

Torture Images: A Failure to See

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Photo: 2016, US Department of Defense

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Abstract

This paper offers two readings of a set of photographic images released in 2016 by the US Department of Defense, after a prolonged campaign by the American Civil Liberties Union (ACLU). From a known cache of 2000 images produced by the US military, as documentation of the CIA Torture Programme, 198 images were released. These two sets of images – both the seen and the unseen – provoke a dialogue between the discourses of contemporary documentary photography and forensic imaging in order to think about the evidentiary nature of the documentary photographic image. The contemporary image is postulated as a vehicle upon which to gauge the role of intuition in knowledge formation. Further, the hidden, or latent, image brings forth a discussion of the problematic of the unseen; some of the 1800 withheld images appear as ekphrastic apparitions in the 'Torture Database', created by the ACLU as a repository for this material. This paper offers an evaluation of the 'legal turn' in contemporary visual art, with its emphasis on legal documents and redactions, which create a kind of cultural afterlife for state imagery. The 198 images were bought as printed artefact in a clear plastic bag by artist Christof Nüssli at a Paris art fair, implying they already operate culturally, if not juridically, as evidence. This sustained act of looking acknowledges the profound power of the image to bring forth a sense of aesthetic justice, while addressing the acutely

political question of what, and who, is permitted visibility in our current episteme.

Author Keywords

Aesthetics; justice; aesthetic justice; ekphrasis; torture; evidence; image; forensic

Prologue

Max Houghton

In 2015, I edited book, a collaboration between an investigative journalist specialising in counter-terrorism, Crofton Black, and a photographer, Edmund Clark, between text, image and legal document. Black had collected data, available in the public domain, to study the flight patterns of planes chartered by the CIA to transport people suspected of terrorism to be tortured in so-called black sites around the world, in a process we now know as 'extraordinary rendition'. Clark photographed airfields where 'cargo' (CIA term for detainees [3]) was moved from one plane to another, and visited sites where, according to subsequent testimony, detainees were tortured, as they were subjected to 'enhanced interrogation' techniques, approved by the Bush regime. The resulting photographs were purposefully banal: American suburbs, hotel rooms, public buildings. Dozens of legal documents were reproduced, again, all of which were in the public domain, from which Black's research had been mined. What was most striking about these documents was how much text had been redacted by the US Department of Defense (DoD). A whole page might depict nothing but a large black rectangle.

In the foreword to the book - *Negative Publicity: Artefacts of Extraordinary Rendition* [10] - Professor Eyal Weizman used a term to describe both the

redacted texts, and a similar composition he observed in the photographs: strike-outs. Together, what the documents and the photographs concealed – and therefore to an extent revealed – was a human body in pain.

This aesthetics of secrecy, of things hidden in plain sight, was at once appropriate, and troubling. Images were being specifically created to make an art object (a photo-book), the purpose of which was to reveal a 'network of mundanity' [10:287], and to point towards our complicity as citizens of torturing regimes. There was something strange about this material, the legal documents in particular, already being in the public sphere, forming evidence – cultural if not yet juridical – of practices that flew in the face of the Geneva Conventions, and which was now circulating in the art world. Much artistic work of this kind (see, for example, [20, 40]) has been – and continues to be – created as a response to the very disappearance of the law, in this period of contemporary history since the date and event of 9/11, 2001. Such practices are pursuing a kind of aesthetic justice, while the law itself was absent for a specific group of people: those suspected, but not tried for, terrorist offences. There is much to be written about this 'legal turn' in the arts, but I was in pursuit of images made by the very regimes that have created this legal lacuna, and are the originary 'documentary' images on the subject of terrorism/counter-terrorism in the 21st century.

When I read that the American Civil Liberties Union (ACLU) had succeeded, at least partially, in its freedom of information request (FOIA) to the DoD [2] to release photographs that depicted abuse of detainees, I knew these were the images I wanted to try to think with.

From a cache of more than 2000, 198 images were released. Immediately my interest switched to those that were proscribed. What power could these images possess, deemed too great, too terrible, to be seen by the public at large?

The power of the image in law has a long history. For Jewish theologian and philosopher Maimonides. 'the first intention of the law as a whole is to put an end to idolatry.' [35] And as Douzinas and Neads remind us: 'Controversies about images permeate Western law. Their public and overtly political expression in the iconoclastic disputes reveals not only a deep-seated fear but also an ambiguity as to the use of art and images more generally. This ambiguity is vividly captured in a famous aphorism by the Renaissance jurist Alciatus: *Imago veritas falsa* – the image is a false truth. The history of law's attitude towards images follows this tortuous dialectic, the deeply paradoxical combination of truth and falsity, blindness and insight [...] Here the stake is not so much the relationship between the real and its mirror, but *the effects or affect of the image on the senses and the soul*. They have the power to short-circuit reason and enter the soul without the interpolation or invention of language or interpretation.' [16] (my stresses)

I will return to this idea of the affect of the image later. The 'deep-seated fear', in judicial hermeneutics, became a fear of plural meanings – and such semantic uncertainty is highly undesirable in court, and has, over time, resulted in a text-based jurisprudence. Laws have been created through the centuries to contain and control images –in Christian canon law, for example, or Islamic sharia law – and which contribute in significant ways to the constitution of both knowledge and

subjectivity, how we consider that which cannot be seen.

The proper destination of the images released by the DoD is at a military tribunal, or the International Criminal Court, in support of the charge of breaking Common Article 3 of the Geneva Conventions. As these images have not been so utilised, there is a sense that they are untethered; floating around in some dark recess of the internet, open to interpretation. They have even disappeared from their original DoD landing page [18]. They can still be found via the ACLU – by means of a 'Torture Database' [48]– and via the Guardian newspaper website [24]. I even bought them at Paris Photo, 2016, printed, in an evidence bag, as another 'art object', created by Christof Nüssli. Their cultural afterlife has begun prematurely.

Could these images be used as evidence? Are they already evidence? I decided to ask John Smith, forensic image expert, and a former colleague from the University of Westminster, to help me think with these images ...

Introduction

John Smith

Early in 2016 Max Houghton contacted me, seeking advice and my opinion regarding a set of images she described as being of torture perpetrated against detainees held in Iraq and Afghanistan by the United States security services. As a forensic imaging specialist I often receive requests to comment on images; it is remarkable how often I am asked to comment by email, or in a phone conversation, without the luxury of seeing the images in question. Most requests have a clear forensic context, pertaining to a

criminal court case or a civil dispute. Max's query was different; she was interested to collaborate, to co-present at the Forensic Imagination Symposium at the London College of Communication [34]. As ever, I explained that I could not properly comment until I had seen the images. Max and I met shortly afterwards, to view and discuss the images. But before I was shown the images I was interested to discuss my expectations. I had been primed by the phrases, 'images of torture' and 'forensic imagination' and by a little of the story of how the images became available. My strongest visual reference was the infamous image of the cloaked detainee in Abu Ghraib standing on a box with wires attached to the hands, and those that accompanied it: graphic, disturbing images. I recalled photographs I had taken or seen in case files of various of victims of particularly horrendous crimes: the baby burnt with a cigarette lighter, the toddler scarred by stubbed out cigarettes, the mutilated bodies, victims of sadistic sex crimes. Such cases left their indelible traces in my memory because their severity equalled their rarity.

I recollected an incident from my first weeks at the forensic science laboratory. I opened an office drawer, seeking stationery. I was shocked to be confronted by the contorted face of a murder victim, ligature tight around the neck, eyes bulging, mouth agape: a picture of pain, suffering and death, all the more traumatic to me because I had never seen such an image, and I was certainly not expecting to find it hidden with the staples. Years of working on serious crimes may temper the shock but some images may haunt one for life.

A few months prior to meeting Max, I had visited India for a fingerprint research meeting. At an earlier meeting I heard an explanation by an Indian forensic

scientist of the high proportion of cases that were 'solved' by subjecting detainees to 'the third degree' (her actual words). I had had no idea that physical abuse was so prevalent there. In Indian museums I saw images of the Amritsa massacre and of public executions of Indians by British soldiers. Some scenes were strikingly reminiscent of online videos of contemporary Daesh-inspired extremist atrocities. It is fascinating to see how cultural establishments in various countries differently portray shared history: the images and captions they display, the images they choose not to show, and to consider the narratives they tell.

I thought of the displays I had recently seen at the Museum of London exhibition, *The Crime Museum Uncovered*, including accounts of crimes of torture by Gordon Cummins and Charlie and Eddie Richardson. [32]

I pondered the various images of torture and injury to which I had been exposed: those to which I had had privileged, restricted access, those reproduced in textbooks such as the *Colour Atlas of Forensic Pathology* [15], those that were on display in cultural repositories and those that are publically available online. And I wondered, what would I expect to see in the bundle of paper inside Max's bag?

What are we looking at?

John Smith

In 2004 the Daily Mirror published a set of images, allegedly of British soldiers abusing detainees in Iraq [12]. On seeing the front page I knew immediately that they were fake because the image quality was too good. It surprised me to note that almost two weeks

later this was the fourteenth of fourteen reasons demonstrating the deception [8]. The other thirteen reasons relied on expert knowledge of the subject matter, which I do not possess.

The first thing that struck me about the DoD images was the poor image quality. I would be ashamed to be associated with an organisation that produces such abysmal images. But I was minded to accept them as genuine because it would take some effort to intentionally produce such poor pictures. The images appeared to have been printed, annotated, redacted and then scanned and compiled into a Portable Document Format (PDF) file. We were looking at third, fourth, maybe fifth generation copies of the originals. Each successive generation degrades the quality by introducing artefacts such as scan lines and compression artefacts or altering the reproduction of tones and colours. It is not always possible to tell what is part of the original image and what has been added or removed by the copying processes. Making sense of the images requires the viewer to see through the degradations, to filter out the noise. It helps to have an expert understanding of the imaging processes but subjectivity is unavoidable when assessing the images. Even accounting for the degradations a remarkable proportion of images is badly lit, badly exposed, badly composed and out of focus. Some images are reduced to no more than a mixture of imaging artefacts and a scale or reference number: they have the *form* of forensic photographs but little of the *function*.

Any reputable source will stress the importance of good quality documentary forensic photography but what we have here is poor quality vernacular photography. I cannot avoid questioning why the images are so bad:

do they intentionally mask relevant evidence, or was the effect unintentional? Which is more problematic, a system that consciously goes through the motions of evidence collection, whilst actually hiding the thing it should reveal, or a system that does it unconsciously?

Forensic imaging practitioners must ensure the veracity and provenance of their images by following standard operating procedures (SOPs). Organisations in many countries, the US included, refer to the UK Home Office's Digital Imaging Procedure [27] and the US Scientific Working Group on Imaging Technologies (SWGIT) publications [44], which form the basis for most local SOPs. Original image files include metadata, which help to demonstrate the authenticity of images. Metadata and case notes should allow traceability to an incident, time, place, subject, imaging device and the conditions of image capture. Linear and colour scales and annotated labels aid image interpretation and facilitate cross-referencing to other relevant material such as witness statements. But here were images stripped of metadata, divorced from much supporting documentation. The Torture Database [48] includes many of the supporting documents, which had been released along with the images, though practically all images and documents are redacted in some way. A large amount of material is available, which is difficult and time consuming to comprehend, and it was neither necessary nor desirable to replicate the work of the ACLU. A full analysis of the images would require additional expertise from a specialist of the alleged content. One wonders whether the apparent process of revelation is as much one of obscuration. I am reminded of the account given in Torture Taxi [40], that although the CIA rendition flights were hidden in plain sight it took considerable time, effort, expertise

and not a little luck to unravel the movements of planes and people.

My attention was drawn to the general characteristics of the images, to the inclusion of certain elements, to the shrouding layers of artefacts and redactions and I wondered, what stories may emerge from studying the unintentional, accidental and unconscious elements? Four examples follow.

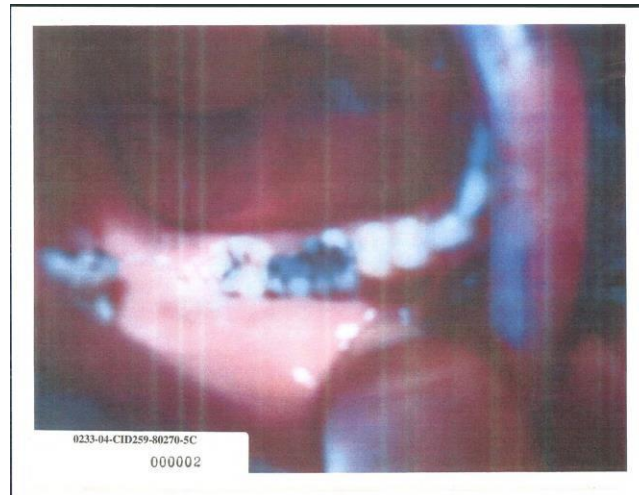


Figure 1: Page 150/162 [2], 2016, US Department of Defense

I was immediately struck by a similarity to Richard Hamilton's Kent State; the similarity is not purely visual. Kent State is an image of US student Dean Kahler, shot down and paralysed on campus by the US military during an anti-Vietnam war protest. It is a product of multiple generations through reproduction processes, during which it is transmogrified from a latent image on cine film into a cultural artefact.

Hamilton states the image 'had already been translated through so many different projections and reassimilations by other devices, that it had been considerably degraded. That's the term they use in photography, cinema and TV, and it's a marvellous thought. But I prefer to think of it as simply being changed since that avoids making a value judgment. [...] So every change that I have made, so long as my hand didn't come into it, and as long as I didn't tamper with it in a physical way, had its own authenticity, too.' [26]

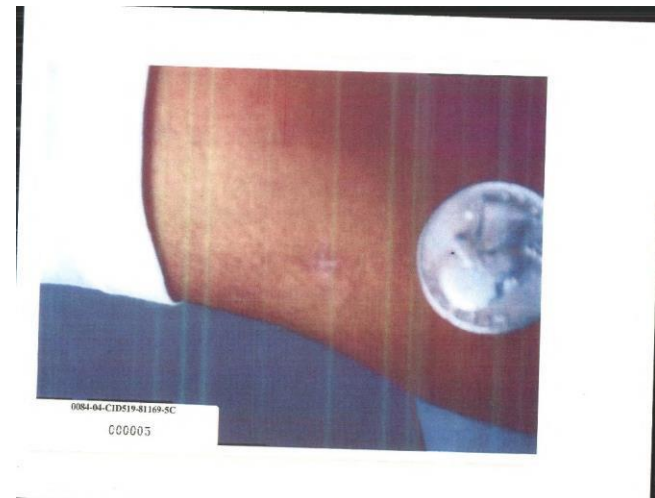


Figure 2: Page 76/162 [2], 2016, US Department of Defense

One of a series of an apparent mark on an arm. Included is a US quarter dollar coin, embossed with the words 'Liberty', 'in God we Trust' and a portrait of George Washington. In the absence of a linear scale it is common practice to include an object of known dimensions. I do not suppose the intention was to place

onto the detainee a symbol of US history, culture and religion, nor to introduce irony with the wording, but the effect is remarkable. I pictured the photograph of Neil Armstrong and Buzz Aldrin raising the American flag on the moon.

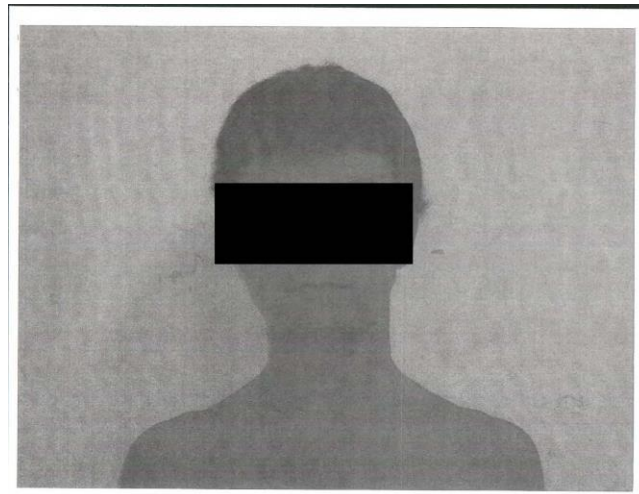


Figure 3: Page 144/162 [2], 2016, US Department of Defense

The black bar over eyes is used to mask identity and is used in scientific textbooks and pornography. There is a direct visual reference to the work I saw over twenty years ago from an MA Photography student. I forget her name but I think she was half-Iranian. She produced a diptych self portrait. In one image, wearing a burka, only her eyes were visible; in the other she was totally naked but added the eye bar. Google's search by image did not return the image I sought, but high on the list was an image labelled, 'Tactical Gear: Head Gear | Military, Law Enforcement, Special Forces, SWAT Gear', which resembles the burka veil.

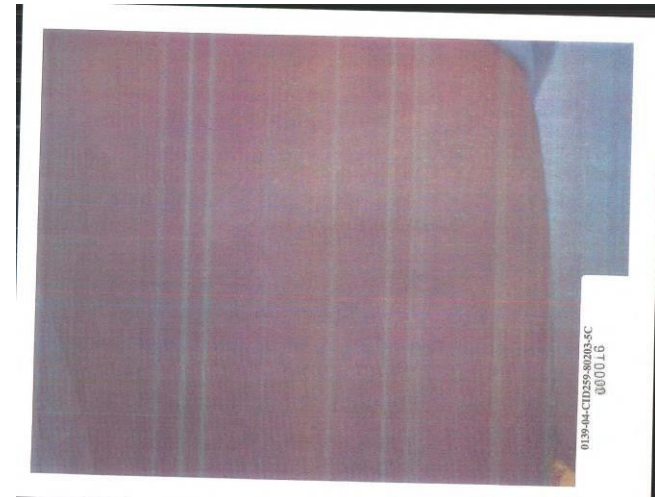


Figure 4: Page 90/162 [2], 2016, US Department of Defense

The original image content is almost completely obscured by artefacts. To me it has the appearance of tartan. I searched online through several hundred tartans, [33] finding a handful of broadly similar but very different patterns. Expert knowledge of image formation and processing led me to experiment with various image combinations. I managed to produce an image with visually similar characteristics, comprised of the Royal Canadian Air Force (RCAF) Tartan and the Cameron Hunting Tartan. The patterns and names are loaded with historical, cultural, imperial and political meaning; for example half the Cameron clansmen were killed on British soil in 1745 during what some describe as religious civil war; David Cameron was the British Prime Minister at the time he was authorising the killing of British citizens with Reaper drones in Syria [9] and both the UK and Canada were bombing Iraq and Syria. The connections here are clearly spurious but

demonstrate how partial, contaminated evidence can be misinterpreted and candidates found within databases even when the database contains no match.

An active imagination may enjoy boundless exercise.

Max Houghton

We are looking at 198 images, of a known cache of more than 2000 images of detainee abuse, held by the CIA. We also know of the existence of another 14,000 images, taken and held by the CIA of their former detainees, which have never been disclosed. Further, there are known to be images of naked detainees in transit, on rendition flights. The images we are looking at today are from 203 closed criminal investigations by the US Army Criminal Investigation Command (CID) into detainee abuse in Afghanistan and Iraq.

Looking at the images, we see human bodies; male bodies with brown skin, inscribed with small scars and marks. We see abstracted limbs. We see measures and scales that might be associated with a forensic methodology. We see redactions. We see things we can't fully understand. We see blurred imagery of men, waiting.

Compared to highly sophisticated visual technologies available to and utilised by the US military, perhaps it is surprising that these lo-fi, badly lit, poorly composed, out of focus images could pose such a threat to national security. So flows the logic of counter-insurgency, when all state actions serve to keep its citizens safe. Both former President, Democrat Barack Obama, and Republican Senator John Warner seemingly concurred that it is the photographs that are dangerous, more so than the acts themselves. And perhaps they are right,

at least in relation to whose bodies, *pace* Butler, are grievable and worth protecting.

In contrast to photographs produced at Abu Ghraib, we are not looking at images made for soldiers' entertainment or trophy images. There is no theatre here, though the positioning of limbs and measures indicates a different kind of performance. Elaine Scarry writes that torture 'goes on to deny, to falsify, the reality of the very thing it has itself objectified by a perceptual shift which converts the vision of suffering into the wholly illusory, but, to the torturers and the regime they represent, a wholly convincing spectacle of power.' [43] That description rings true for the macabre photographs of Abu Ghraib, which do indeed appear illusory, but does not have the same resonance when looking at these images. This prompts the question of how the physical pain of torture or abuse can be pictured, except as surface injury. And, further, can mental suffering be imaged at all? Artists have certainly created such depictions, but could a photograph, similarly limited by surface, ever do so? Those who have looked at the images by the Syrian photographer known as Caesar, which were displayed in a busy corridor of the United Nations building in New York in March 2015, might say that they certainly can. It is interesting to note that these horrifically disturbing images by 'Caesar' of brutalised dead bodies were permitted to be exhibited publicly at this venue in the same city as Ground Zero, with its quietly respectful monument to the dead, inscribed in the Western memorial tradition since WWI with a long list of names. The Syrian images were created by an 'evil' regime, and the showing of the bodies in New York was devised to enact a lesson for history. This catapults the exhibition into the realm of a ghoulish *mea culpa* by the

UN, who were accused of precisely 'doing nothing' as the genocides of Bosnia and Rwanda were carried out in front of their soldiers. The out-going UN ambassador for war crimes, Stephen J Rapp, said, of the 'Caesar' images: 'The [Assad] regime is a particularly rich trove. What other government do you know of who would torture its citizens to death and put identifying information of where the person was tortured ... They've provided this fantastic evidence.' [25] It remains to be seen if these images are destined for an international war crimes tribunal.

The 198 images of torture, though, are quiet and not spectacular. Their repetition and insistence possess a simple rhythm, for example, image after image of feet and legs. Because of the absence of the visually grotesque, there is no imperative to look away. It is possible to look at the images without the kind of physical revulsion that might well accompany images in a different register. We can keep looking. Perhaps such unremarkable imagery might after all possess a power not considered when they were marked for release.

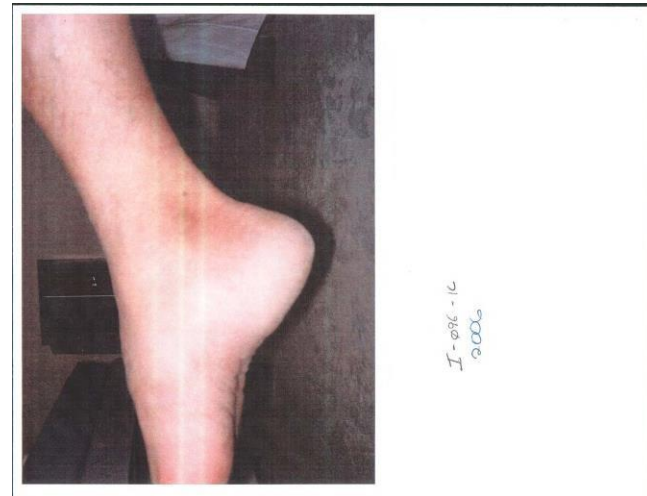


Figure 5: Page 24/162 [2], 2016, US Department of Defense

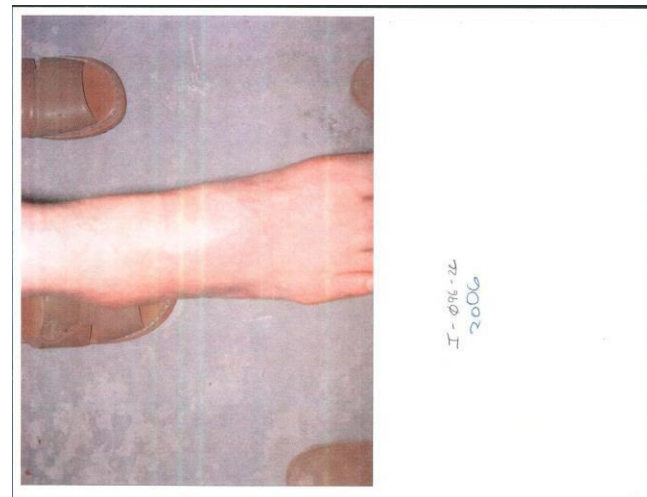


Figure 6: Page 25/162 [2], 2016, US Department of Defense

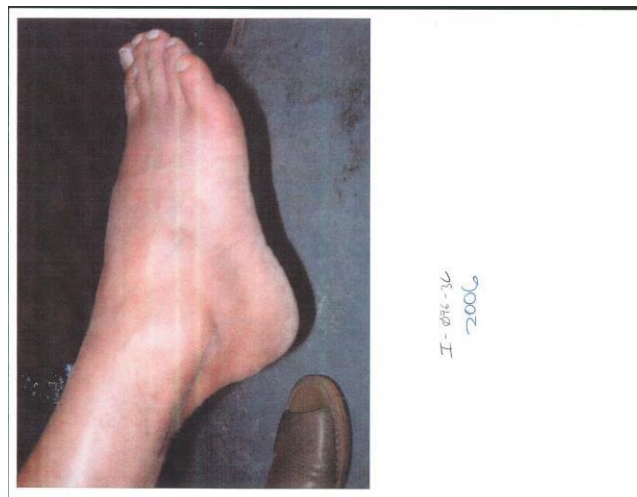


Figure 7: Page 26/162 [2], 2016, US Department of Defense

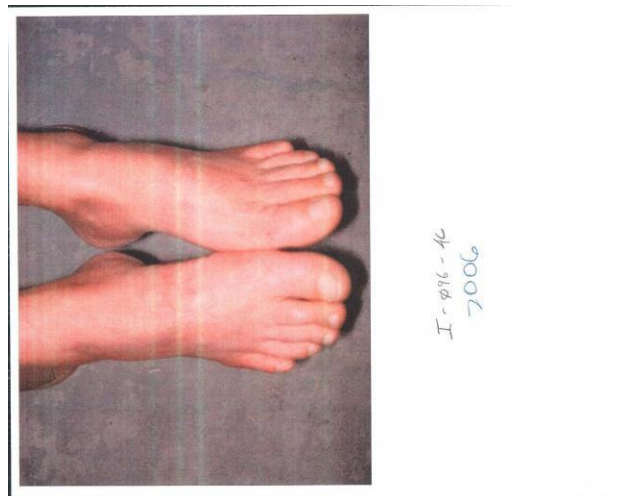


Figure 8: Page 28/162 [2], 2016, US Department of Defense

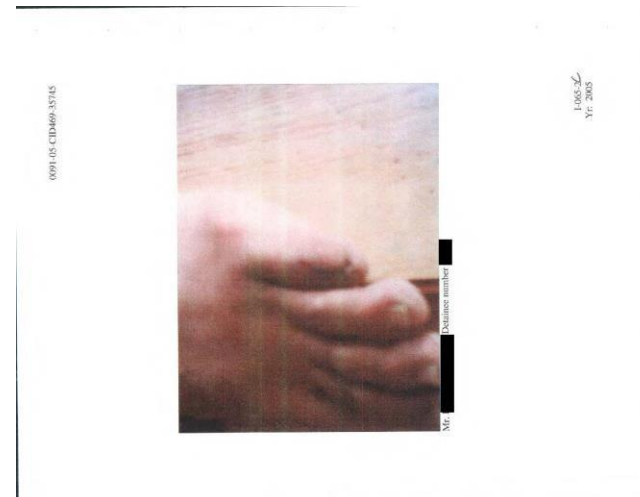


Figure 9: Page 28/162 [2], 2016, US Department of Defense

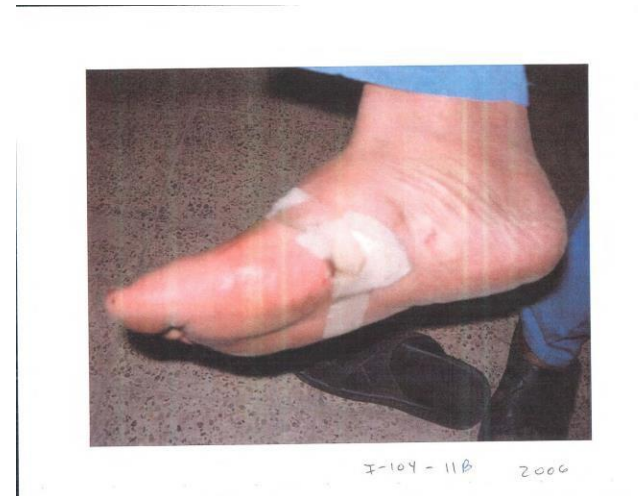


Figure 10: Page 29/162 [2], 2016, US Department of Defense

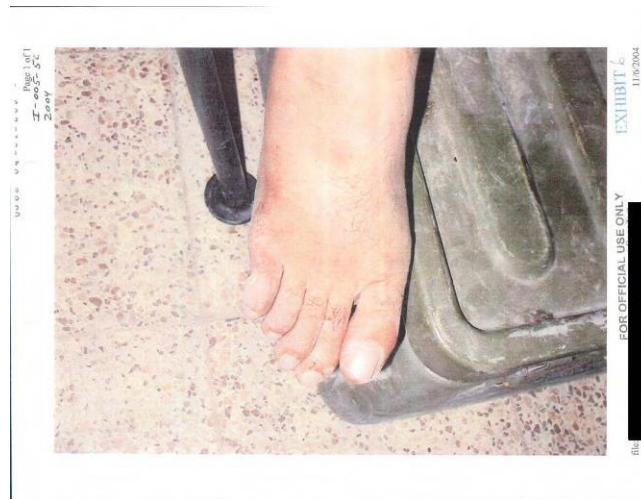


Figure 11: Page 31/162 [2], 2016, US Department of Defense



Figure 12: Page 71/162 [2], 2016, US Department of Defense

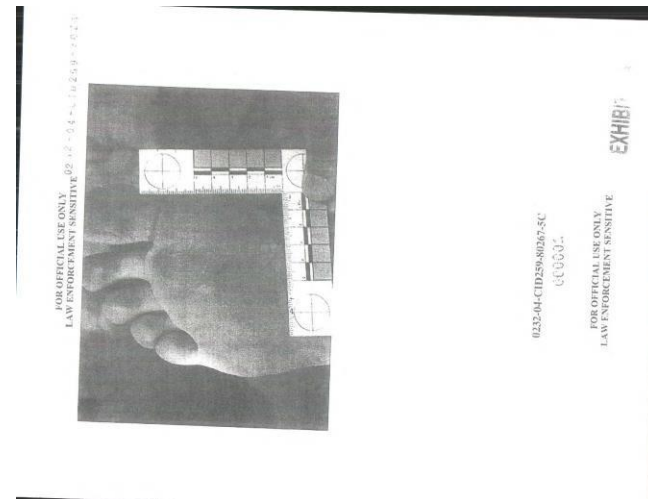


Figure 13: Page 72/162 [2], 2016, US Department of Defense

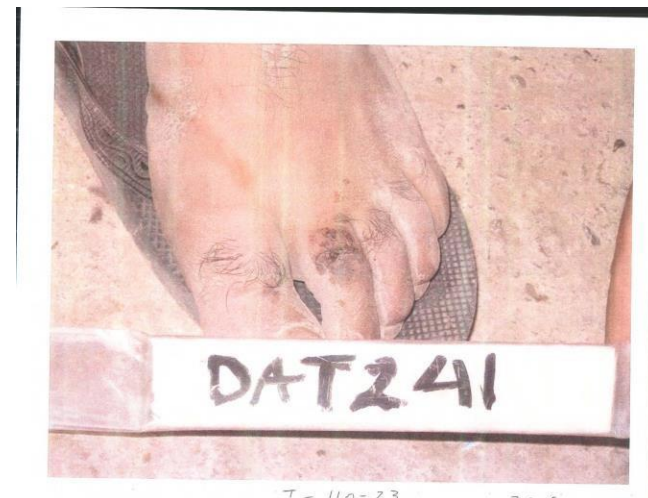


Figure 14: Page 73/162 [2], 2016, US Department of Defense

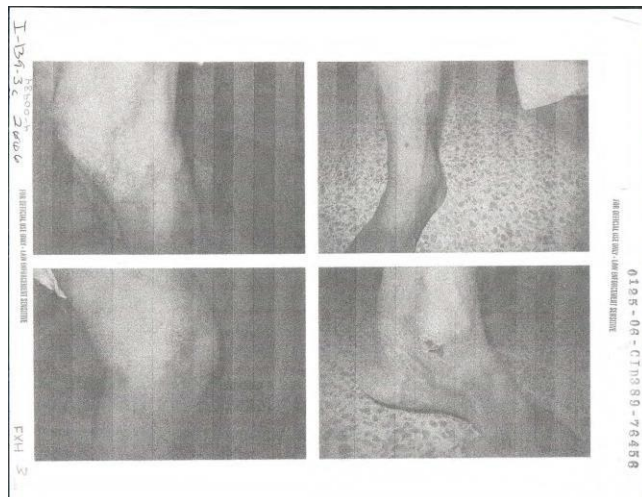


Figure 15: Page 152/162 [2], 2016, US Department of Defense

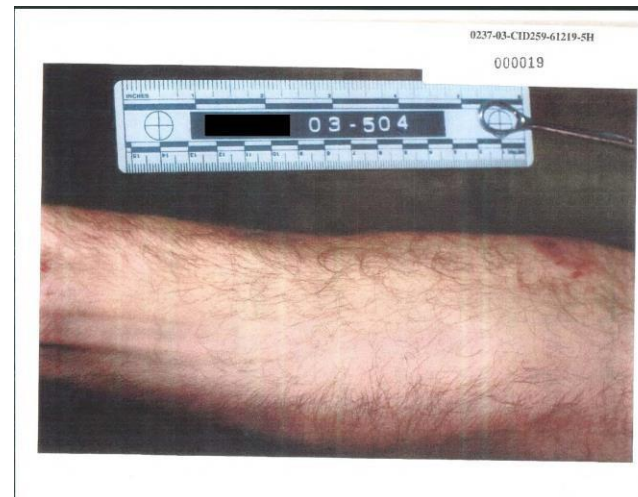


Figure 17: Page 4/162 [2], 2016, US Department of Defense

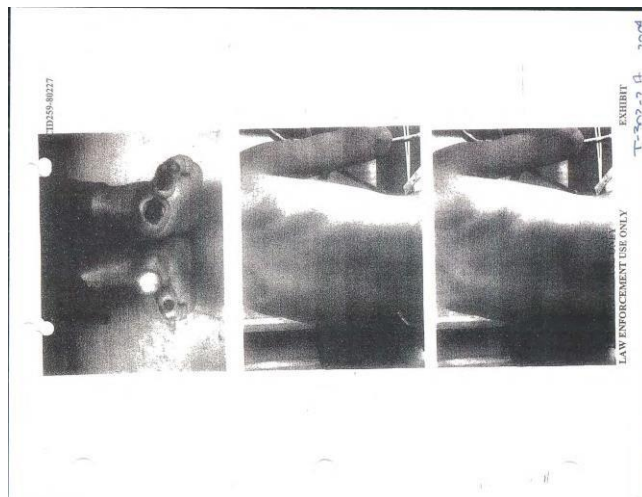


Figure 16: Page 156/162 [2], 2016, US Dept. of Defense



Figure 18: Page 6/162 [2], 2016, US Department of Defense

I found it pertinent to study the many images of feet and legs, in which we see minimal scarring and damage to skin. One image shows apparent burn-marks on the sole of a foot. The CID investigation text, reprinted here, tells a darker story of this image:

Detainee Abuse Photos Related to 0237-03-CID259-61219

DOD | ACLU-RDI 6473

TYPE: Photograph

RELEASE DATE: Feb. 5, 2016 | DOD

SOURCE: ACLU FOIA Request (Oct. 7, 2003)

This photo most likely depicts the injured leg of Manadel Al-Jamadi, an Iraqi man captured by Navy SEALs in November 2003 and tortured and killed by CIA interrogators at the Abu Ghraib prison. The gruesome details of Al-Jamadi's abuse and killing earned worldwide notoriety when photos of U.S. soldiers posing with his mutilated corpse were released by news organizations in 2004. Navy SEAL team leader Lieutenant Andrew Ledford was the only U.S. official tried in military court for crimes related to Al-Jamadi's torture and death. Ledford was ultimately acquitted of striking Al-Jamadi and lying to an investigator. [50]

[CID text ends]

One image is particularly figurative, showing two men, waiting. In the way that images often beget other images, as the mind produces its own version of a Google search by image, I was reminded of an image by the British artist John Keane, which I first saw as the cover picture to a book by the late Alex Danchev, *On Good and Evil and the Grey Zone*. [13] The Keane image is of former UK prime minister Tony Blair,

waiting to give evidence at the Chilcot Inquiry into the Iraq War. It was a striking resonance: disoriented men waiting to be interrogated by very different methods for opposing reasons.

Some of the imagery is incomprehensible, without recourse to the annotations. For example, two images are annotated CID259-80270 and refer to this case:

CID Report: 0233-2004-CID259-80270

May 1, 2005 | CID | ACLU-RDI 2274

TYPE: Investigative File (CID)

RELEASE DATE: Feb. 15, 2006 | DOA

SOURCE: ACLU FOIA Request (Oct. 7, 2003)

CID report of investigation into allegations made by a detainee that, after his first arrest on April 25, 2004 he was punched, kicked and slapped at then transported to a facility at Mosul Airfield known as the "Disco". He stated that during interrogation, his jumpsuit he was abused in many ways including: 1) filling his jumpsuit with ice, then hosing him down and making him stand for long periods of time, sometimes in front of an air conditioner; 2) forcing him to lay down under bags of dirt so that he could not move; 3) hitting him with "smooth rocks" all over his body; 4) rubbing his face in urine on the floor; and 5) kicking him in the groin and punching him so hard as to break two of his molars. An Army soldier who observed the detainee while in custody disputed the detainee's claim of abuse, but did substantiate that the detainee was at the Disco and did pass-out and was taken to medical for treatment. [49]

[CID text ends]

Photographs may not always 'show' us a definable event taking place, but they serve to still and hold the image that the narrative keeps otherwise in motion and in that stillness key human questions spring forth: what happened before this picture was taken? What happened afterwards? What is happening now (the now that is always already past)? Their very ambiguity invites questions to elucidate what we cannot quite see.

Images that depict the abused or tortured exceed what we are able to apprehend or endure, unable as we are to bear too much reality [17]. They explode our vision in the way that the Nazi crimes exploded the limits of the law, in Hannah Arendt's memorable phrasing in her letter to her friend Karl Jaspers. For their unprecedented crimes, the law of 'crimes against humanity' was newly created for the Nuremberg military tribunal, where senior Nazis were indicted. Even the trial itself had no precedent – the tribunal was permitted to make its own rules, including rules for evidence, which led to the showing of the film, *Nazi Concentration Camps*. The film depicted tortured bodies – and many thousands of dead bodies – but crucially, as aftermath, or 'late' photography and cinematography, it did not tie the perpetrators to the crimes. There is no doubt, however, that the images 'entered the soul' of those that looked, and have haunted history and collective imagination ever since. Here we have photographs that seem to be contemporaneous; that tie the perpetrators to the crimes, with annotations. Perhaps they will yet form the basis of some kind of justice-to-come.

Invisible images

Max Houghton

'The invisible is defined by the visible as its invisible, its prohibited sight ... To see this invisible ... requires something quite different from a sharp or attentive eye; it takes an educated eye, a revised, renewed way of looking, itself produced by the effect of a 'change of terrain' reflected back on the act of seeing.' [5]

Shoshana Felman believes in a cultural failure to see trauma, to really see it, even when the evidence exists [19]. Her thought chimes with that of Judith Butler, who has written pertinently on the Rodney King beating by police in Los Angeles. The jurors watched video evidence but its brutality remained 'unseen', as if white perception could only 'see' a black body, behaving in a threatening manner towards the police. 'This is not a simple seeing, an act of direct perception, but the racial production of the visible, the workings of racial constraints on what it means to 'see'.' [11]

Released documents in the Senate Torture Report state clearly the abuse that took place, on US military charge sheets, as part of internal military investigations by CID, the US Army Criminal Investigation Command, whose mottos are: 'Do what has to be done' and 'Seek diligently to discover the truth, deterred neither by fear nor prejudice.' In order to gain insight into how the regime classifies images too dangerous to be seen, what follows are some of the descriptions of images that have been withheld:

CID Report: 0094-04-CID259-80177

Document Description

This is a CID investigation into an elderly female detainee's alleged abuse by U.S. soldiers at an unknown interrogation center near Baghdad, Iraq. The report notes that during her interrogation, the female detainee (name redacted) had two fingers broken, was given a black eye and "made to crawl around on all-fours as a 'large man rode' on her, calling her an animal." She was released after approximately five days. The report found that the investigation "did not develop sufficient evidence to prove or disprove [the detainee's] allegation."

Description of Photo(s)

The report originally included photos related to the detainee. The photo description is partially redacted, but it appears to relate to photos of her residence. All of the photos were withheld.

Baghdad [51]

CID Report: 0153-04-CID146-71446

Description of Photos

According to the Summary of Investigative Activity, the CD contained several pictures of detainees believed to be of Afghan descent, however the investigation concluded that none of these photos depicted abuse or mistreatment. One photo, however, depicts 5-6 young Afghan children, one of whom is a young girl whose genital area is exposed. The author of the summary (the special agent in charge) noted that she seems to be accidentally exposed as a result of her attempts to stand up from a seated position. This photo is altered with "an unknown man's head digitally cut and pasted

in place of the head of the little girl." The report stated that the reasons for the creation of the photo, as well as those involved in its creation, are unknown. The special agent added that the photos in question were part of seven CDs of photos taken by many or all of the soldiers in the unit that were created at the end of their deployment in Afghanistan as "souvenirs" for them to take home. All of the CDs and photos were withheld.

CID Report: 0127-2004-CID259-80193

Description of Photo(s)

Photos of a female detained, who alleged she was abused at Camp Biap, taken at the time of her capture were originally enclosed in the document. All of the photos were withheld.

Location of Photo(s)

Baghdad International Airport (BIAP)

[CID text ends]

When we are in possession of both image and text, there is a vigorous exchange between the two, back and forth, creating the kind of tension between visual representation and verbal or written representations, which are 'inseparable from struggles in cultural politics and political culture.' [38]. When there is only one element, in this case, the text, the image now is created by the imagination. The realm of images exists on so many different planes; between inside and outside, material and virtual, latent and manifest, that we might consider the question of all images being created in our imagination. Images haunt us. This

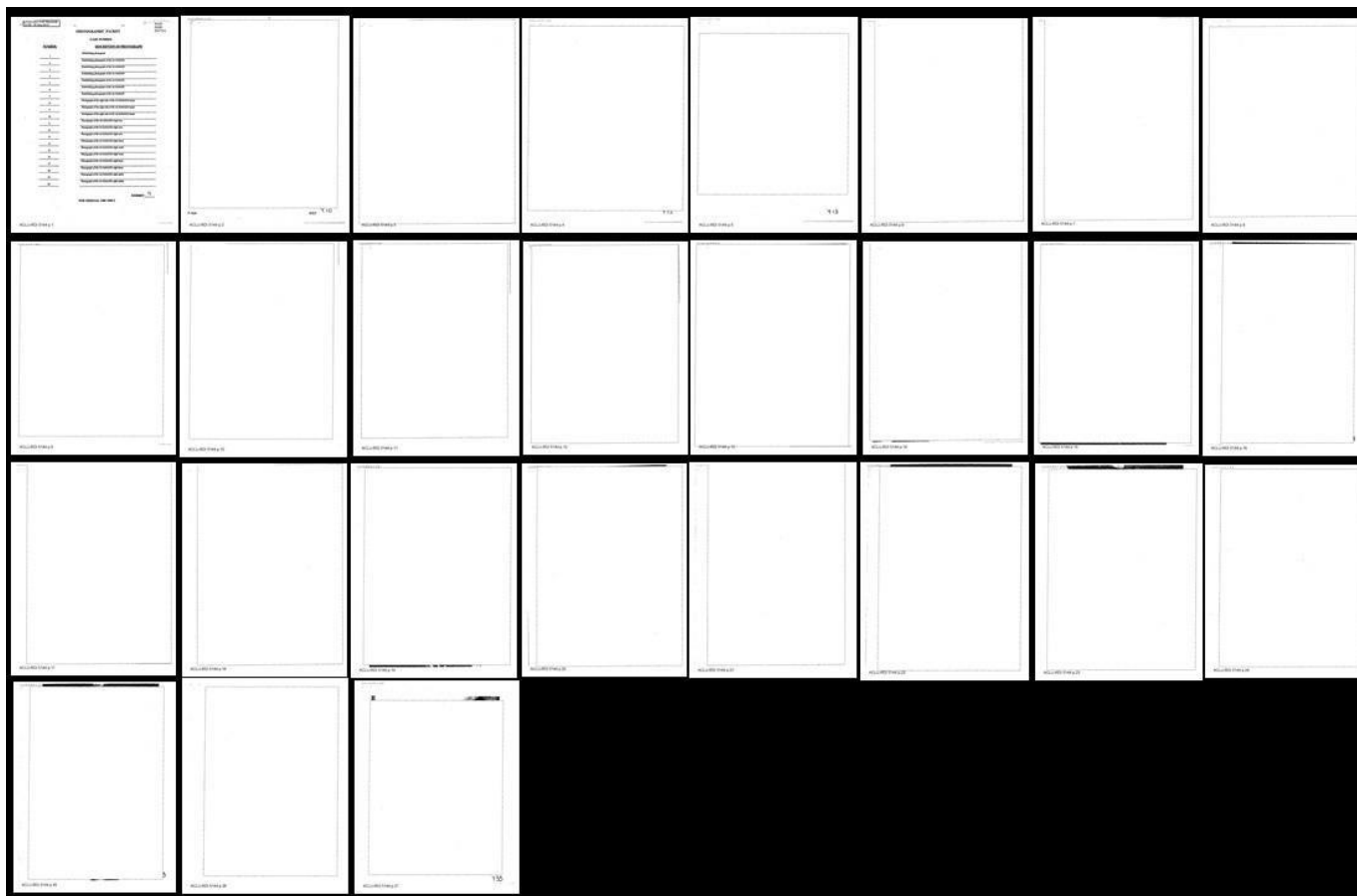


Figure 19: Thumbnail copy of Photographic Packet, ACLU-RDI 5144 'This document lists 21 photographs of Mr. Al-Jamadi. The photos themselves are entirely redacted.' [1], 2016, US Department of Defense

imaginative facility will be necessary upon looking at the empty photographic file on the murder of the aforementioned Al-Jamadi. [1]

A particular phrase is used at the end of military reports, to signify its end: nothing follows. When we look at nothing, nothing happens. Nothing follows. Due process does not follow. As Peter Goodrich reminds us 'The significance and the danger, the stake or the threat of the war of images may often be most apparent in the means of their denial.' [21]

These descriptions without images also raise questions of who we are allowed to picture as a subject of torture. In the images we can see, the subject is always a dark-skinned male, which thus becomes a habitual kind of seeing. This is what a terrorist looks like. What of the 73-year-old woman? A very young male subjected to a mock-execution, detailed in another document? The exposed child? 'It is legitimate to use torturing force on the recalcitrant body of the person designated as an insurgent because the counter-insurgency is legitimation and the insurgency must acknowledge it to be so.' [37] It is easier if the public is made to fear one type of person, lest that undesirable ambiguity creep in again and confuse the picture. We find ourselves in the strange position that invisible images provide the best evidence.

When we cannot see, everything is indistinct and the possibility for corruption increases. The symbol for justice is historically depicted wearing a blindfold. Goodrich and Hayaert state:

'The blindfold symbolizes much more than blindness, and, be it an error, enigma, or things unseen, the

bandage, the missing eyes are markers of potential passage and transition. The blindfold signals a boundary, a border on the path to a greater knowledge

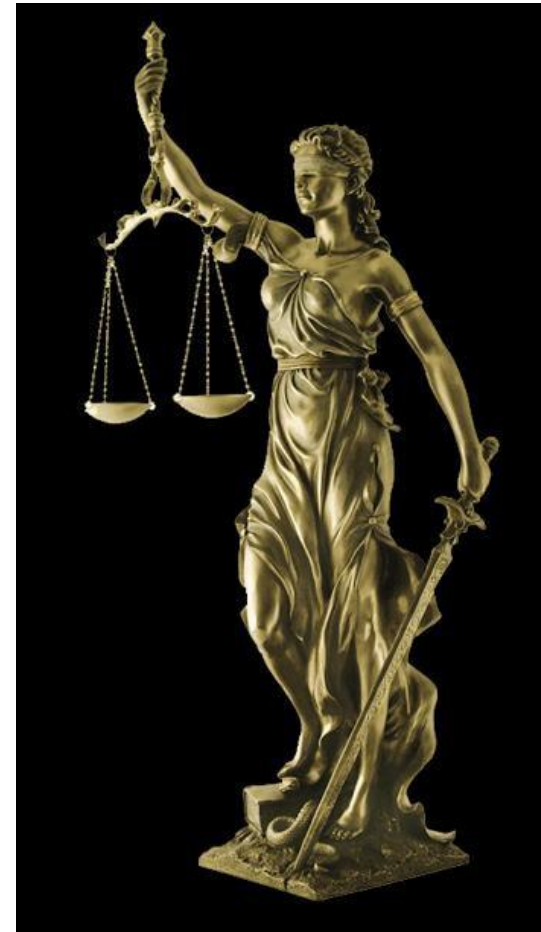


Figure 20: Photo: Lady Justice, © Deval Kulshrestha: Wikimedia Commons / CC-BY-SA-3.0

and truth resident beyond the realm of things corporeal, merely visible and simply extant.

'Justice, sightless and in the world, is increasingly the figure of the distance that separates the sovereign from its subjects [...] in this sense Justice becomes more a symbol of injustice, a figure of administrative practices, a frame and ornamentation that screens and so legitimates a governance that exists and reproduces itself without reason, pretext or consideration beyond that of the choral benediction of a sovereignty and law that the subject cannot see.' [22]

In the UK, this period of history holds echoes of the infamous Star Chamber, an English court of law 1487-1641, which used extra-judicial powers to torture, held sessions held in secret, within which there could be no indictments, no right of appeal, no juries, no witnesses. It possessed the power to inflict any type of punishment except death. [41] Some 600 years on, these powers have increased, and the exception has become the rule.

The Latent Image

John Smith

Where does the image exist: is it on the paper or the screen; is it in the binary data; is it in the mind?

Latent image has a specific meaning in photography: the transformation, of silver halide to atomic silver by the action of light within a photochemical material, invisible before development. It resides only in the dark of the camera, the cassette and the developing tank.

There is no generally accepted equivalent in digital photography. If the digital image is the image file, the

representation in binary data existing on a memory card, a hard drive, a remote server, as radio waves, electrons in a wire or light in an optical fibre, it is always latent.

An image is a representation, semblance, likeness; a metaphor, idea or concept [47]; the word is etymologically related to imagination. Imagination and perception are not as distinct as we may believe. The image we perceive is conceived in the mind, where internal and external signals are processed to elicit sense, meaning and understanding [23]. Memory is malleable; just as with other evidence types, it is prone to contamination [46]. Senses interact with emotions so that even expert observers may be unconsciously deceived by contextual or confirmation bias [31]. Indeed, 'perception is always skirting deception' [13]

'Much of the very best work in neuroscience is an effort to explain how brain processes cause the visual experience and where and how it is realized in the brain' [45]. The brain does not store photographs; memories reside within networks of cells. [30] Are mental images, like digital images, latent? There are remarkable parallels between the functioning of the individual human memory and the distributed global memory of the world wide web [4]. On a fundamental level 'the world can be seen as only connections, nothing else' [7:14]

Analogies to photographic latent images apply to individual traces and can be expanded to cover the whole forensic process. Forensic investigation is a process of seeking traces, of piecing together a jigsaw to form a narrative or narratives, of painting a picture suggesting chains of events. The picture is rarely

complete. If the jigsaw is missing pieces or pieces are misplaced, the resulting picture can be misleading, though convincing. The court is the forum in which to debate competing interpretations and hypotheses. The criminal justice system seeks certainty, an agreed truth beyond reasonable doubt, whereas science is always open to revision: a tension inherent in forensic science.

There are valid reasons for images of certain subjects and events to be hidden from the public gaze. Protection of privacy is paramount where images form part of an individual's clinical records, for example, governed by a contract of consent between the medical establishment and the subject. The administration of justice relies upon rules of evidence, disclosure and due legal process. Most forensic images remain hidden from the public. A few may be released to the news media, often in order to assist an investigation. A selection may be revealed during trial. Inappropriate release of images may breach rules of evidence, leading to the collapse of trials and the inability to administer justice.

My experience of working on many major crimes was that the news media often told a story very different from my understanding of a case, particularly during the investigation phase. The news media did not have the same privileged access to information as the forensic investigators. How, when and where is the complete story told? Is it at the trial, the appeal, or played out in the media?

For images to maintain their weight as evidence their provenance and veracity must be established by following strict protocol. Images of uncertain provenance should be challenged and viewed with scepticism. But the ubiquity of cameras provides

potential for initially unverified images from multiple sources of a single event to corroborate each other. Are we seeing a shifting balance of power from the surveillance state to the people? Investigations by Forensic Architecture [52] and Bellingcat [6] are notable examples of this trend. We might consider that the forensic process can now be conducted in the public domain but there are inherent problems.

The criminal court, the civil court and the court of public opinion adhere to different standards of evidence. The Innocence Project ably demonstrates that a higher threshold of proof does not guarantee a higher degree of truth [29]. Once evidence is in the public domain it takes on lives of its own and is open to multiple interpretations. Is an agreed truth achievable?

Yet what of the power of these ACLU images? The sixth edition of the *Manual of Photography* states 'the latent image is essentially a catalyst that can accelerate the rate of development but cannot initiate a reaction that would not occur in its absence' [28]: a fitting metaphor.

Max Houghton

A biological definition of *latent*, 'lying dormant or hidden until circumstances are suitable for development or manifestation' [39] seems appropriate for the necropolitics [36] in which the UK and US are enmeshed.

Two years after the release of 198 images, thousands more images lie concealed somewhere. Where are they stored? How are they kept secret? Secret images, secret trials, secret extra-judicial processes make for an anxious populous. It is not until circumstances become suitable for the manifestation of such images,

which may well meet evidential standards of proof, that they will be made public, and that members of the US military, security services and in turn members of the US and UK governments may be pursued by the UN for war crimes. Meanwhile, the whole question of these mostly proscribed images turns upon the notion of who has the right to look [37]. Like slaves blinded by their owners, detainees are blindfolded, disoriented, not permitted to see their captors, not permitted to know where they are going, even which country they are in. And as they are then subjected to 'enhanced interrogation' and 'techniques' of torture, a double blind unfolds: the citizenry of the empowered regimes does not have the right to see what its governments perpetrate; the human bodies in pain and put to death.

We need the manifestation of these latent images, these images created by law and power. Peter Goodrich acknowledges the possible falsity and unnaturalness of the image, but sees it as the necessary support of our humanity and 'the only truth we have.' He asks: 'What is the history of law if not the history of institutional trauma or the history of collective encounters with the real?

'In acknowledging the *ars juris*, the aesthetic dimension of law, we open the institution to the ethics of otherness and the justice of the senses or Justitia, the feminine principle of transcendence that challenges the patriarchy of sublime Law.' [15]

I define this 'aesthetic dimension' of the law in relation to Alexander Gottlieb Baumgarten's coinage of aesthetics as a branch of philosophy – as an act thinking beautifully in the realm of human perception. As Gerald Raunig [42] describes, Baumgarten seeks to

mine the realm of cognition for its darkness and confusion. He delineates a space for a cognition between reason and sensuality in which the known divisions dissolve to create a new territory, horizon aestheticus, which can displace or alter the logical horizon, more usually understood as superior. 'The task of the aesthetic sphere is to expand the logical horizon (also envisioned as a sphere) into what is measureless, immeasurable, incommensurate, specifically as a never-ending process.' [42: 98]. This liminal position might be the very place – between nature and cognition – where the human soul is located.

The reason to look at these abject images, to engage in an act of forensic imagination and sustained looking, is to pursue a kind of justice – aesthetic justice – in the sense just described – for a group of people, terrorist suspects, for whom the law was changed and was elsewhere absent, or, like in Kafka's parable, Before the Law, always in the next room. The power of the image is at least matched if not multiplied by the power of the invisible image. We cannot underestimate the effects or affect of even the latent image on our senses and our soul.

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