prosecutors who had trained them in applying the 'professional vision' of police officers.

In their book *The State of Sex*, Brents et al. (2009) used photographs to demonstrate how laws support different structures of what many consider anti-social activities. Through analysis of photographs of prostitutes, their state-sanctioned brothels and the neighborhoods and locations in which they are based, they sought to answer the question of why prostitution is legal in 10 Nevada counties. In the process, they found that the state used laws designed to enable Nevada to build 'a tourist industry [by] turning deviance into leisure' (2).

There are a range of studies such as these. Mizen (2005) asked children to keep photo diaries and helped to expose illegal working conditions. Schwartzenberg (2005) asked participants to document their efforts to establish laws protecting and promoting the rights of people with developmental disabilities. Sparrman (2006) studied ways that film was used to improve the understanding of law and its objectives. These examples not only demonstrated important contributions by visual sociologists to studies of law but also showed the varieties of cases visual sociologists of law have studied. In other words, cases of law became sociological cases of study. But how does one become the other?

WHAT IS A CASE?

In their important book *What is a Case?*, Charles Ragin and Howard Becker and their contributors (Ragin, 1992) tackled this question from a variety of perspectives. Social scientists often did not confront this question head on; rather, they assumed their case was clear cut. Ragin and Becker, however, asked social scientists to think specifically about what a case is, how it is defined, and to consider the consequences of formulating a case one way versus another (Byrne, 2009).

Diane Vaughan (1992) defined cases as 'organizational forms that are analyzed regarding some social event, activity, or circumstance...' (175). Ragin took this notion further by creating a 'conceptual map' to help determine what a case is (Ragin, 1992: 9; Harvey, 2009).

As shown Table 35.1, cases can be seen as general concepts, or as more specific applications.

Cases are objects When a case is an object, a researcher perceives the case as a real thing in the world already bounded – i.e. as given. Cases are based in research literatures; a researcher does not strive to identify a case and its empirical boundaries (Ragin, 1992: 9–10; Vaughan, 1992). The case is general and 'conventionalized' (Ragin, 1992). For instance, a piece of private property is a fundamentally important unit to understanding the organization of capitalism and its parts, including machinery, factories, homes, and other structures. Similar to social science research, a lawyer representing a plaintiff may agree with the lawyer representing the

Table 35.1 Conceptual map for answers to 'What is a case?'

Understanding cases	Case conception	
	Specific	General
<i>As empirical units</i>	1. Cases are found	2. Cases are objects
<i>As theoretical constructs</i>	3. Cases are made	4. Cases are conventions

defendant on the facts of the case, but not agree on what law applies.

Cases are conventions A case can be understood as a *construct* arising from scholarly research. For this type of case, Ragin (1992: 10) argued that researchers view a case as problematic and, therefore, the subject of scholarly interest. In this way, researchers may find that a case, as a convention, changes over time, and ask why these changes have occurred. Thus, a researcher may investigate lines separating public from private domains because they are problematic. A turn to scholarly research on the public–private dichotomy may reveal boundary changes over time in response to changes in power or other social forces, yet the public–private boundary nevertheless influences how people see the world and do things together (Gran, 2003; Gran and Béland, 2008). Similarly, a lawyer may approach an area of law as having undergone significant change over the long term. For example, in seeking to prevent application of eminent domain law to a private property, a lawyer may identify the significant legal precedents of eminent domain to demonstrate how far eminent domain law has changed from its roots to argue that current eminent domain practices are mistakenly applied.

Cases are made When a case is *made*, a researcher sees a case as a theoretical construct. In such a situation, a case is neither empirical nor given. Instead, a case is gradually imposed on empirical evidence as it takes shape during research (Ragin, 1992), such as in theory-building using grounded theory approaches. A lawyer representing government may argue that a piece of private property is subject to eminent domain because it is blighted. Inherent in this claim is the comparison of deteriorating, uninhabitable properties to properties in which a person can safely live.

Cases are found When cases are *found*, researchers define and establish cases. A key part of this work is identifying boundaries. A case's boundary can change, so that a

case previously found can transform into another kind of case. Douglas Harper (1992) developed the concept of community through various means, including photo-elicitation. Harper allowed participants to identify their cases of community, thereby setting the community's boundaries. For lawyers, a case may be defined by a legal question such as an injury, a contract dispute, or employer responsibilities. For instance, a lawyer may frame a situation as an accident, establish that it was caused by negligence, and contend that the boundaries extend to the negligent actor, who should be held responsible for harm.

What is a legal case?

Lawyers studying criminal law in the United States are taught to identify and prove elements of a case ('Criminal Law', 2010). For instance, to prove the crime of murder, a lawyer needs to prove three elements: intent, act, and causation. First, the prosecutor must show beyond a reasonable doubt that the accused premeditated on the murder, i.e. had given thought to committing the murder prior to the crime ('Murder', 2010). Secondly, the prosecutor must show beyond a reasonable doubt that the act of murder took place. The act is the physical action taken by the defendant resulting in a person's death. Finally, causation requires the prosecutor to show beyond a reasonable doubt that the act was the actual cause of death. Some causes of action do not inherently meet the definition of murder. However, by demonstrating a cause of action, a subject may be shown to have transformed from one kind of case to another. An example is eminent domain. Once eminent domain occurs, private property transforms into public property.

Ragin's (1992) typology of cases was an important contribution to social science research. Using visual sociology, I will discuss how eminent domain law has dramatically changed over the last 135 years in the United States, and I will raise questions for contemporary practices of eminent domain law.

EMINENT DOMAIN

The act of government-taking of private property against an owner's will for specified, legitimate government purposes with an offer of just compensation is permitted under the legal concept of 'Eminent Domain' (Nedzel and Block, 2007), and is practiced in many countries. In the United States, eminent domain receives legal support from the Fifth Amendment to the US Constitution, which reads, in part, '...nor shall private property be taken for public use, without just compensation'. Eminent domain is often considered an inherent governmental power, even without legislation saying so. The State, however, must follow due process to appropriate the property, often by taking private property through a condemnation proceeding. The State can only take property for public uses and it must compensate the property owner(s). The courts usually defer to the legislative branch in deciding what a 'public use' is.

Contemporary controversies surrounding eminent domain revolve around what actually constitutes legitimate public uses. The concept of legitimacy has dramatically changed over time, from an idea of universal availability, to a well-defined direct public benefit, and more recently, to include potential or indirect public benefit (Kotlyarevskaya, 2006).

A VISUAL ANALYSIS OF EMINENT DOMAIN

Visual sociology can identify different kinds of cases: *object*, *found*, *made*, or *constructed*. My analysis of cases will center on the public purpose of eminent domain legal cases in the United States. Recall that the elements of eminent domain are:

- government taking
- of private property
- without owner's permission
- for public purpose
- with just compensation.

A case can change from made to found

Visual data have played important roles in recent eminent domain cases. In one case, photographs and video were reasons for why eminent domain failed. In another case in which eminent domain was applied, photographs demonstrate law's failure. These two cases are also examples of how a case can transition from a case that is *made* to a case that is *found*. In Lakewood, Ohio, a suburb of Cleveland, the municipal government attempted to make a case of blight apply to a home for purposes of applying eminent domain (Sartin, 11 December 2002). Lakewood is the third most populous city in Cuyahoga County, with Cleveland the first. Its proximity to Cleveland gives it an urban feel, but its middle-class population consists of young professionals, families, and residents who have raised their families in Lakewood.

For its eminent domain plans, the city government's stated goal was an indefinite public use. In 2002, the city government of Lakewood had issued a 'community development plan', the object of which was to build new condominiums, shops and businesses, from which the city would obtain increased tax revenues. The plan included finding that a neighborhood in the city was blighted according to Lakewood law (Sartin, 17 December 2002). This law designated a property as blighted if, among other factors, it did not have a two-car garage attached to the home; if it did not have at least two full bathrooms; if it had fewer than three bedrooms; if the home was less than 1,400 square feet; and if the home's yard was smaller than 5,000 square feet. According to the Institute for Justice, a libertarian organization involved in eminent domain and other public-private issues, if these characteristics were followed, a majority of Lakewood homes would have been labeled 'blighted', including those of the then-mayor and city council members (Institute for Justice, n.d.).

The Saleets were adamant that their home, and those of their neighbors, should not be

subject to eminent domain. Many of the people there had lived in their homes for nearly 40 years when the city government started eminent domain action. Homes in the neighborhood were well-maintained, crime was not a problem, and the nearby business community was strong. A picture of the Saleet home shows a well-maintained, attractive, middle-class home (see Figure 35.4).

The city's attempt to use eminent domain to take possession of over 50 properties resulted in a powerful backlash. Articles on the Lakewood case were published in Cleveland-area newspapers, including in the *Plain Dealer*. It was pictures of the Saleets and their home in an article in the *Plain Dealer* that attracted the attention of the Institute of Justice, a libertarian interest group, to the Lakewood case ('How', 2004). Their campaign against the city's eminent domain action not only consisted of legal

filings but also organizing events such as picnics and candlelight vigils.

Reports of the Lakewood eminent domain effort and pictures of homes were also featured in national newspapers such as the *Washington Post*. These photos raised doubts about how the Lakewood municipal government was applying eminent domain (Harden, 2003). An important turn was when the television show *60 Minutes* featured the Lakewood story on 28 September 2003. Mike Wallace of *60 Minutes* interviewed the Saleets in their home, showing its excellent condition and beauty (Leung, 2004). Wallace then interviewed the mayor of Lakewood, Madeline Cain, who admitted that even her home did not meet Lakewood's eminent domain standards. After the *60 Minutes* story, Lakewood voters rejected the proposed development, eventually removed the 'blight' label from homes in the Saleets' neighborhood,



Figure 35.4 Interior of Saleet home, Lakewood, Ohio. Author

and voted Mayor Cain out of office. According to Mrs Saleet, the *60 Minutes* publicity was the turning point in the battle against application of eminent domain in Lakewood.

Visual evidence not only can reveal abject failures of eminent domain law but also can challenge legal rationales for contemporary approaches to eminent domain law. Around the same time as the Lakewood eminent domain case, steps were being taken in other cities in the United States to apply eminent domain to private homes. Among the most prominent eminent domain cases was one that resulted in the US Supreme Court case, *Kelo v. City of New London*, 545 US 649 (2005). Unlike the Saleet case, in *Kelo* private properties were taken by the State. The US Supreme Court decided a city could appropriate private property for a public purpose, even if that private property was to be used, at best, for an indefinite public purpose (Benedict, 2009).

Unlike the Lakewood case, blight was not part of the story in the *Kelo* case (Benedict, 2009). Instead, the private properties were characterized as standing in the way of anticipated economic development and anticipated increases in tax revenue. Figure 35.5 is a photograph of the home belonging to Susette Kelo, which was similar to the Saleets' home. While the Kelo neighborhood may not have been as affluent as the Saleet neighborhood, it was stable, and Kelo's home was attractive and well-maintained.

The *Kelo* case was controversial because the application of eminent domain was to private properties in a working-class neighborhood that, by all accounts, was not blighted. Some members of the New London neighborhood had assented to the purchase of their property by the City of New London, but other neighborhood residents had not. Yet the city government condemned the holdouts' properties, despite the owners' resistance.



Figure 35.5 Exterior of Kelo home, New London, Connecticut. Center for the Defense of Free Enterprise: Property Rights

Not surprisingly, hostile responses to the *Kelo* case were swift and strong (Jacoby, 2005). A series of proposed bills, including the 'Property Rights Protection Act of 2009', were introduced in the US Congress. If it was to become law, it would prevent local governments from receiving federal economic development funds to use for eminent domain proceedings for economic development. Across the United States, more than 40 State legislatures have passed legislation to prevent governments from taking private property when the primary purpose is economic development (McGeehan, 2009; 'Eminent Domain', 2010).

The photographs of the Saleets' home and the *Kelo* home suggest the importance of visual sociology to case work. The properties are similar, but the outcomes are different, raising questions for inconsistent applications of eminent domain law.

Moreover, visual sociology can reveal the failure of eminent domain law as social

policy, as well as raise doubts for directions in which this legal doctrine is headed. Visual evidence of the aftermath of the *Kelo* case dramatically shows how government–corporate relationships not only can fail to fulfill promises but also how these relationships destroy family homes, leaving a wasteland behind. Less than 5 years after the Supreme Court made its *Kelo* decision, the Pfizer company, which promised to build on the site of the *Kelo* home, withdrew from New London, Connecticut ('Pfizer', 2009). Pfizer company leadership decided to close its research and development headquarters in New London, despite city and state government spending of \$78 million on the area where *Kelo* and her neighbors had once lived ('Pfizer', 2009). The empty space where the *Kelo* home once stood may now be characterized as blighted, with empty lots, trash, feral cats, and remnants of the homes that previously stood there (see Figure 35.6).



Figure 35.6 Former location of *Kelo* home, New London, Connecticut. Maria Bernier

In Lakewood, the property was confirmed to be a private property, but not subject to eminent domain. In *Kelo*, the property was established as subject to eminent domain. These photos suggest that visual sociology can be important in case work.

A case is found

In the 1954 decision, *Berman v. Parker*, 348 US 26, the Supreme Court considered

whether the District of Columbia Redevelopment Land Agency could use its powers of eminent domain to take blighted property, and non-blighted nearby, in Washington, DC. In the unanimous opinion, Justice Douglas referred to a plan developed by the National Capital Park and Planning Commission. A map of the National Capital Park and Planning Commission depicts which areas were subject to redevelopment (see Figure 35.7): the legend indicates that black areas were locations where buildings

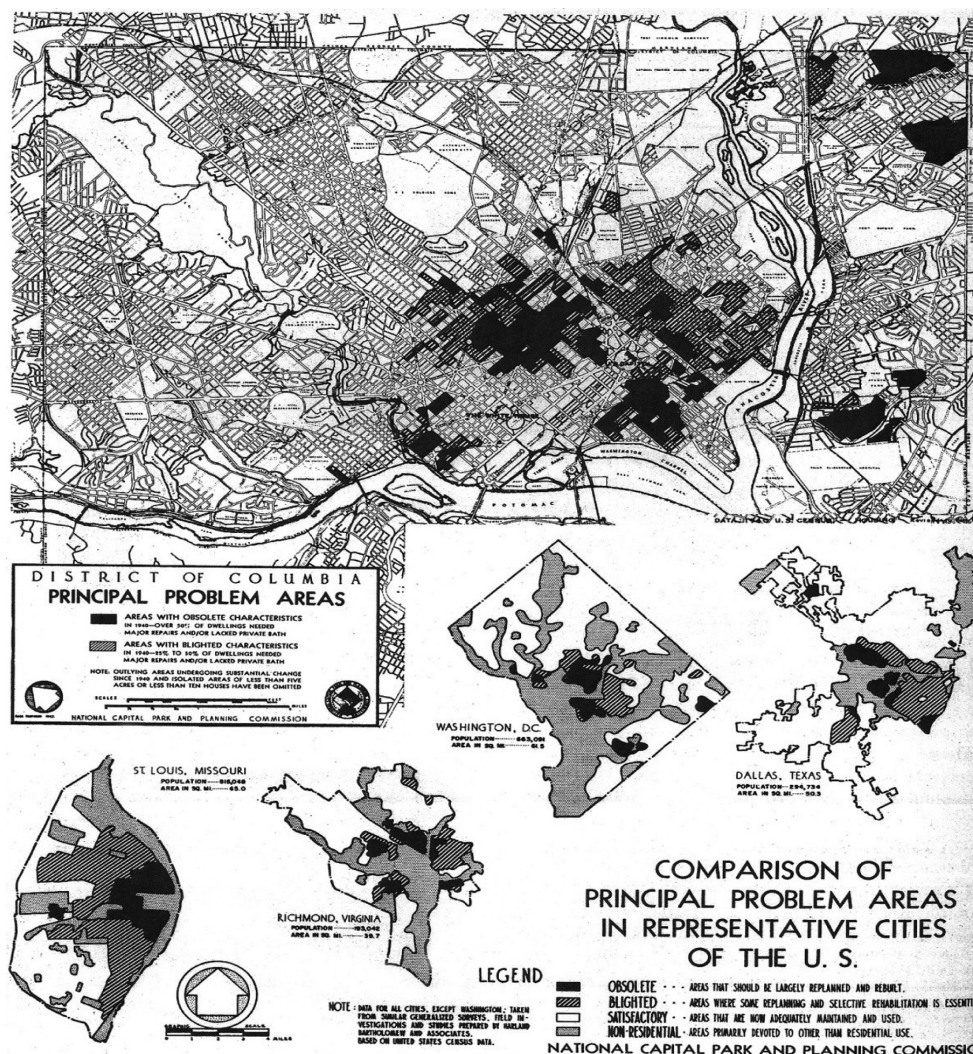


Figure 35.7 Map indicating areas subject to redevelopment, National Capital Park and Planning Commission. Comprehensive Plan for the National Capital and its Environs, 1950

are obsolete, as 'areas where building should be replanned and rebuilt'; gray areas were locations of blight, 'areas where some replanning and rebuilding is essential'.

The Supreme Court appeared to have readily accepted these designations of the buildings made by the National Capital Park and Planning Commission. The specific area subject to eminent domain proceedings was characterized as: '64.3 percent of the dwellings were beyond repair, 18.4 percent needed major repairs, only 17.3 percent were satisfactory...' and the Supreme Court noted that most had outdoor toilets, over 60 percent did not have baths, and over 80 percent did not have laundry facilities or central heating. In ruling that eminent domain proceedings were appropriate, the Supreme Court noted that:

[m]iserable and disreputable housing conditions may do more than spread disease and crime and

immorality....They may indeed make living an almost insufferable burden (*Berman v. Parker*, 348 US 26).

The photograph in Figure 35.8 presents evidence of blighted properties.

Yet the Supreme Court implied that 35.7 percent were not defined and established as blighted, implying the Supreme Court was applying a new legal standard of eminent domain. Instead, these private properties were cases that were *made*. Because their blighted character was not given, merely their proximity to blighted properties, application of eminent domain was subject to argument. Disagreements existed over whether some properties were blighted and should be subject to eminent domain. These individual cases were neither empirical nor given. Rather than contending that destroying the property would remove blight, advocates contended the property stood in the



Figure 35.8 Alley between B and Half Streets in March 1951, Washington, DC. Curtis Collection, DC. Archives, Washingtoniana Division, DC. Public Library

is it ok? please check



Figure 35.9 Non-blighted area subject to eminent domain, Washington, DC. National Capital Park and Planning Commission, Southwest DC, c. 1950

way of redevelopment. Private properties included shops and department stores that continued to do business (see Figure 35.9).

Berman brought the case before the Supreme Court, contending that the property was not blighted. Instead, Berman maintained that the property was only to be resold to a private developer, which was an inappropriate use of eminent domain. The Supreme Court ignored the non-blighted condition of the Berman property, instead concluding that public use was a now general benefit to the public welfare (Nedzel and Block, 2007: 146). The decision concluded that Berman's property rights were 'satisfied... when they receive that just compensation which the Fifth Amendment exacts as the price of the taking' (348 US 36).

Similar to the *Kelo* case, visual evidence demonstrates the failure of eminent domain law. Allen (2005), writing in the *Washington Post*, subtitled her article, 'Look at how urban renewal ruined SW'. She complained, 'That's because I live in Southwest Washington, where nearly every day I contend

with the wreckage – architectural, socioeconomic and cultural...' of the *Berman* case (see Figure 35.10).

Visual data can highlight significant changes in law. In the *Berman* case visual evidence showed how the public purpose doctrine had significantly broadened from public use to general public welfare. In the process of doing research, efforts were made to define a property and establish it as subject to eminent domain. An investigator sought empirical boundaries of a case. Over time, eminent domain practices shifted so that the focus was less on fulfilling a public function to public interests. Private properties subject to eminent domain were not simply objects; instead, qualities of private property were subject to government intentions. The change to finding a case was sometimes made on the basis of a government's police power, or that government can legitimately secure safety, health, and welfare of its citizens by maintaining public order. Police power was sometimes applied in cases of blight.



Figure 35.10 Southwest Washington, DC. Allen (2005)

A case as an object

Visual data can reveal that the qualities of a previously private property are irrelevant to application of eminent domain. As such, visual sociology can demonstrate qualities of a case as an *object*. In the United States, it is given that a private home is personal, not government, property. When a piece of private property is an object, it is treated as real, bounded, and given. For a case as an object, its qualities are not disputed. When the qualities of that home are irrelevant to the application of eminent domain, as a case, the house is an object because researchers treat it as real, bounded, and given. State governments have exercised eminent domain since the nation's founding. One of the first federal applications of eminent domain was private property as an object. Decided in 1875, the main issues confronting the Supreme Court in *Kohl et al. v. United States*,

91 US 367, were whether the federal government has the power of eminent domain and, if it does, whether it can use eminent domain to take private property for a public function.

Once the Supreme Court decided that the federal government did have this power, the question was whether eminent domain could be used to build a federal courthouse and other federal offices. The case largely boiled down to whether the federal government could use eminent domain for a public function. In the *Kohl* case, private properties were taken by the federal government (see Figure 35.11).

The map shown in Figure 35.12, published in the *Cincinnati Commercial Tribune* (1873), shows the properties that were eventually subject to eminent domain and their market values. Kohl's tract, fifth from the left, was valued at \$15,780. It was both a commercial property and a residential property; Kohl lived above his business.



Figure 35.11 US Custom House and Post Office, 1885, Cincinnati, Ohio. Sixth Circuit Archives

Rather than situations of blight, the federal government wanted to seize private properties to build a post office, federal courthouse, and other federal buildings. Various sections of Cincinnati were considered before the decision was made to apply eminent domain to this tract and nearby properties. Initially, Kohl attempted to sell his property to the local Commission representing the federal government, but sales were unsuccessful. After the application of eminent domain was announced, Kohl's estate challenged it. Figure 35.13 is a picture of the ground being broken to build the government buildings. What resulted was the building of a courthouse and other government buildings.

As a case, private property was an *object* in the *Kohl* lawsuit. The question was not whether this property was appropriately subject to eminent domain, but whether a public function was served: hearing lawsuits in a federal courthouse, delivering mail through a

post office, and imposing duties via a customs house. The reason the private property was subject of the lawsuit was because the federal government wanted to take the private property to fulfill a public function. The private properties were *objects* because it was given that eminent domain could be applied to them. The federal government took the property so it could fulfill public functions; argument over the conditions of the private properties was not undertaken.

DISCUSSION AND CONCLUSION

This chapter has sought to make four contributions:

- to demonstrate the use of visual sociology in studying important socio-legal problems
- to demonstrate types of cases of eminent domain

- to critique Ragin's (1992) typology of cases, demonstrating that a case can transform from one type to another
- to critique eminent domain law.

A visual sociological analysis demonstrates the use of visual evidence in legal cases. Focusing on eminent domain cases, Ragin's (1992) typology of cases is studied to structure this discussion of eminent domain law.

I have approached eminent domain as a case that is a *convention*. Socio-legal research on eminent domain law is a collective product of scholarly research. This chapter seeks to contribute to this case as a convention by demonstrating the utility of visual sociology to studies of eminent domain law. In this chapter, visual evidence was used to identify types of cases, how cases shift from one type to another, and to demonstrate the fiascos of eminent domain law.

Over the course of US history of eminent domain law, visual data have grown in importance. Prior to the *Kohl* case, the Commission established to identify the site of the new federal building considered many locations. When the process of narrowing down the final location was made public, maps of the properties and their values were published.

Prior to the *Berman* case, the National Capital Park and Planning Commission prepared maps of southwest Washington, DC. These maps identified properties to be subject to an application of eminent domain. It designated two kinds of properties, obsolete and blighted. In the *Berman* case, ultimately the Supreme Court did not distinguish between these two types of properties, deciding that the properties stood in the way of development. Indeed, the Supreme Court ignored Berman's and other parties protests that their properties were *not* blighted, but were thriving businesses that would just be sold to another private interest.

Fifty years later in Lakewood, Ohio, and New London, Connecticut, visual data played important roles in legal battles over eminent domain applications. In Lakewood, Ohio, the Saleets and their neighbors took on city hall

and won. Key to their success was newspaper articles that published photographs of the Lakewood homes, mobilizing public pressure. Likely, the penultimate factor to the Saleets' successful battle was the *60 Minutes* television program that not only showed the Saleets' home to an international audience but also exposed the hypocrisy of city government officials, whose own homes should have been subject to the city's eminent domain law.

In contrast, visual data did not seem to slow down the government from applying eminent domain to the neighborhood in which Kelo lived. Instead, the US Supreme Court ruled that the city of New London could take the Kelo and nearby properties for the vague public purpose of economic development with hoped-for tax gains.

Photographs present visual evidence that those hoped-for tax gains in New London were not achieved. Instead, the visual data demonstrate the catastrophic failure of law. One beneficiary of the *Kelo* case, the Pfizer Company, has moved out of New London. The formerly middle-class neighborhood where Kelo once lived can now be considered blighted.

Visual sociology demonstrates the failure of law, and more specifically, how unevenly eminent domain can function, in both the *Berman* and *Kelo* cases. Analysts (Allen, 2005) have concluded that 50 years after the *Berman* case, southwest Washington has not reaped the benefits of redevelopment. Photographs of the area where the Kelo home was situated now starkly demonstrate a wasteland where a middle-class neighborhood once stood.

The second contribution this chapter makes is to demonstrate types of cases of eminent domain. Employing Ragin's (1992) typology of cases, this study reveals important information about eminent domain law. For when a case of eminent domain was *found*, the private property was described as blighted. When a case is an *object*, private property as a case is sometimes treated as an object for eminent domain. The city government did not attempt to establish Kelo's home as

blighted, but that it stood in the way of redevelopment. Private property as an object case arises in similar situations, such as taking a non-blighted property for a public use: for example, a highway. Similarly, a case is sometimes *made* for eminent domain. A struggle ensued over characterization of the Saleet home as blighted.

This chapter suggests a case can change from one type to another. I examined a case that was *found*, which changed to a case that was *made*, and subsequently changed again to a case that was *found*. In Lakewood, the municipal government attempted to find the Saleets' home as blighted. After the Lakewood government failed to characterize the property as blighted, the Saleets' home transitioned back to a found case of private property. Blight was not applied to the *Kelo* and neighboring properties, but later, after the indeterminate public use failed, it is fair to ask if these properties may now be found to be blighted.

The third contribution is a critique of Ragin's (1992) typology of cases. As noted, this study finds that a case can transform from one type to another, at which Ragin hints is possible. This study also finds that the lines separating the kinds of cases defined by Ragin can be fuzzy.

The fourth contribution is a critique of eminent domain. This chapter's analysis of eminent domain focused on the public function/public use criterion. It demonstrated how laws governing and practices of eminent domain have changed over time. Even though the Fifth Amendment has not changed, this study demonstrates that applications and practices of eminent domain have changed dramatically. This study raises questions about whether eminent domain law has moved so far from its stated goals as to be unmanageable as currently conceived.

NOTES

1 Eminent domain is government's seizure (*taking*), of private property with just compensation, for a public purpose.

2 ACT UP - AIDS Coalition To Unleash Power, an international AIDS advocacy group, based in New York City.

3 These are the kind of photographs that art historian Terry Barrett (1986) termed 'Ethically evaluative images'. They call for a judgment on the part of the viewer; photographs of the Saleets' house (discussed in this chapter) functioned in this manner. For a more complete description of Barrett's typology, see Margolis and Rowe's contribution on 'disclosing historical photographs' (Chapter 18) in this volume.

REFERENCES

- Allen, Charlotte (July 17, 2005) 'A wreck of a plan: Look at how urban renewal ruined SW', the *Washington Post*. [Online] Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/15/AR2005071502199.html> [Accessed: 10 September 2010].
- Barrett, Terry (1986) 'A theoretical construct for interpreting photographs', *Studies in Art Education* 27(2): 52–60.
- Benedict, Jeff (2009) *Little Pink House*. New York: Grand Central Publishing.
- Black, Donald (1976) *The Behavior of Law*. New York: Academic Press.
- Boyle, Elizabeth H., Songora, Fortunata and Foss, Gail (2001) 'International discourse and local politics: Anti-female-genital-cutting Laws in Egypt, Tanzania, and the United States', *Social Problems*, 48(4): 524–544.
- Brents, Barbara, Jackson, Crystal and Hausbeck, Kathryn (2009) *The State of Sex*. New York: Routledge.
- Byrne, David (2009) 'Introduction: Case-based methods', in David Byrne and Charles C. Ragin (eds), *The Sage Handbook of Case-Based Methods*. Los Angeles: Sage. pp. 1–10.
- Cohen, Charles E. (2006) 'Eminent domain after Kelo v. City of New London', *Harvard Journal of Law & Public Policy*, 29: 491–568.
- Cotterrell, Roger (1999) *Emile Durkheim: Law in a Moral Domain*. Edinburgh University Press/Stanford University Press.
- 'Criminal Law' (2010) *Cornell University Law School Legal Information Institute*, [Online] Available from: http://topics.law.cornell.edu/wex/Criminal_law. [Accessed: 5 September 2010].
- Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*. New York: Cambridge University Press.

AQ: Other References
Please cite or delete the following References:

Cohen (2006)
McCarthy (2005)

- Duneier, Mitchell (2000) *Sidewalk*. New York: Farrar, Straus and Giroux.
- 'Eminent Domain' (2010) *National Council of State Legislatures* [Online]. Available from: <http://www.ncsl.org/default.aspx?tabid=13252> [Accessed: 5 September 2010].
- Goodwin, C. (2002) 'Professional vision', in D. Weinberg (ed.), *Qualitative Research Methods*. Oxford: Blackwell.
- Gould, Deborah B (2009) *Moving Politics*. Chicago, IL: University of Chicago Press.
- Gran, Brian (2003) 'A second opinion: Rethinking the public-private dichotomy for health insurance', *International Journal of Health Services* 33(2): 283–313.
- Gran, Brian and Béland, Daniel (2008) 'Conclusion: Revisiting the public-private dichotomy', in Daniel Béland and Brian Gran (eds), *Public and Private Social Policy*. Palgrave: Macmillan. pp. 269–282.
- Hansberry, L. (1964) *The Movement; Documentary of a Struggle for Equality*. New York: Simon and Schuster.
- Harden, Blaine (22 June 2003) 'In Ohio, a test for eminent domain rights vs. renewal at stake in case', *The Washington Post*, A03.
- Harper, Douglas (1992) 'Small N's and community case studies', in Charles C. Ragin and Howard S. Becker (eds), *What is a Case?* New York: Cambridge University Press. pp. 139–158.
- Harper, Douglas (2001) *Changing Works*. Chicago, IL: University of Chicago Press.
- Harvey, David (2009) 'Complexity and case', in David Byrne and Charles C. Ragin (eds), *The SAGE Handbook of Case-Based Methods*. Los Angeles: Sage. pp. 15–38.
- 'How the West End was Won' (January 2004) *Cleveland Magazine*, Features. [Online] Available at: <http://www.clevelandmagazine.com/ME2/dirmod.asp?sid=E73ABD6180B44874871A91F6BA5C249C&nm=Arts+%26+Entertainment&type=Publishing&mod=Publications%3A%3AArticle&mid=157860OD80804596A222593669321019&tier=4&id=17D0F0D43A294EBA9D36CE8B3F3197AA> [Accessed: 11 September 2010].
- Institute for Justice (n.d.) 'Ohio's 'city of homes' faces wrecking ball of eminent domain abuse'. [Online] Available from: http://www.ij.org/index.php?option=com_content&task=view&id=1053&Itemid=165 [Accessed: 5 September 2010].
- Jacoby, Jeff (26 June 2005) 'Eminent injustice', *The Boston Globe*, Opinion.
- Kotlyarevskaya, Olga V. (2006) "'Public use" requirement in eminent domain cases based on slum clearance, elimination of urban blight, and economic development', *Connecticut Public Interest Law Journal*, 5: 197–231.
- Leung, Rebecca (4 July 2004) 'Eminent domain: Being abused?', *60 Minutes [CBS News]*. [Online]. Available from: <http://www.cbsnews.com/stories/2003/09/26/60minutes/main575343.shtml> [Accessed 23 October 2010].
- McCarthy, Kevin E. (2005) 'Eminent domain', *OLR Research Report*, 2005-R-0321, Connecticut General Assembly, Office of Legal Research.
- McGeehan, Patrick (12 November 2009) 'Pfizer to leave city that won land-use case', *The New York Times*, p. A1 (New York edn).
- Margolis, Eric (2004) 'Looking at discipline, looking at labour: Photographic representations of Indian boarding schools', *Visual Studies*, 19: 72–96.
- Mizen, Phillip (2005) 'Emerging into the light', *International Journal of Epidemiology*, 34(2): 257–259.
- 'Murder' (2010) *Cornell University Law School Legal Information Institute* [Online] Available at: <http://topics.law.cornell.edu/wex/murder>. [Accessed: 5 September 2010].
- Nedzel, Nadia E. and Block, Walter (2007) 'Eminent domain', *University of Maryland Law Journal of Race, Religion, Gender and Class*, 7: 140–171.
- 'Pfizer and Kelo's ghost town: Pfizer bugs out, long after the land grab', (11 November 2009) *The Wall Street Journal*. Review & Outlook.
- Polletta, Francesca (2000) 'The structural context of novel rights claims: Southern Civil Rights Organizing, 1961–1966', *Law and Society Review*, 34(2): 367–406.
- Preston, Catherine L. (2001) 'Territories of images, technologies of memories', *Visual Sociology*, 16(2): 39–57.
- Private Property Rights Protection Act of 2009, H.R. 1885, US House of Representatives 111th Cong. (2009).
- Ragin, Charles C. (1992) 'Introduction: Cases of "What is a case?"', in Charles C. Ragin and Howard S. Becker (eds), *What is a Case?* New York: Cambridge University Press. pp. 1–17.
- Rieger, Jon (2003) 'A retrospective visual study of social change: The pulp-logging industry in an Upper Peninsula Michigan County', *Visual Studies* 18(2): 157–178.
- Riis, J. A. (1890/1971) *How the Other Half Lives: Studies among the Tenements of New York*. New York: Dover Publications.
- Rutkow, Eric (2006) 'Case comment: Kelo v. City of New London', *Harvard Environmental Law Review*, 30: 261–279.

- Sartin, V. David (11 December 2002) 'Plans aim to revive neighborhoods; Lakewood targets West End for development', *The Plain Dealer*, p. B1.
- Sartin, V. David (17 December 2002) 'Lakewood moves to revitalize', *The Plain Dealer*, B4.
- Schwartzberg, Susan (2005) *Becoming Citizens*. Seattle, WA: The University of Washington Press.
- Sherwin, Richard K. (2007) 'A manifesto for visual legal realism', *Loyola of Los Angeles Law Review*, 40 (NYLS Legal Studies Research Paper No. 07/08-2). [Online]. Available at SSRN: <http://ssrn.com/abstract=1004307> [Accessed: 23 October 2010].
- Sherwin, Richard K., Feigenson, Neal and Spiesel, Christina (2007) 'What is visual knowledge, and what is it good for?' *Visual Anthropology*, 20: 143–178.
- Site Selected for the United States Building in Cincinnati (29 April 1873) *Cincinnati Commercial Tribune*, 5:1.
- Sparrman, Anna (2006) 'Film as an educational and political device', *Visual Studies*, 21(2): 167–182.
- Tocqueville, Alexis de (1835, 1840/2004) *Democracy in America*, translated by A. Goldhammer, Olivier Zunz (ed.). New York: Library of America.
- Vaughan, Diane (1992) 'Theory elaboration', in Charles C. Ragin and Howard S. Becker (eds), *What is a Case?* New York: Cambridge University Press. pp. 173–202.
- Weber, Max (1922/1978) *Economy and Society*, G. Roth and C. Wittich (eds), Berkeley, CA: University of California Press.

Legal cases cited

- Berman v. Parker*, (No. 22) 348 US 26 (1954).
- Kelo v. City of New London*, (04-108) 545 US 469 (2005).
- Kohl et al. v. United States*, 91 US 367 (1875).