

Unnatural participation, thus conceptualized, reframes the question of viral kinship on the plane of immanence and depersonalizes Bordowitz's desire for "something greater than ourselves, shared between us." Within the microphysics/metaphysics of barebacking, pleasure in the Foucauldian sense is what officiates these nuptials. It could be said to operate something like the *will* in Nietzsche's doctrine of the will to power: an impersonal, universal striving as the motor of becoming. Pleasure would then link up with radical affirmation, the absolute Yes to existence advocated by Nietzsche so that existence can be transformed, revalued, overcome.

It is certainly striking that Paul Morris, founder of the notorious porn studio Treasure Island Media and the most articulate polemicist from within bareback culture, describes the practice in a manner that sounds like pure Nietzsche. Confronting head-on the monstrous implications of affirming viral transmission, Morris heralds barebacking as radical irresponsibility, devoted only to the perpetuation of a subcultural ethos "with little regard for anything else, including life itself."

The everyday identity evanesces and the individual becomes an agent through which a darker, more fragile tradition is enabled to continue. Irresponsibility to the everyday persona and to the general culture is necessary for allegiance to the sexual subculture, and this allegiance takes the gay male directly to the hot and central point where what is at stake isn't the survival of the individual, but the survival of the practices and patterns which are the discoveries and properties of the subculture.<sup>16</sup>

Have we reached becoming-imperceptible, the "cosmic formula," per Deleuze and Guattari, of all becomings?<sup>17</sup> Or has one persona (the self-perpetuating neoliberal subject) merely been replaced by another (the self-indulgent libertine)? If bareback subculture constitutes the next logical step in the enterprise of gay male promiscuity, that scarcely ensures the value—ethical or ontological—of its discoveries. That it *does* constitute a discovery calls for a new image of thought, one that asks what it means to form a rhizome with our viruses.

<sup>16</sup> Paul Morris, "No Limits: Necessary Danger in Male Porn." Paper presented at the World Pornography Conference, Los Angeles, California, August 8, 1998. Cited in Dean, *Unlimited Intimacy*, 57.

<sup>17</sup> Deleuze and Guattari, *Thousand Plateaus*, 279.

## Law and Disorder

*Susan Schuppli*

JUDGE: Do you think this tape has been doctored in any way or does it represent what you saw at the scene?

Among the more than 90 million court records that comprise the archives of the International Criminal Tribunal for the Former Yugoslavia (ICTY) are two videotapes shot by Liri Loshi (and Sefedin Thaqi) in the aftermath of the massacres at Izbica and Padalishte, Kosovo, in March 1999. These tapes form part of its material evidence archive and were entered as exhibits during the trials of Slobodan Milošević and Milan Milutinović. The following excerpts from the open court session on October 26, 2006, capture a sense of the discussion as it unfolded with respect not only to the veracity of the images recorded on one of the tapes, but also regarding its material integrity and the custodial handling of the videotape prior to its admittance into the legal archive of the ICTY.<sup>1</sup>

Q. Mr. Loshi, are the images we just saw also part of the video you filmed that day?

A. Yes.

Q. And could you describe to us what was taking place there in that part of the video.

A. What we saw here is a burial where we buried all the—these bodies that were found in those places that I was just describing before, and also all other victims in Izbica that were found in some other different spots were brought here.

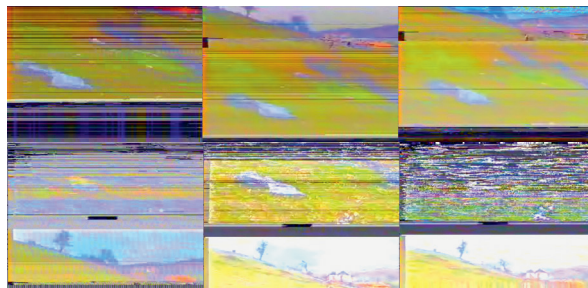
JUDGE. And you say in that statement under oath: "I recorded this videotape myself on March 31 1999, and this original exhibit has been in my constructive possession from the time of filming until now." Now, we already know, thanks to the testimony that you gave in our subsequent statements as well as here today, that in fact this statement you made under oath is not true and accurate because Mr. Thaqi is the one who recorded the video. Now, is it also the case that the second part of this statement, that is to say that you had the original tape in your constructive possession at all times before delivery to the Prosecutor, that statement is not accurate and in fact is false. Isn't that correct?

<sup>1</sup> The International Criminal Tribunal for the Former Yugoslavia (ICTY) is a United Nations court of law established in The Hague in May 1993 to prosecute war crimes committed during the Balkan wars of the 1990s. The first international war crimes tribunal since Nuremburg and Tokyo, it has charged over 160 people; thirty of these trials are still in various stages of completion.

A. No. This is correct, but I believe this is a misunderstanding. Because what I was—what I said there or what I was trying to explain there, and I did—I believe I did so, was that just after the taping was done by Sefedin Thaqi in—after a few days, I believe this was April 3 or 4, I can't remember it now, we transferred the whole filming from his tape to VHS tape, which I had it all the time in my possession. But that tape I couldn't bring with myself to Albania because I found it very dangerous to take it with myself.  
Q. Now, with respect to Mr. Thaqi's tape, am I correct that this tape was at one point in time stolen by some thieves?

A. Yes. At the time where I was looking for this tape, his own camera was stolen, I believe not because of the tape but because—the tape was stolen because of camera. The thieves didn't even know what was in. And then with the help of Shaban Dragaj I get a hold of this tape again.

While the testimony of eyewitnesses has, since the late nineteenth century, been aided by photographs and other visual materials such as drawings and models, court proceedings are increasingly shaped by a forensic account of events in which materially encoded “truths” are narrated by experts. Forensic blood work, such as comparative DNA analysis, offers an exemplary marker of this shift in juridical culture.<sup>2</sup> Yet in order for a material object or an entity derived from a computational database to bear witness legally, given that it can't swear to tell the truth, it must move through a sequence of bureaucratic stages that address its relevant features or structurally recompose it. The extended legal debates around the videos shot by Loshi expose the degree to which the tension between what is captured on tape as visual information and what is captured on tape as incidental inscriptions starts to play an increasingly significant role in the narration and production of the law.<sup>3</sup>



Video frame-grabs from Liri Loshi and Sefedin Thaqi's footage shot in the aftermath of the Izbica Massacre, Kosovo, March 28, 1999. [Source: ICTY Case No. IT-05-87: Milutinović.]

<sup>2</sup> These ideas draw on the collective work of forensic architecture, a European Research Council project led by Eyal Weizman at Goldsmiths, University of London. The project undertakes research that maps, images, and models sites of violence within the framework of international humanitarian law, producing spatial evidence in support of legal investigations that address violations of human rights. See [www.forensic-architecture.org](http://www.forensic-architecture.org).

<sup>3</sup> ICTY, “Transcript 061026IT” (The Hague: ICTY, 2010). Full Transcript available at [www.icty.org](http://www.icty.org).

Appearing initially as erratic magnetic interference, the damaged materiality of exhibit P232, otherwise known as the Izbica massacre tape, eventually migrates into the image-field, as the mute horror of dead bodies slowly coalesces to reveal itself to the camera/viewer. The material violations evidenced in the dense overlay of defects caused by the repeated copying and over-coding of the tape immediately alerts us to the material violations of the body-proper that will soon emerge out of the depths of the image. In cinema such frenzied distortion in the visual field has come to signal immanent danger and threat, as the stability of a world organized as a coherent picture falls apart and is consumed by violence. The massacre video cannot, of course, be compared to the narrative constructions of cinema, given its status as documentary evidence of a crime. But the impoverished condition of the tape, with its material degradations and destabilized image-field, are disturbingly resonant with chilling effect, reminding us of the political program that sought to eradicate difference through ethnic cleansing.

Literary critic Shoshana Felman has argued that the difficulty of producing an intelligible narrative in the face of historical trauma characterizes the true act of bearing witness. Drawing upon the filmed documentation of the Eichmann Trial, in which a witness, Yehiel De-Nur, or K. Zetnik, fainted while attempting to testify, she asks under what circumstances and in what ways the withdrawal of the legal conventions of speech can constitute a form of legal testimony in its own right.<sup>4</sup> When recounting his own experiences of Auschwitz, Primo Levi likens his memory traces to the machinic operations of a tape recorder, which can rewind and play back history: “I still have a visual and acoustic memory of the experience that I cannot explain. [...] Sentences in languages I do not know have remained etched in my memory, like on a magnetic tape.”<sup>5</sup> K. Zetnik's memory erased the trauma of the camp, whereas Levi's recorded it. In both cases the capacity to bear witness occurs not through acts of spoken testimony but through technologies of inscription: the fainting body, the mnemonic operations that rewind and playback like a tape recorder. Likewise, rather than reducing their capacity to stand convincingly before the tribunals of history as witnesses to a crime, the degraded quality of both of Loshi's videotapes enhances their capacity for testimony, insofar as the epistemic dimensions of an image-regime typically called upon to account for historical violence through explicative narration is refused. Instead, their material defects saturate the tapes with a different kind of information, producing a form of ontological reckoning that doesn't require the supplementary intervention of a human witness endowed with the task of extracting meaning from errant electrons or executed bodies. Forcing wholeness and clarity from the massacre videotapes' erratic image-data would, in my mind, violate the events anew, whereas allowing the tapes to disarticulate their material strata registers the radical incomprehensibility of what has

<sup>4</sup> Shoshana Felman, “A Ghost in the House of Justice: Death and the Language of the Law,” in *The Juridical Unconscious: Trials and Trauma in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002), 131–51.

<sup>5</sup> Primo Levi, cited in Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*, trans. Daniel Heller-Roazen (New York: Zone Books, 2002), 27.

taken place. Their relevance is located not exclusively in what they can tell us about the historic events to which they gesture as technical witnesses, but also in their struggle to meet the court's demand for coherent accounts of history.

Writing about Francis Bacon's paintings, Gilles Deleuze contends that "photographs cannot produce an intensity of sensation, or rather cannot produce differences within sensation" in that, unlike painting, they do not activate the body and provide different ways of seeing. Rather, they are merely a recording and a resemblance of what we see.<sup>6</sup> Painting, says Deleuze, requires the cooperation of the artist's hand, which is always in a relationship of imbalance with the eye. What the eye sees can never be registered absolutely by the hand: something different always emerges from within the depths of paint. I contend that many of the media artifacts presented during the legal proceedings of the ICTY emphatically register this imbalance at the level of the machinic. Sensation emerges equally out of the technical reorganization of the image-event as it does out its mimetic regime: the tape's defective materiality forcing an intensification of affect that supplements and at times even supersedes the horror and despair captured on video. A different stratum of knowledge about these events of crisis—knowledge that arises out of processing—is impelled into presence, activating the sensorial domain of testimony at the moment that the plane of resemblance (the appearance of things) gives way to the furtive emissions of the ontological substratum. At these moments of intensified image-compression, a new "material witness" might be said to emerge from within the depths of magnetic particles or pixels.<sup>7</sup>



Video frame-grabs from Liri Loshi's footage shot in the aftermath of the Padalishte Massacre, Kosovo, March 26, 1999. [Source: ICTY Case No. IT-02-54: Milošević.]

While the visceral defects of Loshi's massacre videos do bear sensate and even symbolic witness to acts of palpable violence, their material degradation raised serious legal questions regarding "chain of custody" and the credibility of Loshi himself as a material witness. Under cross-examination, Loshi admitted that the

6 Gilles Deleuze, *Francis Bacon and the Logic of Sensation*, trans. Daniel W. Smith (London: Continuum, 2004), 49.

7 The concept of the "material witness" is elaborated in my forthcoming book, *Material Witness: Forensic Media and the Production of Evidence* (Cambridge, MA: MIT Press, forthcoming).

camera containing the crucial Izbica tape (IT-05-87) was stolen and later recovered in Albania along with the video. Loshi's admission corroborates the damaged state of the tape, which in addition to drop-out shows signs of extensive image-loss, indicating that it was reprocessed by incorrect video codecs. Moreover, the presence of rolling scan lines and yellow streaks suggests that at one point the video was copied by filming directly from a television screen. These are all factors that point toward the tape's ongoing transformation as it traveled between Kosovo, Albania, and The Hague.

At every juncture in these administrative circuits, the media object is imprinted by and modified through these processes, such that a kind of violence is done to the object akin to the subjective processes of forgetting and lying that characterize the human witness. Because we have become so preoccupied with narrating the singularity of the object, we tend to render transparent the very means by which we are able produce such biographies, namely, the discursive uptake of the object within different epistemic frameworks. Matter, in effect, only becomes a material witness when the complex histories entangled within objects are unfolded, translated, and transformed into legible formats that can be offered up for public consideration and debate. Conventions that enable public forums to confer legitimacy upon the speech acts of objects, and agreed-upon standards that permit material evidence to stand up to the scrutiny of evaluative and adjudicative epistemological frameworks need to be continually queried and tested. Yet without this dimension of public discourse, media artifacts cannot fully attain the status of the witness; rather, they remain virtual, carrying their archives of encrypted data into the future as mere latent potential.

When materials, including computational objects, are subject to external processes that bring about their structural reordering, they produce what philosopher Isabelle Stengers has called an "informed material," in the sense that their internal composition becomes progressively enriched by information.<sup>8</sup> The forensic analysis of media is concerned not directly with representational matters, but with matter as captured by different forms of technology and processed by different kinds of legal or quasi-legal apparatuses. Politics likewise enters into the field of media not simply at the level of representation—the content displayed in an image—but at the structural level of its acquisition, processing, and transmission of information. In the case of digital media, this "politicization" takes place at each processional juncture: when pure data is captured by sensors, transformed into binary code, assigned pixel values, algorithmically adjusted, composited to produce a digital image, saved in a standardized file format, and transmitted to recombine with other circuits of technical and social assembly. This is what I would call "the micro-politics of

8 See Bernadette Bensaude-Vincent and Isabelle Stengers, *A History of Chemistry* (London: Harvard University Press, 1996), 206. See also Andrew Barry, "Materialist Politics: Metallurgy," in *Political Matter: Technoscience, Democracy, and Public Life*, ed. Bruce Braun and Sarah Whatmore (Minneapolis: University of Minnesota Press, 2010), 90.



processing”: all the points of contact between the various networks of information transfer, translation, and transmission that are also points of potential transformation and that allow difference, and thus politics, to enter. If the object’s capacity to bear witness is achieved by explicating its passage through various stages of administrative processing, its political dimensions are rendered visible when we attend to the precise ways in which certain kinds of information combine and recombine at these nodal points to produce new aesthetic, technical, and legal configurations.

Digital media, like all digital information, exists first as binary code and requires several stages of processing before it can recompose itself into a comprehensible image or sound. In order for digital materials to have any legal traction as evidence, they require approved procedures that guarantee the security of data and standardize their processing from code to pixels. Given this predicament, should the stability and integrity of information transfer be held accountable to an originary event, or does the very condition of post-processing render its role as a material witness suspect at best? This is especially pertinent to media materials coming out of conflict zones that are often produced and/or secured under challenging conditions. Several other cases in ICTY that relied upon corroborating video testimony were thrown into doubt when expert witnesses could prove that the evidence in question had been spliced and reedited, thus nullifying its apparent truth claims.<sup>9</sup>



Expert witness testifying in 2010 to the authenticity of videos IC00820 and IC00821, depicting the destruction of the Mostar Bridge in Bosnia and Herzegovina in 1993. [Source: ICTY Case No. IT-04-74-T.]

While the Internet has dramatically increased the reach of citizen journalism, much uploaded content is edited and captioned, thus highlighting its postproduction, which the court regards as an impoverishment of its evidentiary capacity. Nonetheless, these are often the only source materials that prosecutors have at their disposal to support a legal claim. With the advent of digital processing, the integrity of metadata becomes an even more urgent legal issue as the potential for subterfuge sinks below the threshold of human perception. Disputes around accusations of genocide and war crimes are thus archived by media materials whose status is in contention, not only at the level of representation (the information contained within the frame) but

<sup>9</sup> See for example, ICTY, “Prosecutor’s Observations Regarding Expert Report on the Authenticity of Videotapes IC00820 and IC00821” (The Hague: ICTY, 2010); and ICTY, “Prosecutor’s Observations Regarding Expert Report on the Authenticity of Videotapes IC00820 and IC00821” (The Hague: ICTY, 2010).

especially at the level of metadata, where informational inconsistencies can immediately raise legal doubts. Consequently, the international forums that adjudicate these materials must archive media in its original acquired state, regardless of how damaged it may be, in order to maintain its relative integrity. When presented in court, however, such materials are often duplicated and altered in order to be played properly. This was indeed the case with several audio files that were unintelligible in their raw state. Corrected copies sit alongside their original versions in the archives of the ICTY. In another case of audio manipulation, the sound of shelling was replaced with a birdsong when the video was presented in court for a second time in a different trial, once again raising doubts as to the authenticity of the video.<sup>10</sup>

What emerges from an examination of these audiovisual materials is the extent to which the court itself becomes a processing machine that works over the materials that enter its legal infrastructure and, in so doing, not only transforms them but also inscribes its legal protocols, producing signifying traces that can be read and narrated alongside the “official” biography of the object.

JUDGE: Well, thank you for assisting us.

WITNESS: You’re welcome. [The witness withdrew]

JUDGE: What’s to happen now?

A. I have the unenviable task to announce, Your Honour, that we have run out of witnesses for this week.<sup>11</sup>

<sup>10</sup> ICTY, “Gotovina et al. (IT-06-90) ‘Operation Storm,’” ICTY transcript 080408ED (The Hague: ICTY, 2008) 945–46. See also ICTY exhibit 014: ACE 80901R0000320056.

<sup>11</sup> Excerpted from ICTY, “Transcript 061026IT” (The Hague: ICTY, 2010), 5322–408.