

The Fate of the Iconic Sign:

Taser Video

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Abstract

Legal practitioners, like many people, can betray a naïve belief that photographs are direct representations of “the real” and that a picture will communicate facts about reality directly to its audience. This arises from a belief that these pictures will reveal truths about which we can all agree because they describe a commonly shared perceptual reality captured by a mechanism that we believe has no desires of its own: the camera. Photographs are commonly understood to have been caused by the phenomena before the camera, light carrying information and imprinting it on a sensitive surface that can then enable the picture to be prepared for display. Photographers know that this is a misconception but the general public does not seem to share that awareness.

Video made with a lens (and therefore presenting viewers with 29.97 photographic frames a second) will be the concern of this chapter – in particular, a very particular form of video, that generated by Tasers (electrical stun guns) when they are equipped with recording devices. In particular, police forces are encouraged to equip their Tasers with this capacity so that the conditions of their deployment can be reviewed later. I call this tasercam video. I will discuss, briefly, the landscape of legally relevant video and then discuss the characteristics of this kind of video in particular, concluding with some thoughts on why, even given its extremely potent and limited nature, we need a sophisticated theory of media effects in what might appear to be the realistic medium of tasercam video. This discussion is centered on American legal culture.

Introduction

Elie Wiesel, who lost both his foundation and his personal fortune to financier Bernard Madoff's Ponzi scheme, [ABC News] was asked how he would like to see the scam artist punished. Wiesel answered: "I would like him to be in a solitary cell with only a screen, and on that screen for at least five years of his life, every day and every night, there should be pictures of his victims, one after the other after the other, all the time a voice saying, 'Look what you have done to this old lady, look what

you have done to that child, look what you have done,' nothing else" [Chicago Tribune]. This is a curious panopticon – the jailer sees to it that the incarcerated must see, all the time, the eyes of the victims confronting the evildoer. He becomes the central observer of a unique show, not himself pinned by the surveillant gaze of a central prison authority but instead trapped in a private exhibition constructed just for him of pictures intended to evoke memories of a wounded collective of victims.ⁱ One problem with this punishment is that we cannot be sure that it actually would be one. Wiesel wants to remind Madoff that his acts had consequences but if Madoff is as sociopathic as his acts would suggest, it is equally possible that he would find the pictures a source of perverse pleasure, reminding him, while incarcerated, of his abundant successes, making the pictures “trophies” of bad acts to be delectated over, a customized pornography not unlike the collections of victim’s personal belongings made by some serial offenders. For instance, news reports of the arrest of Philip Markoff for killing a young woman offering massage services on Craig’s List made sure to note early on that he collected panties from the victims [Netter], conforming him to previously existing stereotypes of compulsive killers.

Wiesel betrays a naïve belief in the realistic power of photographs -- that his picture gallery will communicate “see these victims” to its audience, Bernie Madoff, with all that implies to him, Elie Weisel. This in turn depends upon his belief that these pictures will reveal truths about which we can all agree because they describe a commonly shared perceptual reality captured by a mechanism that we believe has no desires of its own: the camera. Photographs are commonly understood to have been caused by the reality before the camera, light carrying information and imprinting it on a sensitive surface that can then be prepared for display. Consider this statement: “ ‘Photographs are traces left when objects causally interact with cameras, and these elements can be preserved.” On the face of it this denies the frame of human making and misses (as does Peirce) the propositional aspect of all pictures.” [Hookway, p. 65].

Photographers know that this is a misconception but the general public doesn’t seem to share that awareness. Certainly the United States Supreme Court is no different in this general attitude toward photography than was Elie Weisel. Confronted with dashboard camera video evidence in the *Scott v. Harris* case, Justice Scalia, writing for the Court declared, “We are happy to allow the videotape to speak for itself.” [Scott]ⁱⁱ Generally, the Supreme Court only reviews matters that pertain to the interpretation of the law. In *Scott v. Harris* they were asked to decide a qualified immunity case that had never actually gone to trial and so, unusually, the Court was confronted with evidence, in this case copies of police car dashboard camera video tape of the incident that brought about the filing of Harris’ suit against Scott.

Implicit in Justice Scalia’s assertion is that we will see and believe and therefore agree with the

Court's assessment of the case and its decision. Like Weisel, the Court does not imagine that there can be substantive disagreement in viewers' assessments of the meaning of the video evidence in their case(s). An empirical study of public response to the *Scott* dashboard camera tape showed that, while the majority agreed with the outcome of the case, believing that the tape did reveal that the driver of the car was, in fact, driving too fast and the police chase justified, the study responses did vary with political attitudes of survey participants. [Kahan] My methodology does not make empirical claims; it depends upon knowledge of the medium, how it is made, and attending to what is observable in the piece of video. (Readers are encouraged to view for themselves.)

And it is video, a very particular form of video, that concerns me here – that generated by Tasers, (ECDs, or electronic control devices or stun guns), when they are equipped with recording devices that document their use – what I will call tasercam video. Taser International markets this equipment to move interactions involving police use of Tasers from “he said/she said” claims to more evidence-based records that permit review of the circumstances of police use of Tasers post-deployment. I will discuss, briefly, the landscape of legally relevant video and then discuss the characteristics of this kind of video in particular, concluding with some thoughts on why, even given its extremely potent and limited nature, we need to pay more attention to the media effects, not less, with tasercam video.

Video in Law

Inexpensive and easy to use video technology has made it possible for video to move out of television studios, and its use is now ubiquitous and pervasive: institutions and persons in the street record whatever they choose to turn their cameras on. So audiences are becoming accustomed to seeing video that is no longer just a vehicle for news and drama on television, which are controlled for production values and are highly edited to create and sustain audiences. They are used to seeing video clips that may be hard to see, that may have bad audio, that stop and start chaotically, that feature mundane or unusual content that someone somewhere thought was interesting for whatever personal reasons. This is web video on YouTube, Vimeo, Google Video, and so on. This is the context for the emerging legal video culture – not the stuff of law and film, with its clear narratives and complex expression of its themes – but video entangled at every level of legal culture and practice.

Courts, like the rest of society, use available technology to help accomplish various functions. Video is used to document court proceedings (even, at times, to substitute for court stenography), present evidence (particularly depositions, visits to scenes, and sometimes reenactments) and

increasingly to enable distance-appearances – of incarcerated defendants, witnesses who may not be available otherwise due to our global economy, and for official recordings of confessions [Gower]. Or video may itself be evidence. Any newer video forms are going to fit into this “videoscape” of common uses of the technology and their affiliated social practices. In general, these practices assume authority for the camera, and sanction its use, because it is believed to contribute factual truth to matters at hand and/or a more complete sense of presence than is possible through documents alone.ⁱⁱⁱ

That this could significantly complicate legal decision making has been observed in discussions of the use of videoconferencing in appearances and arraignments in criminal proceedings, where defense lawyers have to choose whether to join their client in a remote location, making possible consultation, advice, and support, or to remain in the courtroom, where the client may see the lawyer as part of the court and not as a personal advocate, but where presence in the court enables the defense lawyer to confer with the judge. The benefits attributed to using videoconferencing in these contexts are savings in time and travel costs and easier management of security. Defendants have the right to refuse to appear or be arraigned in this fashion, although there are no doubt pressures toward accepting it. Poor technological arrangements can exacerbate the problems the defendants face. [Fowler] [Sharkey]

When courts use video as part of their regular administrative practices, we have recordings made to accomplish deliberate ends, and while they may be “edited” both through the timing of the start and end of recording or because selections may be made from the video stream (clips from long depositions, for instance), they are not constructed cinematically through the “grammar of film language” [Arijon] to any great degree (though any fragment of video has expressive effects arising from whatever was captured in combination with the circumstances, equipment, social surround and viewer understanding.) While it is very possible to criticize video used by the legal system for technical inadequacy, poor planning for ancillary or incidental effects that can actually affect the administration of justice (as in camera angle for remote appearances; matching of gazes or not in video-conferencing), the circumstances of their making bespeak a measure of control over their realization. Someone ordered and set up the equipment; presumably there are technical staff available to troubleshoot any problems and there is probably some system of backing up crucial data and archiving it. Or there should be.

Newer kinds of video that are and will be increasingly at issue are recordings made by surveillance cameras and those made by mobile devices, such as dashboard cameras in vehicles, and hand-held devices (made by officers or members of the public) to document unfolding events of uncertain outcomes. Uses where cameras are fixed and simply record what appears in their field of

view as determined by the installation offer, whatever the angle, a fixed gaze with its own implications, whether bird or worm's eye view, whether eye level to the action or not. We have other expectations as well: for instance, we expect that surveillance film will be low resolution and grainy, for that is what we have been accustomed to seeing in films and on television or in stores where we shop and catch ourselves in the screens of camera surveillance installations. In fact, these cameras, like our cell phone cameras, are getting better and better. Compare the now famous Columbine High School cafeteria footage from 1999 [Klebold] with the Salt Lake City, Utah, surveillance footage released by the police in April 2009 [Salt Lake City].

In contrast, hand held devices (cameras, video camcorders, still photo and video cell phone cameras, audio recording devices) are often pulled out in a hurry, subject to amateur deployment with shaking hands and wandering gaze leaving data confusing at best. These "informal" video fragments will become evidence, sometimes requiring courts to sort out different and partial accounts of the same event as evidenced by the products of different "observers" – there may be surveillance camera footage, cell phone footage, dashcam video from police vehicles, and footage from passersby on the street -- all relevant to the legal determination to be made. Police are ambivalent about citizens' use of technology for public purposes. On the one hand, they create websites where citizens can send text messages containing tips, and, now, cell phone video, and on the other, they will attempt to confiscate cameras and camera phones if they believe that they will be caught on them in ways harmful to their interests [Baker] [Hauser].

An example of how complicated this new visual environment can be for law enforcement is a story concerning the shooting at point blank range of a young man in the wee hours of January 1, 2009, at a BART Station (Bay Area Rapid Transit) by a uniformed officer of the transit police [La Ganga, & Dolan]. Presumably there was surveillance camera footage from the station. Some travelers managed to hide their devices from police collection and later posted clips to YouTube, forcing authorities to deal with a problem that wouldn't go away. Potential problems of authenticating these kinds of video fragments, and then relating them to one another as decision makers must, in order to construct coherent narratives of the events, abound.

So, like it or not, decision makers are going to have to become adept at fitting these video pieces together in sensible ways. They will need to understand that the video they are asked to use in judgment requires reading and interpretation, not just viewing. Some surveillance footage can only be specifically interpreted using other first person accounts, other footage, and technological enhancement, because it is low resolution and shot at some distance from the relevant actions being recorded. See, for instance, footage from more than one fixed camera in the 95th Street Red Line station in Chicago where Officer Alvin Weems shot Michael Pleasance on Saturday, March 8, 2003.

Without the voice-over explanation of what we are seeing, very little is clearly understandable.
[Chicago Reader]

Other video may offer clear visual signals but be opaque about the narrative and motives of people represented. This is true of most such video posted, for example, a very recent clip posted on the front page of Huffington Post for May 13, 2009 [Huffington] .The video clip is shot from above and so steady that it must have been made with professional equipment; the logo tells us that it is material copyrighted by NBCLA. The clip is now hosted on a news website (NBC) in Chicago but the episode depicted unfolds in El Monte, California. We see the end of a not very fast car chase brought to a conclusion by police cars surrounding a vehicle by the side of a boulevard. The driver jumps out and takes off, the overhead camera following him as he runs across a parking lot, between houses, and is eventually trapped in a fenced backyard. He sees that he is cornered and so lies face down spread-eagled on the grass before any police arrive near him. The video then shows an officer arriving with a drawn gun who kicks the young man in the head. Another officer arrives, also with gun drawn, knees the young man in the back, and both officers keep him down using only one hand each as their guns are still drawn. The tape shows us the same kick to the head three times, twice zoomed in. The young man appears to be white; so do the officers. The young man, unarmed, appears to be slender and constituting no physical threat compared to the bulked up police officers. The clip ends with more officers at the scene with the young man and his two subduers still in a pile. We know nothing of the events that provoked the chase. We do not know whether the police had any reason to suspect that the young man was armed and dangerous. We are treated to a close up view of the kick to the head. That piece of editing must have been done in the camera. Why? Was the NBC News just gratifying their audience or are they attempting to editorialize about police practices? Were they following because they picked up a police radio call or were they just trolling in the neighborhood?

So, far from giving us direct access to reality, if we pay close attention to what is recorded, we may find instead an abyss of questions – who, what, when, what happened before and what does any of it mean? This will not be like *Rashomon* [Kurosawa], produced cinemagraphic material from multiple viewpoints ready to be assembled by viewers; it will be more like putting together part of an ancient pot from a few shards and guessing at the rest.

Further, we should know, but do not, much more about the effect of the source on the credibility of the video document. Does video material from dashboard surveillance cameras have a special credibility because of its source within police practice and not just from its seemingly detached “eye”? Does video that is generated in this way, even if it records bad behavior on the part of the officers, more often than not exonerate officers who should be reprimanded because of the source?

See for example the video from *Buckley v. Haddock*, the first case to cite the Supreme Court's decision in *Scott v. Harris*. The Buckley police dashcam tape records the use of the Taser by an officer [Buckley police]. The Buckley tape produced no revulsion in the finders of fact – Haddock was given qualified immunity. But I, watching this video on the Web, cannot but feel surprise that the officer thought he needed to tase a handcuffed man who was merely weeping. What are the effects on judgment if members of the public post the same police video on YouTube or other similar venues? We simply do not have empirical studies on these and related topics.

A New Video Medium

One of the newest forms of on-the-spot video recording that has legal significance, is video made by Tasers when they are activated. For a detailed discussion of these pieces of equipment, see a major report by Amnesty International [Amnesty ii] [Taser International].

They are referred to as Electronic Control Devices (ECDs) and are intended to incapacitate briefly an out of control person by disrupting their ability to control their gross motor capacities. In December 2008, an Amnesty International report stated that there have been 334 deaths from the use of Taser guns in the United States [Amnesty i] [Rawstory]. As the use of these stun guns expands, we can expect that video records of deployment will enter both as evidence of crime and crime control and also as evidence in cases litigating over the effects on people who have been injured or killed from being tasered.^{iv}

What are we looking at in Taser video? First, it is plain vanilla video -- we are not looking at MTV -- we are looking at something that appears documentary and “unedited,” if by “editing” we mean complex juxtapositions that arise from putting together video clips to tell a story or clips that have been stylized through the use of video effects generators, whether aided by transitions or not; the cut itself is a carrier of meaning. This is a data stream with moving pictures and sound [Tasercam]. While it may run continuously from the moment the video is turned on, it does not provide much context about what was going on prior to deployment and nothing about what happens after the Taser is turned off. The camera is attached to the gun so that viewers are treated to what might be touted in another context as the ultimate immersive first-person shooter experience, where the point of view the viewer assumes is not that of the eyes of the officer above the gun, but that of the gun itself -- lower down in the visual field, more a part of the action and less connected to the head of the operator. Viewers can feel this disconnection from the head, it is a visceral view. This point of view puts us in the action, not just standing back and thinking about it; it seems to turn the standard trope of photographic observation, particularly photojournalism, as non-intervention, on its head.

[Sontag, p.11]

Looking with the barrel of the Taser, we are not only there but our looking itself is carrying out the action -- extreme action; pain is being inflicted. Beings are subdued and brought under control, seemingly with the glance of our eyes. We can see them fall and hear them cry out. Subsequent events do not appear on the video snippets that are currently available. The actual wounds, the actual pain, from the use of the Taser (or other stun devices) for the most part leave no marks. It is what Darius Rejali has termed "violence you can't see." "Out of sight is out of mind. Niccolo Machiavelli once advised princes to use stealthy violence because people will get less alarmed. He said, 'in general, men judge more by sight than by touch. Everyone sees what is happening but not everyone feels its consequences.'" [Rejali]

So on the one hand the viewer is invited into the action as its agent and on the other oddly distanced from the consequences of that action because the viewer sees no visible wounds on the body, no blood, no broken bones, no sounds of direct body contact that would be made if someone was hitting or stomping on the victim. The person deploying the Taser can stand back without personal risk as the other is temporarily immobilized and seemingly unhurt. There is, however, a typical ratta-tat-tat, a bit like raccoons calling to each other erotically on early spring nights that can be heard on YouTube videos of tasing, some 4,000 posted so far as of 8/4/09.

When the arena is video game play we might be inclined even to value the catharsis of harmless violence by representation, hoping that it would deflect the need for actual acts of violence in the world. When the video in question has been recorded during real action and becomes a document of legal interest, this is a problematic perspective, because it is untrue that Tasers cannot cause long lasting harm or even death. Will finders of fact be seduced by the voyeuristic participation in what seems to be harmless action in these videos or will they be able to step back and think critically about them as evidence? For instance, if we see the police tasing a man in the back, will we assume that the shooter is acting egregiously aiming at a receding non-threatening person or will the viewer be moved to ask whether that same receding figure hadn't just before threatened the shooter with physical harm? Or if the shooter maintains the story of threat to explain his actions, will the viewer be moved to ask whether that account is credible, or not, and look for external evidence to corroborate one version or another, especially if one is a police officer in uniform? [Miller ii]

While the camera possibly will record a lot of detail, it may or may not be meaningful for understanding the unfolding events because of the narrow view. So we may become occupied with the clothing or hair of the person being tased, and see stains on the floor, but we probably will not see much of the full scene at all. The camera is intended to document the deployment of the weapon, neither to tell the story of the events that caused the gun to be fired nor the aftermath of its use. So

the figure is ripped out of context, in contrast to dashboard camera video that may show the tasing episode from some distance and where the context overwhelms the picture of what is happening to the person being tased. One of the few examples of tasercam (in contrast to tasing) involves a dark and relatively unspecified interior of perhaps a small commercial establishment and a young African-American man, with short dreadlocks and otherwise undistinguished clothing. [Taser Cam] Contrast this with the dashboard camera video of the tasing of Jesse Buckley, mentioned above. He was a twenty-three year old very large man [US Court of Appeals] stopped on a speeding charge. He submits to being handcuffed and when he gets out of his car, he drops down to a seated position on the ground and begins to weep at his situation – not just the moment of being pulled over but perhaps over all the destitution in his life. When he refuses to get up and go to the police car, after repeated warnings, he is tased at least three times at close range. The video that we find posted on the web, taken from deputy-sheriff Jonathan Rackard's dashboard camera recording, begins after Buckley has gotten out of his car and ends before a second officer arrives to render assistance. We see cars passing on the two-lane highway on the left side of the picture and the rear of Buckley's car and the grassy embankment where much of the action unfolds. We cannot really see his face and can barely see the effects of tasing, although we can hear the weapon go off each time it is discharged. The person tased in the tasercam example looks like a youth who might be scary if encountered on the street where Jesse Buckley does not seem to pose a threat at all. In both these examples, the officers appear to be calm and clear and managerial in their orders in contrast to other recordings where officers seem to lose control. The most famous example of this is the Rodney King beating caught on Richard Halliday's amateur recording where viewers worldwide focused rather more on the police batons than the stun gun used against King [Shanahben].

As a non-police viewer, it is hard to understand why the officer, under no threat from Buckley, and having stopped him on a traffic violation and not in pursuit of criminal activity, needed to be in such a rush. Where would the harm have been in letting Buckley have his cry? And why did he proceed to tase him multiple times when any properly trained officer should know that it is impossible to follow an order to stand up shortly after receiving a tasing? Taser stuns produce immobility immediately in most people, so a police officer who demands that someone move/stand up after tasing is producing an involuntary disobedience which is then subsequently punished with repeated tasing if the officer loses control, prolonging the inability of the person to comply.

Both of these video sequences depersonalize the recipients of the tasing because of the particularities of the recording and because of the truncated, only barely suggested narratives they report. Of course it is not "I came, I saw, I tased" but there's not much more than "I saw something that I had to put a stop to" or "someone I thought I had to gain control of." From the video itself, we

know little more. This maps onto the new penal system where “the offender is rendered more and more abstract, more stereotypical, more and more a projected image rather than an individuated person.”[Garland, p. 179]. Similarly, due to problems of file size, resolution, hurried taping, much surveillance camera footage presents relatively undifferentiated persons who are hard to categorize. We have to take someone’s word for it; the video data are just an information token encouraging us to believe an account expressed with words.

To review: Tasercam video is made by a “security” device that is a kind of weapon that claims to be non-lethal. While the picture is being recorded an electrical current is being deployed against a living subject, so the making of the picture and the infliction of pain are co-incident within a point of view that brings viewer and weapon into a tight relationship. Because there is no outward evidence of wound or permanent damage, we viewers can perhaps enjoy the sadism (inflicting pain on another) seemingly without being implicated or feeling too much responsibility. What viewers see is a person being immobilized. If there is audio, generally those on the receiving end cry out [Taser clips].

Aside from the various recordings of enforcement activities involving Tasers, the web is full of examples of training videos and “home uses” – a roommate tasing his friend while in the shower [BreakMedia], a wife, her husband, while fooling around in the backyard, [NinjaWholesale], trainees doing it to each other. [Trainees taser video] . As of 8/4/09, YouTube responds to the search term “tasers” with a possible 14,400 choices. All of this normalizes the device, reducing any reservations we might harbor over its deployment in law enforcement. Todd Phillips’ summer 2009 film *The Hangover* has a scene, played for broad comedy, of school children being drafted to tase one of the heroes to punish him for bad behavior before his release by the authorities [Phillips].

On the Taser International web site there is a category of Tasers for consumers and it is illustrated with a picture of a woman protecting her home, not unlike previous ad campaigns to sell women on the use of firearms [Women and Guns]. The result of disseminating materials like these is to make the technology everyday, like an appliance. We are invited to protect ourselves, the Taser giving us security, and, at the same time, it justifies our “actions” in identifying with the point of view if we are watching Taser video: this can only increase our sense of psychological safety around the gratification of our own sadistic pleasure of being on the sending end of pain infliction.

Without resorting to Freud, we can look to our own art history for confirmation. Stephen Eisenman argues that, in the Western cultural tradition, that which links Classical art from the ancient world with European and American civilization is the pathos formula replete with eroticized tortured humans and animals (culminating in much religious art that many hold sacred) and that it is this tradition that has paralyzed our social response to the Abu Ghraib photographs. He suggests

that our outrage has been tempered by the deep familiarity of such imagery to us as evidenced by our own cultural history [Eisenman]. This, too, is the cultural ground that tasercam images will evoke. But unlike art in museums, tasercam in courtrooms will be part of the administration of justice and its truth, like all forms of evidence, must be actively tested. So, I argue, we need to be concerned about our ability to take on these compelling video records.

We Can Be Fooled by Our Own Media Habits

How do the facts of photography as a medium complicate our understanding of video? First, and common to all photography, is that we have a reading problem – photographs look real. Second, the social context has shifted dramatically: anyone can make quite good photographs now and they are easy to disseminate. Non-gatekeepers are making pictures to create alternative histories of public and private events; they are “talking” back to power. Official sources are using photography (as they always have) as a weapon in info wars. Our reading problem when it comes to photography arises from the fact that a photograph looks like something we might have observed with our own eyes were we but there. We are wired with the cognitive default setting that we automatically believe that something that looks real, actually is or was real. [Reeves & Nass]. Video represents “the real” because it looks real in the same way as pictures from other cameras and because it moves, it is even more lifelike. The photographic picture in general is a very complex object because it participates in all three elements of the Peircean sign triad. At first glance the photograph is a Peircean iconic sign, because it overwhelmingly resembles the surface characteristics of that which it depicts; nevertheless, “it is directly and physically influenced by its object, and is therefore an index; and lastly it requires a learned process of “reading” to understand it”[Huening] which brings it into the realm of mediation and symbolic (Peircean) structures. Interestingly, while Peirce’s system articulates the reasons for photography’s power, Peirce himself failed to see his own errors when he limited photography’s power to the indexical. [Kibbey, pp. 132-164].

Perhaps it is this semiotic triple play that gives the photograph its particular power over us as a medium of exchange. While it is true of all semiosis that it is dynamic and not neatly fixed, this appeal to the entire basic Peircean triad of the relationship of the sign to its object must confer extra credibility on the photograph. I would suggest that it is precisely because of this power that we are so unable to disentangle our perception that it reflects reality of some kind from the proposition that what it shows IS reality. That is, at first glance, without training, we miss entirely that we are looking at a picture of reality that has been transformed by a technology that has characteristics of its own. The camera is being operated by someone or something that has a reason for taking the

picture. (Note how this is analogically like the common sense construction that if a person is arrested, they must be guilty; both suppositions have the potential to lead to serious miscarriages of justice.) The picture, in turn, is then deployed as a sign in a context. Tasers equipped with video and used by the police are made to record the actions of the person using the gun in context for a record of what happened, as evidence. Once made, the recording can be used by supervisors to monitor the behavior of officers (police, prison guards, etc.) and it may or may not become part of a legal proceeding. Monitoring can result in exoneration from culpability; it adds information to what might otherwise be a “he said/she said” situation of competing and difficult to verify claims. But once out in the world on YouTube, these recordings become a part of a larger conversation.

As an aspect of the media culture arising from digital technologies, “the photographic” is now a sign itself deployed in ever more complex mash-ups of data from multiple sources and the still photograph is now a nearly infinitely malleable set of pixels [Ritchin]. The public is beginning to understand that the same thing can be true of video data. The cultural understanding of the photographic is parting company with our everyday social understanding of the video that we encounter in the non-art situations of surveillance video, etc. We used to be able to count on such markers as poor focus or poor resolution to help us tell the difference between social functions of the video picture. The price of higher resolution has been coming down and surveillance video is ever better (and so are the cellphone cameras that people have been using to do their own surveillance). For instance, Janis Krums’ cell phone picture of the emergency landing of an aircraft on the Hudson River, in January 2009 [Krums], is a beautiful picture with old master overtones, and not at all what we expect of a snapshot taken from a cell phone. Can the iconic sign continue to function in a world where it can be a paintbrush for a new virtual creation?

The ever-increasing quality of inexpensive video recorders is already bringing about a convergence of entertainment data streams and reportorial/documentary data streams, so it is difficult to distinguish them on the basis of their appearance. The claims of poor police, poor technicians will no longer hold up and the distinctions that finders of fact will have to make will be ever more complicated by our habitual experiences of the medium.^v

The roughhewn handheld video output of amateurs that was imitated in a film like *The Blair Witch Project* and conferred on it a mark of (seeming) authenticity, has since become just a style. On the one hand, we will see that which is represented with ever greater clarity. On the other, we may be less and less able to separate one kind of video from another as other photographic media are deployed in our documentary as well as fictional lives. Where does a gigapixel photograph of Vancouver that allows us to peek into real people’s apartment windows fit? Are we spies or voyeurs or just grooving on the pleasures and powers of our digital tools? [Vancouvergigapixel]

The demanding process of creating photographs in the medium's infancy has been replaced by technology that is small, can "remember" many pictures, and can do this at great speed, so anyone can be a photographer. Not only do average people make pictures, lots of them [Higonnet], but in urban areas especially, they are also used to being on camera in public places. Even in smaller towns, public buildings, banks, etc. are equipped with camera surveillance. Reality television, "The People's Court" and its many offshoots, and now YouTube and other video hosting sites on the World Wide Web, present a huge variety of non-professional people in front of cameras as well as behind them. In the early days of nineteenth century photography, there was a lot of social concern about people taking pictures in public of unwilling subjects, even prior to the development of photojournalism [Jay]. The expectation of privacy has eroded – or we have all become participants. Photography has both escaped from its referents and escaped from the constraints of social boundaries. Probably inevitably, people are using available camera technologies to document abuses of power by those in authority and are thereby providing an alternative record of events. Francis Ford Coppola's 1974 film *The Conversation* explored the beginning of this social change.

Police and other enforcement authorities are responding now by going after cameras demanding that people surrender their equipment, erase their memory, otherwise cease and desist exercising their legal rights to photograph in public [Schneier]. When not hostile to photography, the police are using cameras as public relations weapons themselves. They may release their own or "official" surveillance video of events in response to people's posting their videos on the Internet to frame the debate themselves or to try to head off the unofficial version acquiring a social consensus. In some jurisdictions, police are asking citizens to post evidence of crime on special websites [NYC_311]. See for example the TSA posting of its own surveillance footage to counter the story of a disgruntled passenger [WUSA9.COM].

Courts will have to sort out different versions of evidentiary video; they will have to be interpreting what is shown and can be known from often fragmentary recording of bits of reality in different degrees of resolution and, finally, all participants may come to the court having seen all kinds of video that won't be admitted at all but which may, nevertheless, influence their judgments. In the "olden days", television would broadcast information about events that could wind up in the courts but television had gatekeepers. Virtually free and self-selecting video posting has changed all that. Indeed in some recent cases in the United States jurors were found to be using their hand held devices to surf the World Wide Web for additional information pertaining to their cases. [Schwartz]

Photography has become a "weapon" in info-wars carried out by opinion makers and critics, whether photo-op (as in the recent ill-advised fly-over of lower Manhattan of Air Force One) or the photoshopped (as were Iranian missiles, the wounded in Palestine) [Wald] [Morris].

We are learning to be skeptical of all official stories. Taser video enters this pictorial landscape of uncertainty. Will it seem to be especially probative given the authority of its source and its bare bones narrative? Or will it evoke a different set of cultural associations?

In Taser video we have created a tool that is, truly, a weaponized picture maker, capable of “speaking” in the real world. It is especially powerful to us because it is so semiotically rich and compelling from the combination of its photographic medium and point of view, and, let’s be honest, there is the additional pleasure of the satisfaction of our voyeuristic impulses to literally but safely “be there.” When officers deploy tasing appropriately, it can save them and others from real harms arising from dangerously uncontrolled persons. But the stun gun is a tool that can very easily be misused. Manufacturers’ claims that such devices cause no permanent harm encourage use, not just the threat of use. The fact that Electronic Control Devices leave no obvious marks makes misuse seem to have no consequences. And they are so easy to deploy. From anecdotal viewing of posted videos showing Tasers in use by police authority, it seems that these devices are often brought out to compel obedience for its own sake instead of using words either to elicit more information or to persuade. With so little communicative information in play, the human meaning is diminished. There are two recent stories, from different states, on the Web concerning the deployment of Tasers against middle-aged folks sitting in the wrong seats at ball games. Both seem like a totally unnecessary use of force [Ball_game_taser-videos].

The managerial threat of tasing described above, reminiscent of either bureaucrat or parent, is another form of normalization. “If you do not, or if you do ... I will tase you....” The gun offers immediate enforcement, and immediate gratification through the assertion of power. In our society that claims to observe the rule of law, do we really want police officers not only enforcing laws but also delivering punishment without a full fact-finding procedure?

It’s Not Just A Picture

We have come a long way from Elie Weisel’s fantasy of using pictures to punish by simply making victims visible. Wiesel shields himself from his own sadistic impulses by proposing punishment by representation – effectively saying to himself, “It’s just a picture”. With the invention of a picturing device that actually punishes, that inflicts not just emotional pain but extreme physical pain, one that collapses the distance between a perception of the problem and administering punishment for it, we risk the very evidence itself making the event seem “only a picture” and

therefore “unreal.” In the video-equipped Taser we have a device that records photographically but one that draws on different media habits for deployment – the rapid reflexes of aggressive video games where the task is somehow to control or eliminate “others”. These “others” in the real world of people getting tased are often mentally ill, foreign or not competent in the local language, members of minorities, women, the elderly, and the young.^{vi}

In this fantasy space, a “harmless” Taser makes talk unnecessary – there needs to be no communicative relationship between the person of authority (whoever has the stun gun) and the other. With no talk needed, there is no debate, there are no alternative points of view that need to be resolved. There is just power, all action; it’s very simple in this reductive universe. There are many reasons to be concerned about this use of technology. If we begin to assimilate this as the way things are, then how will we be able to object to the use of robots for law enforcement? [Marks]

In courtrooms with screens showing all kinds of moving pictures, will we be able to make critical and informed judgments based on photographic material that is now being generated in a culture where the old norms of photojournalism are seriously frayed, where people know that pictures can be altered? Will we be able to watch and step back from the gratification of our own sadism to think critically about the Taser picture? Alternatively, will police forces reject the supervision that tasercam might provide and therefore fail to equip stun guns with this feature? Will we be able to respond to counter stories about those very pictures? Are we concerned with justice or do we simply want to restore order after a threat of chaos, and if so, how far are we willing to go with regimes of control? How will we determine the proper role of pictures in the pursuit of justice? How these questions are answered will help to define whether we sink completely into an authoritarian culture of control or rescue our democratic ideals. History gives us some pause and some reason for cheer.

In *The Story of Cruel and Unusual*, Colin Dyan links the conditions of America’s current penal system to the old institutions of slavery and both to the debates on torture that spanned the end of the Bush administration and the beginning of the Obama presidency. She asks, “What do prisoners, ‘security detainees,’ and ‘illegal enemy combatants’ in U.S. custody all have in common? They are all bodies. Few are granted minds. The unspoken assumption is that prisoners are not persons.” [Dyan, pg. 90]. It is unknown whether the taser-play represented on videos in YouTube circulation will have a dulling effect on their audience, normalizing a tool of law enforcement that can also be used as an instrument of torture [Regali] [Miller i], or whether a younger generation of participants in the legal system will bring new literacies to bear. Habits from their own use of photography and, most especially, their experiences editing it with widely available digital tools, may cause younger people to be able to think more critically about what they are seeing. Will they be more able to see the doubleness of iconic pictures – that they look like what we see but that they also have mediated

effects and are not just slices of “reality”? And will they be able to maintain this under the viewing pressures of 29.5 frames a second?

Viewers of weaponized video will need moral imagination. They will have to begin by seeing that the person tased is a human being with rights. They will have to refuse the pleasures of the images of control and mastery over that person by an officer of the law enough to evaluate those same pictures in the context of other evidence in the case. Supervisors reviewing the Taser recordings to monitor their own operations will face the same sorts of questions, only the recordings will be even more normalized because they are a part of normal institutional practices. Will they pay attention? First, video recording ought to be mandatory on every stun gun unit sold. Users should know that their decision to deploy might be monitored and subject to review by some external authority. Supervisors should be required to keep detailed data on Taser deployment by officers and correctional staff working under them. Without surveillance, it is too easy to use impulsively. Anecdotal evidence suggests stun guns are deployed against people who lack political power in circumstances where officers are not really in danger. So we need to have more pictures generated, not fewer. And second, we need to be sure that everyone connected with the justice system is media literate – and the broader population as well.

Conclusion

We need the resources of pictures that have iconic relationships to reality for witnessing and documenting and for entertainment and aesthetic pleasure. We also need to resist their simple persuasions so that we can understand them as a communication in a context that is material, pertaining to how it is made, and social. While there is promise in a younger generation of sophisticated media consumers, in the interest of justice (and legitimacy) we ought to make much more self-conscious efforts to make sure that visual media literacy is regarded as crucial to educated people and most especially for all those involved in the justice system.

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References

Arijon, D. (1991). *Grammar of Film Language*, Los Angeles : Silman-James Press.

Amnesty International (2008). "USA – Taser Safety Questioned as Death Toll Hits 334."

<http://www.amnesty.org/en/for-media/press-releases/usa-safety-tasers-questioned-death-toll-hits-334-mark-20081216>

Amnesty Report (2009). [http://www.amnesty.org/en/library/asset/](http://www.amnesty.org/en/library/asset/AMR51/010/2008/en/65fd4233-cb63-11dd-9ec2-e57da9519f8c/amr_510102008en.pdf)

AMR51/010/2008/en/65fd4233-cb63-11dd-9ec2-e57da9519f8c/amr_510102008en.pdf
(last accessed July 10, 2009).

Baker, A. (2008). "Police Urge Citizen Crimefighters to Text Their Tips."

<http://cityroom.blogs.nytimes.com/2008/08/06/police-urge-crimefighters-to-text-their-tips/?scp=1&sq=citizens'%20tips%20topolice&st=cse> (Last accessed 14-9-2008).

BreakMedia (2009). "Guy Tasers Friend in the Shower." <http://www.break.com/index/guy-tasers-friend-in-the-shower.html>

Browder, L. (2006). "Women and Guns." <http://www.womenandguns.vcu.edu> (Last accessed 5-14-09).

Chicago Tribune (2009). "So you played by the rules; does that make you a chump?" Editorial, **March 6**. (Last accessed March 12, 2009).

Chris, T. "Police Litigation Against Taster Int'l." <http://www.talkleft.com/story/2005/08/22/435/59281> (Last accessed 1-20-2010).

Conroy, J. (2009). "Killed on Camera." <http://www.chicagoreader.com/features/stories/killedoncamera/>

Dyan, C. (2007). *The Story of Cruel & Unusual*. Cambridge, Massachusetts and London: The MIT Press.

Eisenman, S. (2007). *The Abu Ghraib Effect*, London: Reaktion Books.

Feigenson, N. & Spiesel, C. (2009). *Law on Display, The Digital Transformation of Legal Persuasion and Judgment*. New York: New York University Press.

Feigenson, N. Private conversation

- Fowler, G. & Wackerbarth, M. (1980). "Audio Teleconferencing versus Face-to-Face Conferencing: A Synthesis of the Literature," in the *The Western Journal of Speech Communication* 44, no. 3, pp. 236-252.
- Frontline, (2009). "The Madoff Affair" at <http://www.pbs.org/wgbh/pages/frontline/madoff/> (Last accessed 5-12-09.)
- Garland, D. (2001). *The Culture of Control*. Chicago: The University of Chicago Press.
- Gower, P. (2009). "Video Proposal to cut costs of court trials", http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10582761
- Hauser, C. (2008). "911 to Accept Cellphone Videos," September 9, 2008, <http://cityroom.blogs.nytimes.com/2008/09/09/911-to-accept-cellphone-videos/?scp=1&sq=citizens'%20pictures%20to%20police&st=c> (Last accessed 14-9-2008).
- Higonnet, A. (1998). *Pictures of Innocence*, London and New York: Thames and Hudson Ltd.
- Holmes, O. (1859). "The Stereoscope and the Stereograph," *The Atlantic Monthly*, June, 1859, pp. 738-748. PDF available at www.geocities.com (Last accessed 5-4-09).
- Hookway, C. (2007). "Peirce on Icons and Cognition" in *Lecture Notes in Computer Science, Volume 4604*. Berlin: Springer.
- Huenig, S. (2004). "Theories of Media:symbol, index, and icon" <http://csmt.uchicago.edu/glossary2004/symbolindexicon.htm>
- Huffinton Post (2009). "Police Brutality: Cops Punt Man In The Head, Then High-Five" at http://www.huffingtonpost.com/2009/05/13/police-brutality-cops-pun_n_203245.html (Last accessed 15-4-09).
- Jay, B. (1984). "The Photographer as aggressor, when Photography became a moral act." <http://billjayonphotography.com>
- Kahan, D., Hoffman, D, and Braman. D. (2009) "Whose Eyes Are You Going to Believe? An Empirical (and Normative) Assessment of *Scot v. Harris*, *Harvard Law Review* 122, no. 3,(January 2009).

- Kibbey, A. (2005). *Theory of the Image, Capitalism, Contemporary Film, and Women*, Bloomington and Indianapolis: Indiana University Press.
- Klebold, E. (2006). "Columbine shooting cafeteria footage Harris Klebold."
<http://www.youtube.com/watch?v=UJ13CZ4Hekg&feature=fvst>
- Krums, J. (2009). "US Airways adds new Hudson River destination."
<http://www.velozia.com/?p=410> (Last accessed 15-5-2009).
- Kurosawa, Akira. Film, *Rashomon*, 1950.
- Marks, P. (2008) "Packs of Robots will hunt down." <http://www.newscientist.com/blogs/shortsharpscience/2008/10/packs-of-robots-will-hunt-down.html>. (Last accessed 11-8-2009).
- Miller, C. i (2009). "Idaho police sodomize man with Lazer."
<http://carlosmiller.com/2009/07/23/idaho-police-sodomize-man-with-taser>
- Miller, C. ii (2009). "Texas cop uses Taser gun on man too slow to provide proof of insurance."
<http://carlosmiller.com/2009/07/07/texas-cop-uses-taser-gun-on-man-too-slow-to-provide-proof-of-insurance/> (Last accessed 10-7-2009).
- Morris, E. (2008). "Photography as a Weapon." <http://morris.blogs.nytimes.com/2008/08/11/photography-as-a-weapon/?scp=11&sq=errol%20morris&st=cse>. (Last accessed 10-7-2009).
- Netter, S. (2009). "Victims' Panties Found in Craigslist Suspect's Home." <http://abcnews.go.com/US/Story?id=7398011&page=1> (Last accessed 5-03-09).
- Nevins.D. (2009) "Municipal Liability Under 42 U.S.C. § 1983 For Failing to Equip Police With Tasers", *Quinnipiac Law Review*, Vol. 28:225.
- NinjaWholesale (2008). "Wife's shoots husband with Taser ... lol" <http://www.youtube.com/watch?v=LCGQNQ83c7Y>.
- NYC_311 (2009). <http://www.nyc.gov/apps/311/allServices.htm?RequestType=about311Service&serviceName=Video+or+Picture+Upload+Information> (Last accessed 10-8-2009).

- Phillips. Todd. "The Hangover", 2009. Scene of tasing can be viewed at:
<http://www.youtube.com/watch?v=JbpNVcgct6Q> (Last accessed 1-20-2010).
- Raw story (2009). http://www.rawstory.com/news/2008/Sold_as_nonlethal_Tasers_killed_400_1213.html
- Reeves, B. & Nass, C. (1996). *The Media Equation*. Cambridge [England] and New York: Cambridge University Press.
- Rejali, D. (2003) "Violence You Can't See." <http://www.collegenews.org/x3015.xml> (Last accessed 5/4/09).
- Rejali, D. (2007). *Torture and Democracy* Princeton: Princeton University Press.
- Ritchin, F. (2009). *After Photography*. New York: W.W. Norton & Company.
- Salt_Lake_City_footage (2009). http://www.youtube.com/watch?v=Xqs_20oxTrw.Both (Last accessed 10-7-2009).
- Schneier, B. (2008). "The War on Photography." http://www.schneier.com/blog/archives/2008/06/the_war_on_phot.html. (Last accessed 15-5-2009.)
- Scott in *Scott*, 127 S. Ct. at 1775 n. 5, in "The Rhetoric of the Real", Feigenson, N. and Spiesel, C. (2009). *Law on Display, The Digital Transformation of Legal Persuasion and Judgment* New York: New York University Press.
- Shanahben. (1991). "Rodney King" http://www.youtube.com/watch?v=ROn_9302UHg (Last accessed 5-4-09.)
- Sharkey, J. (2009). "A Meeting in New York? Can't We Videoconference?" http://www.nytimes.com/2009/05/12/business/12road.html?_r=1&scp=1&sq=video%20conferencing&st=cse (Last accessed June 25-6-2009).
- Sherwin, R. (2000). *When Law Goes Pop*. Chicago: University of Chicago Press.
- Sontag, S. (1977). *On Photography*, Farrar, Strauss, & Giroux, New York.

Schwartz, J. (2009). "As Jurors Turn to Web, Mistrials Are Popping Up."

<http://www.nytimes.com/2009/03/18/us/18juries.html?scp=1&sq=jurors%20use%20cell%20phones&st=cse> (Last accessed 4-5-2009).

Taser International (2009). <http://www.taser.com/pages/default.aspx> (Last accessed 4-4-2009).

Tasercam_video (2009). <http://www.youtube.com/watch?v=QdipLDbV2jU>. (Last accessed 4-5-2009).

Trainees_taser_video. <http://www.youtube.com/watch?v=rVUY2C4ln0Y&feature=related>

US Court of Appeal (2008). [www.ca11.uscourts.gov/unpub/ops/2007 10988.pdf](http://www.ca11.uscourts.gov/unpub/ops/2007%2010988.pdf)

Vancouver_gixapixel. <http://gigapixelphotography.com/vancouver-yaletown-condos>

Vettel-Becker, P. (2005). *Shooting from the Hip. Photography, Masculinity, and Postwar America*. Minneapolis and London: University of Minnesota Press.

Wald, M. (2009). "Jet Fly-over Frightens New Yorkers." <http://www.nytimes.com/2009/04/28/nyregion/28plane.html?scp=6&sq=fly%20over&st=cse>

Watson, P. (2009). "Cops Taser Old Man for Sitting in Wrong Seat At Baseball Game." <http://www.infowars.com/cops-taser-old-man-for-sitting-in-wrong-seat-at-baseball-game/> (Last accessed 10-8-2009).

Worldpoliceus. (2007). "University of Florida Taser Incident (taser portion)" <http://www.youtube.com/watch?v=8XWijwmvGU4>; a remix of this episode: http://www.youtube.com/watch?v=Xzkd_m4ivmc

WUSA9.COM. (2007). "TSA Posts Video To Counter 'Sippy Cup' Allegation." <http://www.chicagoreader.com/features/stories/killedoncamera/>



ⁱ It is outside the scope of this chapter to discuss the meaning of this suggestion within Wiesel's life and work. Given that he was a Holocaust survivor, and the Nazi regime that carried it out was obsessed with visual imagery, it is not surprising to this author that he would make such a suggestion.

ⁱⁱ Justice Scalia is either unfamiliar with Justice Oliver Wendell Holmes' writing on photography or doesn't agree with him. Oliver Wendell Holmes: "There is only one Coliseum or Pantheon; but how many millions of potential negatives have they shed,--representatives of billions of pictures,--since they were erected! Matter in large masses must always be fixed and dear; form is cheap and transportable. We have got the fruit of creation now, and need not trouble ourselves with the core. Every conceivable object of Nature and Art will soon scale off its surface for us. Men will hunt all curious, beautiful, grand objects, as they hunt the cattle in South America, for their skins and leave the carcasses as of little worth." [Holmes]. While acknowledging the role of the sun (light) in making the picture, Holmes clearly saw both that people make photographs and that this activity was going to be socially transformative.

ⁱⁱⁱ Presence is of increasing importance in legal contexts. Our global economy is creating disputes across national borders, time zones, cultures, and there will be increasing debate around what is the required presence for trustworthy decision making with the use of technology to transcend limitations on actual physical presence, adding not just videoconferencing but virtual reality environments, avatars, etc.

^{iv} Being tasered is part of police and military training, so some victims of Tasers are, in fact, members of uniformed services. [TChris] Readers interested in arguments favoring widespread deployment of Taser technology can read a note arguing for municipal liability for NOT supplying officers with these weapons. [Nevins]'

^v Richard Sherwin's *When Law Goes Pop* takes up the blurring of law and popular culture. [Sherwin]. While this is certainly relevant, I discuss the video medium itself in the communicative stream and not so specifically its narrative characteristics, especially because tasercam video is without self-conscious storytelling strategies.

^{vi} It is also probably a mistake to assume that medical risks, and therefore potential harms, are the same for all these groups. We certainly need much more data in this matter.