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Damages: Trust No One; Believe Only What You See

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Although the first impression of *Damages* (FX Networks, 2007-) is a promise of very good entertainment, it does seem to be just another law series. There have been many big city law firms at the center of the legal dramas since *L.A. Law* in 1986 (NBC) and like those, *Damages* is set in a large and bustling New York City firm, under the sole name of its founder, Patty Hewes (Glenn Close). However, the television viewers realize early on that, despite any similarities with other series they might know, *Damages* is going to be quite different because it is constructed as a thriller. *The Lyon's Den* (NBC, 2003) was also a series based on a suspenseful murder mystery, while the lawyers of the big Washington D.C. firm went about their weekly business of defending cases, but in *Damages* the thriller far outweighs the legal aspects of the show. Of course, the lawyers are shown from the start in their professional capacity, dealing with clients, discussing cases with colleagues, negotiating, preparing witnesses, taking depositions, evaluating the admissibility of available evidence, searching through endless documents for concrete proof usable at trial and generally suffering from the stressful atmosphere of this big, high-powered firm. We see them delve in lawyerly activities little represented in television dramas until now, like discovery, which is a long and complex process in preparation for trial, engaging hundreds of billable hours. We also become aware of ethical considerations like the ban on any contact with members of the opposing party during proceedings.

Viewers see Patty Hewes adeptly handle the media, manipulating journalists and getting herself invited on talk shows to make useful marks on public opinion before trial. Patty Hewes is the quintessential fourth generation television lawyer,[1] motivated by winning the game with whatever means she can conjure. Her clients are not her major concern, but if she wins they'll come out okay: "The clients come and go", she tells her young colleagues, "the lawyers survive". She is ruthless, but efficient. She trusts no one, but requires that everyone, clients and associates alike, trust her.

The steps of the civil law process are seen in greater detail in this show than in previous series. However, Patty Hewes' ferociousness and shark-like characteristics, in themselves, no longer constitute elements for a particularly innovating series since so many courtroom dramas of the last three years have used cut-throat lawyers as central characters.[2] The fact that this series is also a thriller, with the suspense successfully sustained throughout the 13 episodes of the first season (the second season adds a new mystery complicating the solution to the first) sets it apart from the traditional genre of legal series and would almost remove it from the category altogether, were it not for the mechanism of the show. The use of images, the re-view of images, creates a parallel with real courtroom activity in which the jury examines visual evidence (here, the images) while listening to testimony (the narrative), in order to come to a decision with regard to the facts. There are hardly any traditional courtroom scenes in this first season, and thus no jury is seen, but the television viewers sit as a jury, watching and listening to the evidence proposed in order to arrive at as much of a conclusion as is possible about what happened to the people in this case—just as in court.

Caught in what act?

The title credits are followed by magnificent shots of New York City. These images are accompanied by recognizable, but not easily identifiable, music punctuated by the regular ring of a bell. The scenes of New York go from the general to the specific, as the camera leaves the streets to center on an uptown Manhattan building and then, even more specifically, on the elevator, the doors of which are

opening in very slow, staccato motion. Each frame, almost like photographs, rather than a film, is marked by the ring of that same bell. Viewers come to realize that the bell is the sound made by the elevator as it reaches the selected floor and the doors are about to open. Successive frames reveal a wider space between the elevator doors until viewers can discover, inside, a frightened half-naked young woman, covered in blood. Avoiding the doorman, she runs out of the building and turns a corner. These indexical images alert the viewer that a violent act has been committed but, for the moment, no one knows against whom, nor by whom.

We know these images mean something. Viewers are today well versed in recognizing the messages encoded in the rhythm of images. The music indicates no danger, but the interruptions of the incongruous bell add suspense especially as we do not know what it is at first. Incertitude and ambiguities always draw attention and ignite curiosity. They alert viewers to watch in an active way. The shock of seeing the young girl covered in blood provides the audience with questions, but no solutions for some time. Their queries will advance over the season, as viewers go from one hypothesis to another. Certain ambiguities, however, are never fully eliminated, like in a trial.

The episodes are constructed of scenes which complexify the chronology of events: a superposition of flashbacks from different periods of time prior to the opening of those elevator doors. The writers play with time, and viewers—the home jury—must recreate an order of events as if they were conducting an investigation. There is sometimes indication on the screen of how long before the apparent crime the next scene takes place but, most of the time, the audience must assemble and remember all the visible evidence. Repeatedly, we will see young lawyer, Ellen Parsons (Rose Byrne) running, blood-covered, out of the elevator, fleeing the building. In the different images of this scene throughout the season, observant viewers notice that she is sometimes wearing pants and sometimes not. Is this a cutting error or a way of playing with viewers' powers of memory and observation?

Although the shots of the elevator are repeated, throughout not only this episode but the whole first season, it is not mere monotonous repetition. Audiences are required to do active work since, sometimes, a different angle will be offered or an extended view will put the images into a more informative context.[3] Each time, viewers are given an opportunity to form hypotheses about the events leading to this state of affairs. As the first season progresses, new details, both narrative and visual, are flung at the audience, bringing them to modify their interpretations of what they have seen. Slowly, a link becomes apparent between these events and the civil case Patty Hewes is preparing. The connection between the two cases is not clear for quite some time; and, even at the end of the first season, it is impossible to be absolutely sure about what actually happened, who did what, or for what reason. Additional

information discovered through wider angled shots and bits of conversations modify the context in which the first images can be interpreted, but the result is nothing more than an interpretation.

A theory of the case

In Common Law trials, truth is the object, but it is never really possible to know exactly what happened unless someone confesses. Each side at trial presents its theory of the facts, or theory of the case. The trial is therefore a combat between the two parties (the Prosecution and the Defense in a criminal case, the plaintiff and the defendant in a civil case) to convince the court[4] that their interpretation of the facts and the law, their theory of the case then, is the right one. In countries with a Roman law tradition, like France, the inquisitorial trial follows a long period of investigation conducted by the "juge d'instruction", a sort of examining magistrate. This specialist of truth finding must examine all evidence for and against the main suspect. The investigation will ultimately produce one theory of the case, that of the "juge d'instruction". If the case is then brought to trial, it is his/her theory that is presented to the court. The object of the trial is then to confirm[5] this theory of the facts, the truth as established beforehand by the "juge d'instruction".

The viewers of *Damages* find themselves in the same situation as members of a jury in a Common Law trial. They see Ellen being examined by the police and consulting with her lawyer. Then as they would at trial, they are invited to view and review the evidence. Ellen will come out of that elevator a few times before the audience discovers that her fiancé was killed. Later, they will see Ellen standing beside the body holding the murder weapon. This scene establishes the first central doubt of her case. Has she killed her fiancé? It is not clear from the first view of her standing there whether this has occurred before or after the image of her in the elevator.

Putting together the pieces of the puzzle is the process necessary for the audience/jury to get to the truth. Despite the different jumps in time and Ellen's apparent implication in the crime, the viewers easily come to the conclusion that she must have been framed. There is only circumstantial evidence but no reason to believe that she could have killed her fiancé. It is only at the end of the season that viewers discover the couple had indeed fought to the point of breaking off the engagement. Here a legal mechanism is deployed: more than establishing the truth, which no one can ever fully know, arguments—including the presentation of evidence—must meet with the approval of the jury as being plausible. The social group must adhere to this version of events[6] which is possible if it meets with their experience and common sense.[7] Lovers' quarrels and engagement breakups in other movies they have seen often end well—and if not, rarely in murder.

Nevertheless, seeing Ellen stand over her fiancé's body in the bathtub, with his head bashed in, unsettles the audience's certitudes. Especially since she is holding the murder weapon. Later, viewers will see her, already in the state in which she left the elevator, as she enters the apartment to find him dead. This comforts the theory that she did not kill him, but if she did not kill him, then what happened to her? Why was she covered in blood? And who did kill him? Are the two events even related? Scene by scene, clue by clue, viewers construct a narrative, which is coherent to each of them and will lead to their theories of the case. The construction of the "truth" in court is heavily dependent on the "overall narrative plausibility of the story told".[8] How the story is structured by the lawyers in court, and here, by the "home jury"

itself, produces an effect on its credibility. When Ellen is first seen, the building she leaves is not known to the audience. She turns around the corner but viewers do not know where she is going. She is soon picked up by the police at a corner, but it is not clear whether this is the *same* corner. Only the most observant viewers will soon notice that the building Ellen leaves is Patty Hewes' apartment building and not the one in which the young couple had made their home—a fundamental fact, given that the construction of meaning is determined by how well a jury remembers the evidence[9] and fits it all together. Some evidence may not seem to fit in at all and must be discarded: a secondary story that runs through several episodes of the series, for instance, puts the audience on the wrong track of another woman. For a while, it seems as if there may have been an adulterous affair, but this soon appears to be a bad lead: the fiancé was faithful and Ellen had full confidence in him. She realized the other woman was mad and, rather than becoming jealous, chased her away in good lawyerly form.

Moreover, Ellen never corresponds to the type of person who could commit murder—and especially not for such a reason. At the point in the series where this knowledge is made available to the audience, other complexities have overshadowed any suspicion of Ellen's involvement in this crime. The high-stakes litigation the firm is involved in, and the incredible acts to which Patty Hewes will stoop to win the case and save her skin, complicate the story and cancel previous hypotheses the viewers may have imagined.

There are several villainous characters in the series, which serves brilliantly to complexify the narrative. Two are especially terrible, and oppose each other throughout the show. Patty Hewes is the first, and she will stop at nothing to win a case, conquer her adversary and protect herself in the interest of her clients' cause. The other is Arthur Frobisher (Ted Danson), a self-made millionaire at the head of a multinational firm. Accused and acquitted of insider trading, he now faces a class action suit brought by a number of his former employees represented by Patty Hewes because the sudden sale of shares in his company led to the failure of his firm, leaving them jobless and penniless. Patty Hewes is determined to put Frobisher behind bars or, at least, to ruin him personally. Reputations are a real stake in civil

law cases, and the resulting battle between these two powerful figures does not only take place in preparation of a trial—they both resort to trickery, bribery and, it is suggested, murder, to save their skins. Several murders are committed in relation to the case, and it is only sometimes clear who is behind them. Ellen, as a fighting young lawyer in Hewes' firm, is thoroughly engaged and committed to the case—however, when her fiancé is killed and she finds herself implicated personally, she becomes as ruthless as Patty to get at the truth.

The audience finally discovers that, before coming out of the elevator, Ellen has been attacked at Patty's duplex apartment. After her fight with David, her fiancé, Ellen accepted Patty's offer to spend the night there, as Patty herself would be away. Ellen gets a phone message from David and while she lies back down in bed to think about it, she hears someone in the apartment. She runs downstairs to grab something to use as a weapon, gets hold of a butcher's knife in the kitchen and tries to protect herself but ends up killing her attacker in self-defense.

Ellen is convinced that Patty tried to kill her and perhaps also commandeered her fiancé's murder. In fact, since she believes Patty is behind even a greater deal of evil, she sets out for revenge. The theme song of the series, "When I get through with you there won't be anything left", acquires all the more meaning when considered in terms of Patty's ruthlessness and Ellen's determination. The first season of the series thus ends with no truly conclusive information as to these murders. Better clues have been given, but much is left unresolved. This is an effective mechanism to guarantee the viewers' return to the series for Season 2.

Trust no one

Was the attacker sent to Patty's house to kill Ellen, or just scare her? Did Patty send him because she feared that Ellen's remorse at how they handled the Frobisher case would lead her to do something unwise? If not, who cleaned up the mess so the police would find nothing to corroborate Ellen's story? Was someone sent to find something at Patty's house when he unexpectedly fell upon Ellen? If so, was the person sent from the Frobisher camp? When Ellen runs out of Patty's building, another person is getting out of a car to search for something in the apartment. This one, we know, is connected to Frobisher, which again complicates the story: two intruders? Who works for whom?

It seems possible that the two murder attempts (one aborted, one successful) were unrelated and coincidental. The presence of multiple villains makes this conceivable. What can one believe in this context of distrust and manipulation? Like the repeated images of the elevator, several textual refrains come back to hammer in a message about trust. Although she is not the only one to ask these questions, Patty Hewes is constantly sounding out one character or another: "Can I trust you?" "Do you think I can trust him?" "You know you can trust me". She often requests of a colleague: "Keep an eye on him, will you?" "You needn't tell X about this conversation". Is this the world of the law? According to Patty, it is: "When you're a lawyer, lies come with the territory". Her recurrent message throughout the series is "Trust no one!" And Ellen learns the hard way that this is the best advice.

Huizinga wrote that the trial is a form of play, agonistic or competitive play, like combat. In many series of the last years, the lawyers have clearly spoken of the trial as a combat, but also as a game, and the objective for them is to win it. "Trial is war", says Sebastian Shark. Patty Hewes refers to the game of the trial and how she loves winning it; losing is not an option. She therefore resorts to all the underhanded means that most people would find unimaginable. For a television lawyer to break the long-standing myth of the lawyer-saviour,[10] a person in whom a client can have unlimited trust, is a major revolution in the imagination of audiences. *Damages* also invites viewers to enter a game in which they are challenged to find the truth. A theory of the case is all they can come away with, except perhaps the gnawing feeling that they can never really be sure, in the absence of a confession, which always solved Perry Mason's cases during the last few minutes of each episode. Truth? The only sure thing that the series leaves audiences with, is that a good lawyer is better to have on your side than against you.

Trust nothing

Despite all its innovations, this series joins the ranks of programs offering a reflection on our post 9/11 age. The question of trust is at the center of all our daily decisions and this is why the law, and especially the lawyer, has inevitably become one of the essential tools in dealing with today's challenges to survival. Like fictional doctors, psychiatrists or undertakers, lawyers help television viewers, today, come to terms with reality. Television has understood that this is a slow process, one of accumulation and assimilation. This is the reason that series are so effective: they give the viewer the time to walk down that road and, in so doing, think about the subjects without realizing that learning is being accomplished.

Damages also offers a reflection on the power and credibility of images today. Images offer global information, but it becomes clear here that this information must be understood in the correct context. Alone, images are too open to interpretation and inherently untrustworthy in this digital age: we know that images can lie. The question of the credibility of visual proof, like that of witnesses, is also a current legal debate. How can the credibility of evidence be determined? Each time viewers see

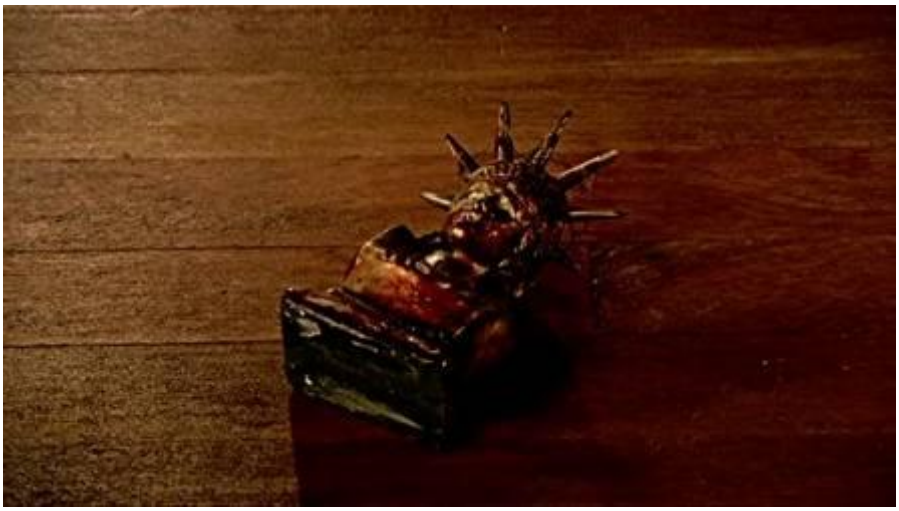
the first images of *Damages*, it becomes necessary for them to modify their interpretation and the narratives they are putting together. It must be remembered that these images are shown several times in each episode, and thus slowly contextualized in different ways. The unclear place of this visual evidence, shown in connection with different events at different moments in the general narrative, calls into question the credibility of these images as valid clues to help determine what may have happened. The insertion of a wrong lead (the woman stalking David in the hope of starting a relationship with him), which never amounts to anything, is a reminder of the onslaught of information currently available—information that must be waded through, selected, and interpreted to find the necessary knowledge to make decisions. The absence of courtroom scenes in *Damages*, or even the presence of a judge, puts the emphasis on the responsibility of the viewer/juror in the situation of a trial. Each viewer is alone, but among others in their living rooms. They are all lay jurors, trying to make sense of the facts and decide, save reasonable doubt, what happened. No other series has left the viewer/juror with as much doubt at the end of the season, since most legal dramas succumb to the expected desire of audiences to finish the story with a solution, as detective novels do (often with disappointing ends which oversimplify human complexity). The courts know human complexity very well, and another debate among jurists is whether the simple citizen—the television viewer for example—can be trusted to assume the responsibilities incumbent on lay jurors. Yet the lay jury is a symbol of equitable justice in the United States, and the trust in judgment by one's peers is a fundamental principle in the Common Law.

Another important symbol of trust in the American imagination is the Statue of Liberty. She is also a recurring image in *Damages*. The statue symbolizes the welcoming state, the epitome of trust and relief. The scenes of New York, where Hewes' law firm is located, very often include shots of the Statue of Liberty. The clients look to Patty Hewes as their last hope, as many immigrants looked to the United States symbolized by Lady Liberty greeting them at the shores of New York.

> "Give me your tired, your poor, your huddled masses,
> yearning to breathe free, the wretched refuse of your teeming

> shores. Send these, the homeless, tempest-tossed to me. I lift my lamp beside the golden door."[11]

But Patty is not to be trusted and one of the bookends representing the head of Lady Liberty, sent to the future married couple as a wedding gift, ends up as the weapon used to kill David. This symbol of trust gone awry is a message that the whole notion must be reconsidered. Like Patty the lawyer, will Lady Liberty really take care of those that trust her?



Ellen Parsons, awaiting trial for murder, is invited to return to the firm by Patty at the end of the last episode of Season 1. Ellen agrees, and for a change, her intentions are clear to the audience. This is another mechanism to ensure the viewer's return to Season 2. The series relies heavily on such mechanisms, carefully dosing revelations so that viewers keep their weekly appointment. Far from trying to reproduce real time like the series *24*, *Damages* seeks to convey the impression of the *slow* process of legal proceedings. However, slowness is skillfully distinguished from boring in this series. The difficult challenge of reconstructing the events, establishing links, listening to bits of conversations, becomes clear as the first season comes to an end; an open end though, because too much remains obscure.

All through the first season, the audience sits as a jury considering the meaning of images offered to them for inspection, and reinspection, just like evidence in a trial. As viewers come to recontextualize the evidence, they modify their theories of

the case. As they do this, they become aware of manipulations of different kinds, manipulations by anyone who has a stake in the result. Viewers are invited, at the same time, to enter a complex reflection on the power, as well as the betrayal, of images, which have so long been considered sources of unquestionable truth.

Damages is a double game: a trial and a thriller. Viewers are caught up in the suspense of the thriller, while they also learn the importance of strategy to winning a lawsuit, and become aware of ethical questions, which are mentioned, sometimes before being ignored. In the absence of trust, one must learn to be very attentive. *Damages* calls upon the viewer's capacity to look and be present in the act of looking. The viewer comes out of the world of Patty Hewes, entertained and perhaps a little more skillful.

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[1] See Villez, "Afterword".
[2] See, for example, *Justice* (Fox, 2006) or *Shark* (CBS, 2006-8).
[3] See Mitry, p. 122-129.
[4] In the United States, there is a jury in nearly all civil trials, but this is more rarely the case in the United Kingdom.
[5] See Garapon, p. 158.
[6] See Lévy-Bruhl, p. 46.
[7] See Jackson, p. 61.
[8] *Ibid*, p. 63
[9] See Burns, p. 42.

[10] See Villez, Chapter 1.
[11] "The New Colossus", the famous poem by Emma Lazarus (1883), engraved on a tablet within the pedestal on which the Statue of Liberty stands.