

Law as Record: the Death of Osama bin Laden

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1. Scrutinising law's record

1.1. Recording law

Osama bin Laden was killed by US Special Forces in his home in Pakistan on 1 May 2011, and later buried at sea—or so goes the official U.S account.¹ The contestations surrounding bin Laden's death (e.g., Hersh 2015; Johnson 2015) highlight the complexities and contingencies of *record*: record making, disseminating, and receiving. Building on recent scholarship theorising the co-determinations of record² and law (Vismann 2008; Mawani 2012), this paper asks, what does the mediatised record of bin Laden's death tell us about law in our contemporary world?

Cornelia Vismann's influential genealogy of Western law analyses materialities, functions, and technologies of administrative record-keeping, drawing on selected instances of Western history from ancient Greece and Rome to the present. Vismann finds that law and record 'mutually determine each other' (Vismann 2008, xiii), and that 'official records have [a role] in the emergence of the notions of truth, the concepts of state, and the constructions of the subject in Western history' (Ibid., xii). Renisa Mawani's compelling theorization of law as archive 'combines, builds on, and expands

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1 President Obama announces death of Osama bin Laden. Available on <https://www.whitehouse.gov/blog/2011/05/02/osama-bin-laden-dead> (visited on 25 February 2016); see also Wilson, Whitlock & Brinigin 2011.

2 I use the term 'record' expansively to embrace 'archive'—the primary category in Mawani's analysis, and 'files'—the primary category in Vismann's analysis.

Derrida's (1998, 2001) insights on the force of law and on the archive as command' to highlight 'law's significance to historical, contemporary, and future struggles of sovereignty, authority, violence, and nonviolence' (Mawani 2012, 341 and 337). She argues,

law's archive cannot be broached as a compendium of sources or as a regime of power/knowledge alone. Rather, law *is* the archive. It is an expansive and expanding locus of juridico-political command [...] operati[ng] through [...] a double logic of violence: a mutual and reciprocal violence of law as symbolic and material force and law as document and documentation. Law's archive is a site from which law derives its meanings, authority, and legitimacy, a proliferation of documents that obscures its originary violence and its ongoing force, and a trace that holds the potential to reveal its foundations as (il)legitimate. (Mawani 2012, 337.)

With bin Laden's death, the double logic of violence marking law's archive (Mawani 2012), and the contingent, relational dynamics of truth, state, and subject—uncovered by Vismann as 'the three major entities on which the law is based' (Vismann 2008, xx)—are at the forefront. The contested claims to truth, our subject positions as spectator-consumers of these contestations, and the striking disjuncture between official and unofficial accounts,³ illustrate the very entities, dynamics, and mutualities of violence, law, and record identified by Vismann and Mawani. It is in part for these reasons that I have chosen to explore law as record through a scrutiny of the mediatised account of bin Laden's death.

1.2. Law, language, and 'law as ...'

Before launching into the main argument, I should address the manner in which I deploy the compound category 'law'. Without denying that law 'is also conceived as a semiautonomous realm' with dedicated spaces, professional practices, and notions of authority (Feigenson 2014, 20), my paper adopts notions of law that challenge entrenched legal doctrinal and disciplinary parameters. Rather than a focus on positive, doctrinal law, in keeping with interdisciplinary scholarship on law informed by literature, philosophy, critical theory, and history (e.g., White 1990; Constable 2005; Sarat 2001; Tomlins 2014), I approach law as 'the creation of a world of meaning' constituted by 'acts of language [that] are actions in the world' (White 1990, ix). I follow White in embracing as language more than lexical aspects of communication. Images, sound, gesture, affect, and feeling are all attributes of the social, relational 'deep sea of competence' that is, and informs, language (White 1990, 233) and the law (White 1973). In short, I read for law in co-existing records: the state's record of its conduct, and the record that is cultural text.

³ For example, Edward Snowden claims bin Laden is 'alive and well in the Bahamas' (Johnson 2015). And Seymour Hersh claims Pakistan knew of the raid in advance and that parts of bin Laden's corpse were 'tossed out over the Hindu Kush mountains' (Hersh 2015).

The enormous value of first, turning to cultural texts to discern these worlds of meaning, and second, of regarding law as more than positive rules, is that an expansive, interdisciplinary understanding of law's pervasive presence and forms of expression in broader culture is enabled. This understanding perceives knowledge and law in material and embodied senses.

[W]e think that there is some place that [knowledge] comes from which is external to ourselves. [...] [A]gainst this I would like to suggest that there are no rules out there [...] but that they exist only in reality, that is, only because we live them, we continually create and transform rules as we exist. There is no absolute place where they are all fixed, and to which we can refer to find their authentic form. Law is embodied, as we are and denying this is only a way of making life and law easier by pretending that rules are an absolute justification. (Davies 2002, 5.)

Reading for law in cultural texts thus involves expanding the analytic gaze so that law continues to be understood, at one level, as the 'uniquely authorised discourse for the state' (Post 1991, vii), even as critical and postmodern philosophies of law point us to embracing, *as law*,

everything—from literature to science, and everyday experience. The whole world is structured by laws of one sort or another. The law is a form we cannot avoid, whatever its substance. We think and act in relation to laws. There are laws of social behaviour, laws of language, laws relating to what counts as knowledge and what doesn't, and laws which say that [...] law itself must be clearly distinguished from other sorts of inquiry. [...] But how can law be even conceptually separate from its context? (Davies 2002, 4.)

Alongside established interdisciplinary approaches to both law and language, I build on the recent and ongoing 'Law As ...' project led by Christopher Tomlins. 'Law As ...' is importantly distinct from the conventional sociolegal framework of 'law and' through which disparate disciplines are yoked together. Instead, 'Law As ...' probes the insights facilitated by

deploy[ing] history as an interpretive practice—that is, as a theory, a methodology, and even a philosophy—by which to engage in research on law. Simultaneously it proposes history as a substantive arena in which other interpretive research practices—those of anthropology, literature, political economy, political science, political theory, rhetoric, and sociology—can engage with law. The result is a capacious interdisciplinary jurisprudence inflected by history rather than by the positivism of the social sciences, which holds out the possibility, a century after their divorce, of reuniting metaphysics with materiality. (Tomlins 2014, 1.)

This long overdue reuniting of metaphysics with materiality relates, in part, to a recovery of justice and ethical relations as inextricable aspects of law (McVeigh 2014; Tomlins & Comaroff 2011). As a lens for interdisciplinary scholarship on law, 'Law

As ...' dwells 'on the conditions of possibility for a critical knowledge of the here-and-now' (Tomlins & Comaroff 2011, 1044). In search of a critical knowledge of law in the here-and-now, I excavate legitimising scripts from mediatized accounts of bin Laden's death; engaging in an interpretive practice in order to illuminate insidious rule- and norm- making represented in texts we tend not to think of as legal.

A final note on methodology relates to the close reading of text and the approach of entering broad social questions through single textual examples. This paper draws on the sociolinguistic sub-field of Critical Discourse Analysis (CDA) (Fairclough 1989).⁴ CDA is informed by critical theory on language and power, in particular, the work of Foucault, Bourdieu, and Habermas. CDA seeks to render explicit underlying meanings and social relations so as to uncover that which may be hidden or normalized.

In CDA, close reading of text is highly valued because each and every instance of text is understood to yoke the macrocosm of society to the microcosm of a particular text. Because every instance of text expresses the conditions of possibility that are the larger structures of the social, the task for the scholar is to uncover the histories, politics, ideologies, and social relations embedded in, and occluded from, a text. Thus, through the lens of CDA, a single instance of text can validly lead to an excavation of broader social and political dynamics. Through close analysis of text, the goal is to analyse the ways in which one text relates to other texts (intertextuality) as well as to historical and synchronic contexts (Wodak 1995).

It is, collectively, these literatures and approaches that have led me to read for law in the mediatized accounts of the killing and burial of bin Laden. Vismann's media-material genealogy of Western law, and Mawani's theorizing of law as archive, are coherent with, and draw upon, many of the interdisciplinary approaches to law that I have sketched above, such that a history of our present—articulating co-determinations of law and record, illuminating law's contemporary archive—might be mined from accounts of bin Laden's death.

1.3. Why the case of Osama bin Laden?

As a figure central to 9/11⁵ and its aftermath, bin Laden may appear so extremely aberrant that his death stands in a class of its own, thereby offering limited analytic value. However, while his unique role in redefining violence (Lawrence & Karim 2007, 539) cannot be understated, it is also important to recognise that the discourse

4 Critical Discourse Analysis informs an extensive body of scholarship attending to the relationship between language and power. In addition to Fairclough's own considerable body of work, see (for example) the scholarship of Allan Luke on pedagogy, literacy, and race; Carmen Luke on critical media, and cultural studies, feminism, and globalisation; Teun A. Van Dijk on mass communications, race, and ideology; and Ruth Wodak on critical sociolinguistics. Blommaert & Bulcaen (2000) offer a useful review of CDA.

5 I use '9/11' as a shorthand with some regret. Richard Jackson warns of the bundle of meanings and risks attached to the way in which the use of 9/11 works to 'erase the history and context of the events and turn their representation into a cultural-political icon where the meaning of the date becomes both assumed and open to manipulation [...] [a] mythologizing practice' (Jackson 2005, 7).

of bin Laden's death is coherent with a re-calibration of law as an instrument of a national security ideology 'predicated on eradicating the identity and existence of the Other, not just controlling the illicit use of violence' (Brysk 2007, 5).

The parameters of this discourse in which law is subordinated to national security extends to targeted killings (e.g., the U.S. Department of Justice memorandum that became known as 'the secret drone memo'),⁶ justifications of civilian casualties in the extensive drone program (e.g., Byman 2013), state lawyers 'prepared to deem significant collateral damage as lawful' (Savage 2015), and President Obama's assertion that bin Laden's death is the realization of justice (Obama 2011). Almost five years after the bin Laden killing, in his State of the Union Address, Obama invoked the killing of bin Laden as proof of 'American determination [to] root out, hunt down, and destroy killers and fanatics who go after Americans,' naming others who had been targeted, and would be targeted, in the same way (Obama 2016). In short, bin Laden's death cannot be treated as an isolated response to a uniquely aberrant individual. A template for a certain mode of legality, in response to a certain category of enemy in the context of post-9/11 concerns, is inscribed in these events.

A further reason for exploring contemporary law through bin Laden's death is that, in our time, law's public face—its record—appears to have altered. The secrecy of Guantanamo tribunals, for example, seems emblematic of a displacement of law's traditional representations. At the same time, even as traditional representations have receded, '[d]igital visual displays construct legal knowledge in new ways and reconstitute our notions of community' (Feigenson 2014, 13), and images have been pivotal to the post-9/11 militarization of global culture (Mirzoeff 2006, 4-8). If the violence of 9/11 and its aftermath have been recorded through indelible images—planes crashing into towers, hooded abused prisoners—the question that must be asked is where is law in this record? If principles and practices that used to represent law, such as human rights, and judicial proceedings in the public domain, have been displaced by what is invoked as 'national security,' how is law represented and made visible today?

Neal Feigenson asks—and answers—'Is justice different in a culture awash in pictures? The proliferation of digital visuals in law and in society at large has many implications for this question' (Feigenson 2014, 13). The scholarship on visuality in law is in agreement that images are powerful in structuring relations to, and meanings for, law (e.g., White 1973; Douzinas 2011; Young 2005; Douglas-Scott 2013). And the visual culture literature highlights that contemporary technology has made for especially pluralized, mediatized, and relational meanings for law, and indeed, all aspects of the social (e.g., Speisel, Sherwin, & Feigenson 2005; Berry 2014; Mitchell 2005a).

An additional motivation for considering the mediatised record as a site of law

⁶ This memorandum was written in July 2010. A redacted version was publicly released, by court order, under the Freedom of Information Act in 2014. See Redacted U.S. Department of Justice memorandum justifying targeted killing of U.S. Citizens. Available on https://www.aclu.org/files/assets/2014-06-23_ca2-revised-opinion-plus-drone-memo.pdf (visited on 24 February 2016).

through bin Laden's death is that there is a striking disjuncture between what we have been *told* and what we have been *shown*. We were told about the Abbottabad killing and the burial at sea but the two primary visuals produced by the U.S. state—the Situation Room photograph,⁷ and Obama's video announcing bin Laden's death⁸—do not show us these events. Instead, images and narratives speaking to the Abbottabad raid and the burial at sea have emerged from the sphere of popular culture, rendering vivid and pictorial what official words have described. Given that law's archive operates, in part, through 'a proliferation of documents that obscures [law's] ordinary violence and its ongoing force, and a trace that holds the potential to reveal [law's] foundations as (il)legitimate' (Mawani 2012, 337), the proliferation of unofficial images speaking to bin Laden's death prompts this paper's exploration of the role of the *unofficial* (Part II below) in recording and representing law.

1.4. Law off the record?

Approaching law as record necessarily, as highlighted above, involves a turn away from law as positivist abstraction. For Vismann, law is 'a repository of forms of authoritarian and administrative acts that assume concrete shape in files' (2008, xiii). In other words, within action reposes law; a law discernible from the material reality of records. With bin Laden's death, the co-determinations of law and record are refracted through discourses of security and exceptionalism, such that certain actions are bracketed as *off the record*,⁹ or at least, off the record to which we, as publics, have access. These attributes of secrecy and selective publication, and the tension between public demands for disclosure and state declarations of secrecy, have inhered in record keeping and disseminating from the time 'the publication of records could create a public' (Vismann 2008, 147). Vismann points out,

[F]iles have been the medium instrumentally involved in the differentiation processes that pit state against society and administration against citizenry. The state compiles records, society demands their disclosure. Alongside these struggles over access to files, society arises as a discursive unit, a political force antagonistic to the state. (Vismann 2008, 147.)

Significantly however, with bin Laden's death, demands for disclosure have been minimal,¹⁰ suggesting a collapse of the state/society antagonism. Typically, this collapse accompanies the rise of the friend/enemy distinction marking a state of war

7 The Situation Room photograph. Available on <https://www.flickr.com/photos/whitehouse/5680724572/in/album-72157626507626189/>. (visited 25 February 2016).

8 Video of President Obama's announcement on bin Laden's death available on <http://www.youtube.com/watch?v=m-N3dJvhgPg>. (visited on 25 February 2016).

In general, major newspapers worldwide, carried an image of Obama delivering this speech as the pictorial accompaniment to the report's text (Kennedy 2012, 265-266).

9 Vismann writes, 'For the administrations of the Western world, a life without files, without any recording, a life *off the record*, is simply unthinkable' (2008, xii, emphasis in original).

10 The demands for disclosure made by the conservative legal group, Judicial Watch, discussed below at Part 3, are an interesting exception to this generalization.

(Schmitt [1929] 2007). In our context of what has been called war that is perpetual (Kennedy 2012, 262) and permanent (Lutz 2009), if law's conventional actors, such as lawyers, feature, they seem to be cast in very peripheral roles, almost as an afterthought (Savage 2015). In contrast, at the forefront of contemporary law, those with the agency and ability to deliver 'justice' appear to be military, intelligence, and counterterrorism personnel (Rajah 2014, 136). For all these reasons—law's contemporary context and actors, law's contemporary representations, the disjuncture between what we are told and what we are shown—it becomes important to perceive, in a manner suspicious of received notions, law's new record.

Part 2 explores the question of the unofficial—popular cultural texts—as law's record, examining the dynamics of popular cultural text as law's record through an analysis of the burial at sea of a fictional bin Laden-like character enacted in the popular television series, *Homeland*. Part 3 presents an analysis of the principal official photograph relating to bin Laden's killing, the Situation Room photograph. Part 4 concludes the paper, arguing that contemporary legal and political engagements may be revitalised by approaching law as record.

2. The unofficial as law's record

2.1. Unofficial and factual

Embracing the unofficial as part of law's record helps unsettle taken-for-granted assumptions about law's sites, sources, and forms of expression.¹¹ Scholars approaching law from a range of non-doctrinal perspectives have long illuminated law's pervasive presence in social sites and texts, including popular culture (e.g., Freeman 2004), images (e.g., Manderson 2015), and sound (e.g., Parker 2015). And as Fleur Johns points out in her compelling analysis of legality at Guantanamo, spaces of apparent legal exceptionalism and evisceration, may, on closer scrutiny, demonstrate 'to a hyperbolic degree, work of legal representation and classification' (Johns 2005, 613).

Demonstrating the potency of Johns' argument, bin Laden's killing too appears to have been a site suffused with (conventional) law. In October 2015, some four and a half years after the bin Laden killing, the *New York Times* disclosed that weeks before the Abbottabad raid, federal lawyers had engaged in '[s]tretching sparse precedents' to produce 'rationales intended to overcome any legal obstacles' (Savage 2015). This stretching of sparse precedents is a vivid illustration of Mawani's point that,

[b]y referencing statutes and judgments that came before and by determining which are apposite, law cultivates its meanings and asserts its authority while at the same time concealing and sanctioning its material, ordinary, and ongoing violence. (Mawani 2012, 341.)

11 Eve Darian-Smith (2013) highlights that while an extensive and interdisciplinary critical scholarship has turned away from narrowly positivist understandings of law, dominant, popular, and received understandings of law are overwhelmingly positivist, and legal education tends to perpetuate and emphasize a positivist model of law. Unsettling assumptions about law thus continues to demand attention.

Ironically, four and a half years after the event, the apparently extra-legal killing of bin Laden takes on a second life as a hyper-legal killing; a killing authorised by precedent and legal rationality.

[L]egal analysis offered the administration wide flexibility to send ground forces onto Pakistani soil without the country's consent, to explicitly authorize a lethal mission, to delay telling Congress until afterward, and to bury a wartime enemy at sea. By the end, one official said, the lawyers concluded that there was 'clear and ample authority for the use of lethal force under U.S. and international law'. (Savage 2015.)

However, just as images of the killing and burial are secret, so too is this legal memorandum invisible; off the record to which we, as publics, have access. Paradoxically, the disclosure of the existence of these secret memoranda—so secret that they were concealed from the state's own chief legal officer¹²—performs attenuations of state secrecy, compounding the contested truths marking bin Laden's death.

These revelations of secret legal memos have unfolded in the ostensibly factual spheres of a prestigious newspaper, the *New York Times*, and a book based on interviews with senior state actors (Savage 2015b). On the continuum of fact to fiction, these are claims to truth conventionally regarded as closely aligned to fact and therefore, closer to official than unofficial records. On the other end of the continuum, how do we grapple with law's record when it is articulated through the sphere of the unofficial and the (ostensibly) fictional?

2.2. Unofficial and fictional

The value of fiction as an analytic resource animating law's record is highlighted by Vismann. She writes, '[l]iterary fictions that deal with administrations highlight those media and realities of the law that nonfictional, scholarly self-presentations of the law and its history tend to overlook or even suppress' (Vismann 2008, xiii). Similarly, while affect, political myth, and images are among the repertoire of communicative resources deployed by the official record (Rajah 2014), the sphere of the unofficial is at liberty to mobilize these resources in a manner that is *qualitatively* different from the official.

As noted earlier, attending to fictional representations that speak to bin Laden's death may be especially important because, while officialdom has generated and relied principally on two images—the Situation Room photograph, and Obama's video announcing bin Laden's death—these official images do not actually *show* us the events official words describe. Instead, a collapsing of two sets of distinctions—fact/fiction, official/unofficial—appears to be at work when unofficial accounts (such

¹² Savage highlights that the intensity of the secrecy was such that 'the White House would not let them [the four federal lawyers] consult aides or even the administration's top lawyer, Attorney General Eric H. Holder Jr.' (Savage 2015).

as the television series *Homeland*, the films *Zero Dark Thirty*, and *SEAL Team Six*, and YouTube clips purporting to leak helmet-camera footage from the Abbottabad killing), render visible what official words have described. Given the paucity of official images, the mushrooming of unofficial visual media speaking to bin Laden's death points, in part, to the visual entertainment industry's recognition of our (the spectator-consumer 'us') desire and need to mark truth by seeing (Mirzoeff 2006; Mitchell 2005).

In light of the centrality of record in shaping the civil and political relations underpinning law (Mawani 2012; Vismann 2008; Azoulay 2008), taking the unofficial and the ostensibly fictional seriously builds understanding of 'the ways in which visual and discursive fields are part of war recruitment and war waging' (Butler 2010, ix). If law's contemporary record articulates our context of perpetual and permanent war (Kennedy 2012; Lutz 2009) then, as Judith Butler highlights, 'if war is to be opposed, we have to understand how popular assent to war is cultivated and maintained' (Butler 2010, ix). Implicit to confronting law's violence is also a wrestling with law's promise of 'a world of meaning in which justice is pursued' (Sarat 2001, 4; Cover 1986). Rather than succumb to discourses scripting war as 'an inevitability, something good, or even a source of moral satisfaction' (Butler 2010, ix), scrutinising law as record holds the promise of illuminating de-democratizing and propagandizing texts that re-inscribe the closures of friend/enemy while normalizing perpetual war and thwarting of law's promise of justice.

2.3. Militainment and law's record

Scholarship on post-9/11 engagements between the U.S. state and the visual entertainment industry compels a rethinking of received notions of demarcations between official/unofficial, and fact/fiction. Mary Douglas Vavrus, for example, traces enmeshments between profit-driven television and the Pentagon in describing the workings of the 'media-military-industrial complex' in *Army Wives*, a television program. *Army Wives* submits its scripts to the Pentagon's Entertainment Media Office; an office that 'won't support scripts that present negative portrayals of the U.S. military or its chain of command' (Quigley 2015). Vavrus notes that *Army Wives* 'submits scripts to the Pentagon in order to use Charleston's Air Force base as a backdrop for filming [...] and for employing its Air Force reservists as extras' (Vavrus 2013, 103). The content of *Army Wives* 'naturalize[s] and normalize[s] historically specific ideologies about Army gender politics and the wars in Iraq and Afghanistan' (Ibid., 93) even as 'it obscures the human toll on Afghan and Iraqi families, the politics of war, the military-industrial complex, and any number of problems experienced by female military personnel (such as rampant sexual harassment and abuse of female troops)' (Ibid., 95). Vavrus concludes that this program produces 'gendered propaganda and advance[s] banal militarism' (Ibid., 92).

Roger Stahl's monograph focuses on the post-9/11 relationship between war, media and popular culture (Stahl 2010). Stahl traces the emergence of the neologism 'militainment' to the surge in military-themed television after the 2003 U.S. invasion

of Iraq (Ibid., 6). Stahl defines militainment as ‘state violence translated into an object of pleasurable consumption [...] this state violence is not of the abstract, distant, or historical variety, but rather, an impending or current use of force, one directly relevant to the citizen’s current political life’ (Ibid.). And in her analysis of the U.S. television program *24*, Jinee Lokaneeta points to the manner in which ‘the popular and the official legal and political debates on torture inform and constitute each other’ (Lokaneeta 2011, 108). The circulation of a particular, state-serving set of meanings across the sites of officialdom and popular culture is consonant with the de-democratizing post-9/11 intolerance of dissent in the U.S. public sphere (Brown 2005, 27-36).

The following example is illustrative of concerns for law as record arising from the collaborations—perhaps collusions is the better word—between profit-driven entertainment media and the Pentagon. In August 2013, in the course of the long-drawn out Guantanamo military commission trial of five men accused of 9/11 war crimes, it emerged that while defence lawyers had not been supplied with *any* classified information, militainment had.¹³ Shortly after the bin Laden killing, when *Zero Dark Thirty* director Kathryn Bigelow, and screenwriter Mark Boal, approached the CIA and the Pentagon, a memo was declassified and handed over to them. In short, information denied to lawyers was supplied to film-makers.¹⁴

Thanks to demands for disclosure filed under the Freedom of Information Act by conservative legal group Judicial Watch,¹⁵ redacted versions of state records documenting communication between state institutions and *Zero Dark Thirty*’s writer and director are publicly available. Even in their redacted form, these documents reveal the astonishing degree of collaborative engagement between the state and these film-makers. The claim made by *Zero Dark Thirty* in its opening frames, that what we are about to watch is fact, not fiction, appears to be rooted in these collusions between state and media.

This example suggests that in our time, truth is emerging, not at trials, but in the narratives and images of film and television. Television, and increasingly film, is media often consumed in the private sphere of the home, and media that we, as consumer-spectators, are unlikely to recognise as sites of law. Television and film produced for entertainment are thus likely to escape scrutiny for the interests that are served. Certainly, features of the adversarial encounter in a common law public sphere trial—challenge, contestation, counter-narratives, proof—these dynamics are absent when mediatised images make a claim to represent what is *sensed* as truth; a claim that is all the more insidious when it instrumentalises affect, the narrative power of political myth, and the liminality of the fact/fiction conflation.

If unofficial texts are read as law’s record, what account of law’s ‘expansive and expanding locus of juridico-political command’ (Mawani 2012, 337) is inscribed

13 Available on <http://media.miamiherald.com/smedia/2013/08/30/10/26/f74LR.So.56.pdf>.

14 Available on <http://washingtonexaminer.com/zero-dark-thirty-becomes-an-issue-in-911-war-crimes-trial/article/2537824>.

15 See <http://www.judicialwatch.org/>.

in media we think of as entertainment? What accounts of truth, state, and subject are constructed? *Homeland*, the award-winning¹⁶ television series that is followed by (according to some estimates) 4.4 million viewers each week,¹⁷ illuminates law's unofficial record.

2.4. *Homeland's* Law

Before detailing *Homeland's* depictions of law, and its enactment of a burial at sea, it is important to contextualise this text of militainment in terms of the collapsing of the fact/fiction distinction. Consider, for example, the opening sequence of *Homeland*. *Homeland's* opening montage weaves three narrative strands together: one is fictional—images of *Homeland's* protagonists. The other two are factual—the aftermath of the 9/11 attacks and U.S. Presidents from Reagan to Obama. In the trajectory of presidents, there is a significant omission—George W. Bush is absent—and a significant emphasis—Obama's face flashes on the screen three consecutive times. All this unfolds on our screens through extremely rapid image shifts. Richard Sherwin highlights that rapid image shift is a technique drawn from advertising designed to induce viewer passivity. Pace and change simultaneously draw the eye and hold attention, but leave the viewer without time to engage in interpretive processing (Sherwin 2000, 143-144).

Despite including footage of the 9/11 attacks and their aftermath, *Homeland* claims to be fictional. In manifesting the ambivalences between binaried notions of fact/fiction, *Homeland* confronts us with the impossibility of knowing truth when we inhabit a mediatised public sphere in which impressions, as Ian Ward notes, are so much more potent than cold facts (Ward 2009, 7).

In *Homeland*, conventional sites and expressions of law are portrayed as inadequate to meet the urgent needs of the contemporary security context. For example, in the space of the first two episodes of season one, CIA agent Carrie Mathison violates formal law to set up surveillance on new national hero, Brody, who returns to the U.S. after eight years as a prisoner of war in Iraq. The unfolding plot shows us that Carrie has been correct in her suspicion of Brody, thereby legitimising Carrie's breach of law and valorising national security ideology over (formal) law.

When Carrie's CIA supervisor, Saul, discovers that she has set up the surveillance despite his instruction not to, Saul effects a repair by approaching a judge to sign documents permitting the surveillance. The transaction between Saul and the judge takes place in a closed room that holds only the two men. In the dialogue, and in the manner in which the judge reluctantly signs the papers, we understand that the judge is somehow corrupt, somehow beholden to Saul.

Later in the series, in season three, Saul and Carrie use public, televised Senate hearings to stage an elaborate and convincing performance of Carrie's fall from grace within the CIA. After she has been confined to a psychiatric ward for violent

¹⁶ *Homeland* has won 37 awards, including three awards in the 2013 US Golden Globe contest.

¹⁷ See <http://www.hollywoodreporter.com/live-feed/homeland-season-2-dexter-ratings-375374>.

and invasive treatment for her bi-polar disorder, Carrie is approached by Iranian secret service to work with them against the U.S. The unfolding plot shows us that this apparent public disgrace is part of an elaborate plan hatched by Carrie and Saul to penetrate Iranian intelligence networks.

In portraying formal law as obstructive (the restrictions on surveillance), formal legal processes as a theatrical smoke-screen (the Senate hearings), and a formal legal actor as corrupt (the judge), *Homeland* dramatically and convincingly marginalises the utility, values, actors, and platforms, of conventional law. At the same time, a particular mode of patriotism, and individual dedication to securing the nation, become a new, embodied law; legitimising the discretionary violence enacted by individual state actors whose conduct, within the shadowy spheres of counter-terrorism and intelligence institutions, is minimally transparent.

As this brief discussion illustrates, *Homeland* scripts a new set of meanings, authority, and legitimacy for law; meanings, authority, and legitimacy coherent with the manner in which democratic states have conducted their power in a post-9/11 context (e.g., Lokaneeta 2011; Brysk & Shafir 2007; Jackson 2005). An especially acute illustration of law's record through confluences of fact/fiction, official/unofficial is supplied by *Homeland's* portrayal of a burial at sea.

2.5. *Homeland's* burial at sea

As I have noted above, the U.S. state has not released photographs or video footage of the burial at sea. These are events the state has relied on words to describe. Significantly, this space of official invisibility has come to be occupied by unofficial images through *Homeland's* enactment of a burial at sea.

In December 2012, eighteen months after bin Laden's corpse was buried at sea, *Homeland* ended its second season with the burial at sea of a fictional bin Laden-like figure, the terrorist Abu Nazir. In a visual enactment remarkably attentive to the descriptions of the bin Laden burial supplied by the US state,¹⁸ an imam is shown on board a US Navy vessel, conducting the ritual cleansing of Nazir's bullet-riddled corpse, reciting prayers, wrapping the corpse in a white shroud. The corpse is placed on a narrow plank and tipped into the sea. On our screens, the burial at sea of Abu Nazir is marked by dignity, reverence, and an apparent adherence to Muslim practices;¹⁹ a visual legitimisation of the manner in which the U.S. dealt with bin Laden's body.

In this translation into the visual of the hidden spectacle of bin Laden's burial, *Homeland* presents the (fictional) U.S. as observant of law (in the sense of order,

18 Press Briefing by Press Secretary Jay Carney and Assistant to the President for Homeland Security and Counterterrorism John Brennan, 5/2/2011. Available on <http://www.whitehouse.gov/the-press-office/2011/05/02/press-briefing-press-secretary-jay-carney-and-assistant-president-homela>. See also Wilson, Whitlock & Brinigin 2011.

19 *Homeland's* dramatisation of this burial conforms with the US state's claims as to what constitutes prescribed Muslim burial practices, but the US account of what constitutes proper Muslim burial has been contested. See for example, Leland & Bumiller 2011; Halevi 2011.

decorum, ritual) in a situation in which it need not be. *Homeland's* U.S., mimicking the U.S. that killed and buried bin Laden, has the power and the management of visibility to treat this corpse in any range of ways and yet, the unfolding burial pays homage to the idea of a body of rules that must be observed in the regulatory ordering of this major life event; even when dealing with the corpse of a man characterised as evil beyond redemption, beyond humanity. Even if, in its content and form, that law be sharia, the ritual ordering of the moment is anti-anarchic, law reinforcing.

In a broader project of post-9/11 legitimisation, *Homeland's* respectful treatment of Abu Nazir's corpse blurs the boundaries of fact and fiction to exclude any suggestion that there is something annihilatory about dealing with a corpse in this way. Just as the Situation Room photograph (discussed in Part 3 below), displaces the primary violence of the raid on bin Laden's compound, the measured unfolding of ritual in Abu Nazir's burial distracts us from the primary violence of the open sea's erasures. The sea, after all, functions as an unmarkable medium; transforming the material reality of a body into the untraceable—beyond exhumation, forensics, or visibility of any kind.²⁰ As law's record, *Homeland's* representation of the burial at sea legitimises, even as it masks, the annihilatory violence of this move.

3. The Situation Room photograph

The Situation Room photograph has been disseminated and viewed worldwide (Kennedy 2012, 265-266), speaking both to bin Laden's death as a global media event, and to the vitality of contemporary visual culture. In keeping with the project of exploring law as record, I draw on Vismann (2008) and Mawani (2012) to ask, how does this photograph shape truth, state, and subject to represent law; and how, as law's archive, does the photograph participate in the 'mutual and reciprocal violence of law as symbolic and material force and law as document and documentation' (Mawani 2012, 337).

Together with theorising on law as record, this analysis of the Situation Room photograph also relies on Ariella Azoulay's lens on photographs as simultaneous expressions of, and platforms for, political relations that exceed nation-state ideology (Azoulay 2008, 12). For Azoulay, photographs establish a civil and political sphere embracing all actors involved in photography's social and technological encounter, including photographer, photographed subject, camera, viewer-spectator, processes of dissemination and remembering, and those present at a photographic event who are not captured in the image (Azoulay 2008; 2010).

Azoulay's complex and sometimes elusive argument is effectively encapsulated by Justin Carville in his discussion of her 2008 monograph,

The invention of photography is [...] identified as not only the beginning of a new technological means of producing images but as the emergence of a radical reorganization of social and political relations within and through the visual. The

²⁰ I am grateful to Camilo Arturo Leslie for this point.

very breadth of this ‘community of photography’—everyone who has had some relation to photography—what Azoulay terms the ‘citizenry of photography’ is what establishes it as ‘borderless and open’ (97), positioning photography as having agency in ‘de-territorializing citizenship’ (25). Photography’s invention is thus identified as marking a moment when a political space emerged within the arena of the visible in which all those governed are able to participate as citizens. (Carville 2010, 355.)

Also of importance is Azoulay’s argument for a re-thinking of the status of photographs as record. Deploring the tendency of both scholars and the general public to discount photographs as ‘partial, false, incidental, biased’ (Azoulay 2010, 9), Azoulay advocates for photographs to be valued as worthy documentary sources for research; in part so as to challenge the fantasy of sealed images, settled meanings, and single, sovereign perspectives (Ibid.). Given the global engagement with the Situation Room photograph, and the layers of meaning held within it, Azoulay’s bold reimagining of photographs as sites for transnational civil and political relations is of particular value.

3.1. Obscuring law’s violence

The Situation Room photograph depicts Obama’s national security team watching a screen we cannot see.²¹ With the exception of the uniformed Brigadier General Webb, who is working on his laptop, this room full of powerful state actors watches the screen beyond the photograph with intense concentration and fixed expressions. In this image, the U.S. is pictured as omnipresent watcher; managing territory beyond its borders. The image subsumes the world to a U.S. sphere of action and control with no suggestion that this expansive jurisdiction needs to be explained or justified. Extraterritorial power is seamlessly presented as taken-for-granted; the proper order of things.

Perhaps the most striking feature of the Situation Room photograph is its displacement of the primary scene of violence. In representing ‘spectatorship and virtualization’ (Kennedy 2012, 265) instead of the operation²² against bin Laden, this photograph captures a double paradox: first, as law’s record, it simultaneously reveals and conceals a killing; and second, in spite of hyper-mediatisation, we see *less* of law’s violence.²³

21 While a discussion of gender is beyond the scope of this paper, it is noteworthy that the Situation Room photograph depicts an especially masculine space: only two women are visible in a room otherwise populated by men. One of these women is Secretary of State Hillary Clinton, and her gesture, of a hand held over her mouth, is the most dramatic betrayal of an affective response from anyone in the image. The other woman, Audrey Tomason, Director for Counterterrorism, stands at the back of the room.

22 ‘Operation’ is the term Obama uses in his announcement of the killing; an announcement characterized by the significant avoidance of the term law. In the affiliations of ‘operation’ with the spheres of medicine and the military, ‘operation’ is surely designed to evoke the technical expertise of surgical precision and military calculations (Rajah 2014, 121).

23 I am grateful to Alejandra Azuero for this point.

In what it does show, the Situation Room photograph captures a major strand of law in our present: it expresses that law in which the authority of state resides in a national security team rather than in a (peacetime) cabinet or an apex court. With the national security team centre-stage, alternative configurations of state are displaced even as the photograph reinscribes a post-9/11 context of ‘terror as normality’ (Masco 2013) and a militarized civil sphere (Lutz 2009). The uniformed Brigadier General embodies this militarized civil sphere,²⁴ while personnel from counterterrorism and intelligence agencies embody surveillance and hidden limbs of state power. The national security state, we are shown, is composed of key civil members of cabinet, the brute violence of military, the covert violence of intelligence agencies, and the compound body of the President/Commander-in-Chief.

3.2. Liberal democratic virtue in the Situation Room photograph

In her discussion of political idealization, Wendy Brown explores ‘the relationship between citizenship, loyalty, and critique [...] as they are configured by a time of crisis and by a liberal democratic state response to that crisis’ (Brown 2005, 18). In exploring the psychoanalytic dimensions of the state-citizen relation, Brown focuses on ‘the place of *idealization* and *identification* in generating political fealty and conditioning the specific problem of dissent amid this fealty’ (Ibid., 27, emphasis in original). Brown draws on Freud to explain the dynamics of collective political idealization typical of conventional patriotism.

[I]ndividuals replace their natural rivalry toward one another with identification, an identification achieved by loving the same object [...] e.g., the image of the nation, or the power of the nation [...] However, the attachment, [...] produces two very significant, indeed troubling effects for democratic citizenship even as it binds citizens into a nation; first, the attachment achieved through idealization is likely to glory in the *power* of the nation, a power expressed in state action; second and relatedly, because individual ego ideals have been displaced onto the nation, citizenship and patriotism are rendered as both passive and uncritical adoration of this power. Power thus replaces democracy as the love object, and passivity, obeisance, and uncritical fealty replace active citizenship as the expression of love. (Brown 2005, 30, emphasis in original.)

Delving into the complexity of identification informing civic love, Brown explains the work of imaginary and symbolic identification in maintaining political idealization, as well as in ‘maintaining the kind of identification upon which a liberal democratic patriotic ideal depends’ (Brown 2005, 32). Drawing on the work of Slavoj Žižek, and on Rey Chow’s discussion of Žižek, she writes:

[I]n an image of America as good, free, and true, but injured by evildoers who

²⁴ Music critic, Chris Richards notes that the Brigadier General takes the seat usually occupied by the President, <http://www.washingtonpost.com/wp-srv/lifestyle/style/situation-room.html>.

‘hate our way of life’, imaginary identification involves identifying with wounded goodness, while symbolic identification identifies with the power that generates this image. [...] If imaginary identification tends toward identification with powerlessness in such scenes, symbolic identification identifies with power, but dissimulates this identification in the image of purity or woundedness through which it is achieved. (Brown 2005, 32-33.)

In the Situation Room photograph, the tense demeanours of the national security team, augmented by Clinton’s gesture of concern—her hand held over her mouth—facilitate our spectator-subject identification with the wounded goodness of liberal democracy.²⁵ In the concern and tension, we see affect appropriate to the liberal democratic state displayed: when lives are at stake, decisions and actions are informed, not by untrammelled bloodlust, but by intense concentration, and a sombre gravitas.

The displacement of the primary scene of violence facilitates the other limb of political idealization: symbolic identification. Symbolic identification ‘generate[s] a patriotic ideal that disavows its imbrications with state violence, imperial arrogance, aggression toward outsiders’ (Brown 2005, 33). Instead of seeing the Abbottabad raid—the chaos of sudden military attack in an extra-territorial residential arena, and the affect generated by people confronting, risking, or experiencing imminent and violent death—what we *do* see is a clean, orderly room, populated by clean, orderly people. State elites clad in corporate attire²⁶ suggest the (peacetime) quotidian regularity of bureaucracy and state institutions.

A further representation of conduct appropriate to a liberal democratic state might be read into the photograph’s apparent delivery of transparency. Even as it displaces the primary scene of violence, the Situation Room photograph appears to supply transparency by taking us into the immediacy and intimacy of the inner workings of state power. Liam Kennedy has characterised this move as the construction of visibility as a species of transparency and legitimacy (Kennedy 2012, 267).

All in all, in appearing to deliver transparency by showing us an otherwise secret state space populated by clean, orderly, concerned people, mostly dressed for work in corporate settings, and taking their work very seriously indeed, the fraught legitimacy, contested legality, and brute violence of the killing of bin Laden is simply not represented. The image thus facilitates identification with the wounded goodness of the US’s liberal democratic virtue even as it ‘disavows its imbrications with state violence’ (Brown 2005, 33).

In a contemporary context of globalized media culture, and processes by which ‘nation-states themselves are receding, however slowly and unevenly, as the basis of collective identification and collective action’ (Brown 2005, 19), the impact of the

25 I am grateful to Bonnie Honig for this point.

26 The potentially discordant note introduced by the one sartorial exception—the uniformed Brigadier General—is muted by his exceptional status, the formal military dress rather than battle fatigues, and the mundane activity of his working on a laptop.

Situation Room photograph far exceeds that of state-citizen within the container of U.S. domestic relations. In addition to Azoulay's point that 'photography [...] de-territorializes citizenship' (Azoulay 2008, 25), it is important to highlight that the U.S. is, uniquely, 'the one and only *global* state, with strategic interests and military deployments spread across the entirety of the globe' (Falk 2007, 18, emphasis in original). When U.S.-based and owned media corporations disseminate to audiences worldwide, it is not unlikely that 'global media corporations [...] actually export the perspective of the U.S.' (Butler 2010, xv). As participants in these global processes, the 'we' who are not U.S. citizens, are also likely to read into this image the liberal democratic virtue structuring a political idealization of the one and only global state. Given that '[t]he idealization that symbolic identification generates and lives off of are extremely powerful as legitimation strategies' (Brown 2005, 33), it is important to highlight that the audience for the Situation Room photograph's scripts of legitimation is a global spectator-subject.

3.3. Law as vengeance

Significantly, what we are not shown—the chaos and violence of the action unfolding in the Abbottabad compound—is more akin to law as vengeance than what we *are* shown. The arresting power of this photograph rests, in part, in the action and state actors we *imagine*, even as we gaze upon the suspense and stillness of the photograph. The dynamic watching Azoulay calls for—injecting movement and time into the stillness of the photograph—becomes part of what we *see* even though we are not shown it (Azoulay 2008, 14).

These different strands of law—liberal democratic virtue, law in the national security state, and law as vengeance—converged when the conservative group, Judicial Watch, filed Freedom of Information Act lawsuits against the U.S. Department of Defense and the Central Intelligence Agency. Judicial Watch sought 'all photographs and/or video recordings of Osama (Usama) bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011.'²⁷ At both first instance²⁸ and on appeal,²⁹ the courts upheld the US government's position that legitimate national security interests barred public release of these images. The courts agreed with the state's assessment that America and Americans were safer if the killing and burial were not evidenced by images. At first instance, Judge James Boasberg said:

A picture may be worth a thousand words. And perhaps moving pictures bear an even higher value. Yet in this case, verbal descriptions of the death and burial of Osama bin Laden will have to suffice, for this court will not order the release of anything more. (Mears 2012.)

²⁷ See <http://www.judicialwatch.org/document-archive/foia-request-for-osama-bin-laden-photos/>.

²⁸ *Judicial Watch, Inc. v U.S. Dep't of Defense*, Civil Action No. 11-890 (JEB) (D.C.D.C. 2011). For a media report, see <http://www.cnn.com/2012/04/26/justice/bin-laden-photos/>

²⁹ See *Judicial Watch, Inc. v U.S. Dep't. of Defense*, 715 F.3d 937 (D.C. Cir. 2013).

The word/image distinction that marks the official record of bin Laden's death (telling us with words what it will not show us with images), illustrates Foucault's insight that the archive is 'a system of enunciability [...] first the law of what can be said, the system that governs the appearance of statements as unique events' (Foucault 1972, 129). Visual culture augments the law of what can be said, with the factor of what can be *shown*, when state and judicial actors acknowledge the impossibility of controlling responses to images that will be seen worldwide. In Azoulay's words, 'within this space of photography [...] no sovereign power exists' (Azoulay 2008, 25).³⁰ Through the lens of law as record, the plurality of meaning ascribable to photographs, and the expansive, transnational civil political sphere of the visual (Azoulay 2008) shapes the law of what can be *shown* differently from the law of what can be said.

In the challenge to the state launched by Judicial Watch, there is a striking commonality between plaintiff and defendant: the legality of the killing, in and of itself, is unquestioned. This extra-territorial, extra-legal killing is understood by both plaintiff and defendant as belonging to a register of post-9/11 violence which 'creates its own interpretive conditions and so suspends ethical and legal conventions of response to its enactments' (Kennedy 2012, 265). Before the courts, Judicial Watch invokes the Freedom of Information Act, and principles of democratic transparency, with no apparent awareness of its complicity in a re-scripting of humanist principles of law and justice (e.g. Sarat 2001). In the web of meanings tied to the Situation Room photograph—law as vengeance, liberal democratic virtue, and law as the national security state—law as vengeance, and as the national security state, are the accounts of law privileged by the state, the courts, and by publics who seem to recognise that state and society cannot be antagonistic when friend/enemy is at work.

3.4. Captions, capture, and slippage

When it comes to law as record, captions, Azoulay points out are a key attribute of photographs (Azoulay 2010). In addition to facilitating administrative aspects of record-keeping, captions tend to influence what we see on a first encounter with a photograph. With renewed viewings, a photograph may reveal bodies, objects, and representations that our caption-directed gaze initially dismisses (Azoulay 2010, 10). Captions, and key terms linked to a photograph, will often disseminate discursive categories and ways of seeing that serve state power (Azoulay 2010, 9; 2008, 16).

The relationship between captions, photographs, and state power, are of particular salience with the Situation Room photograph for three main reasons. First, this photograph is especially expressive of state power because it was taken by the White House's official photographer, Pete Souza. Minimally mediated by non-state sources, disseminated both through the White House Flickr website and major newspapers worldwide, this state-generated photograph, depicting state elites in a

30 The US state's wary attention to the potency of images cannot but recall the continuing horror—a horror unregulated by nation-state affiliation—precipitated by images of prisoner abuse at Abu Ghraib and Guantanamo Bay.

highly secretive state space, has been assessed, at one point, to be the most viewed image on the internet (Kennedy 2012, 265).

A second reason to highlight the relationship between captions, photographs, and state power is the unwieldy texture of the caption the Situation Room photograph was originally given on the White House Flickr site: 'President Obama and Vice-President Joe Biden, along with members of the national security team, receive an update on the mission against Osama bin Laden in the Situation Room of the White House, May 1, 2011'. The leaden, bureaucratic language of the official caption illustrates Azoulay's point that captions serve an administrative, archival function while perpetuating state perspectives (Azoulay 2010, 9; 2008, 16).³¹ In the almost parodic bureaucrat-speak of the official caption, it is as if the weighty burden of truth and fact is carried by the official caption's sharp distinction from the witty word play in typical of captions found in the sphere of entertainment.

Unsurprisingly, the unwieldy official caption has been discarded in common use; the image has come to be known as the Situation Room photograph (Kennedy 2012, 262). This de facto caption speaks to the vitality of dialogic engagement between the spheres of officialdom and popular culture. The ponderous, immemorable caption generated by officialdom is discarded, even as the image is taken up, disseminated, and enlivened with a new, unofficial caption.

As a shorthand, the unofficial caption also expresses US soft-power dominance in the global arena. In addition to its factual depictions, various imagined guises of the situation room as the material encapsulation of U.S. global supremacy via networks of technology, intelligence, and military command, have featured in popular film and television viewed worldwide.³² Both with the Situation Room photograph and with popular cultural texts, the situation room becomes a synecdoche: a part representing the whole that is the extensive fabric of U.S. geo-political power. The operative presumption is that a reference to 'the situation room' needs no explanation. The presumption of shared knowledge is its own expression of the asymmetries of power shaping globalised media culture and the work of the imagination (Appadurai 1996).

The coherence between Azoulay's analysis of the relationship between photographs, captions, and state power, and Vismann's point on the contingencies of truth in law's record, is also brought to the surface by the early contestation as to what was actually unfolding in the situation room at the time the photograph was taken. As Liam Kennedy highlights, '[t]he first media reports, supported by White House spin, stated that the president and his team were watching live footage of the killing of bin Laden. Under media scrutiny, this story quickly swerved after it was admitted that only a small portion of the video viewed was live at the scene'

31 Additionally, the unimaginative captions given to photographs on the White House Flickr site appear to extend the titling conventions reflected by the White House archive of speeches, in which bland description appears to be the norm.

32 TV critic Hank Stuever offers a useful discussion of television and film representations of the situation room: <http://www.washingtonpost.com/wp-srv/lifestyle/style/situation-room.html>.

(Kennedy 2012, 263).

Would media have scrutinised this photograph and its surrounding claims in quite the same way if the photographer had not been a state actor? In any event, the quick swerve in the story reveals the state's ready participation in a misrepresentation.

A further fracturing of alignment between truth and state is articulated through state actors' failures to maintain silence so as to secure secrecy (Mahler 2015, 18). In his memoir, the former Secretary of Defense, Robert Gates, accuses those who were in the situation room of seeking public attention by breaching the silence that sustains secrecy (Gates 2015, 542). However, journalist Jonathan Mahler interprets the failure to maintain silence as a strategic alternative that he characterises as 'the more modern, social-media-savvy approach'. He elaborates, '[t]ell the story you want them to believe. Silence is one way to keep a secret. Talking is another. And they are not mutually exclusive' (Mahler 2015, 19).

Truth then, in a modern, social-media-savvy approach is especially contingent, especially relational. State is disaggregated into multiple, competing, institutional and individual voices. The materiality of contemporary social media, and norms of celebrity culture informing the desire of state elites for media recognition, mean that not even the state is able to generate that 'single and stable point of view' conventionally associated with sovereignty (Azoulay 2010, 11).

4. Conclusion

As law's record, the mediatised account of bin Laden's death, whether in the form of the official—the Situation Room photograph—or the unofficial—a journalist's account of secret legal memos, *Homeland's* burial at sea—illuminates the normalizing and legitimizing of the national security state across discursive arenas. At the same time, gestures and representations of law associated with liberal democracy thread through these accounts, compounding law in the national security state with liberal legality. We see this compounding in the reverence and ritual of *Homeland's* burial at sea, the concern and apparent transparency of the Situation Room photograph, and the assurance that secret legal memos have built on precedent. In short, approaching the events of bin Laden's death through the lens of law as record demonstrates the double logic of law's violence at work in representations of law in our present.

Scrutinising this record as law enables us, as non-state subjects, to discard the uncritical passivity engendered by militainment and the media-military-industrial complex (Vavrus 2013; Stahl 2010), and by scripts of political idealization generated when a liberal democratic state is in crisis (Brown 2005). In confronting the gap between what is officially disclosed to us, and what we are unofficially shown, law as record illuminates the impossibility of uncovering a single and certain truth. Law as record compels us, as subjects, to address the astonishing ideological coherence evident in the mediatised and transnational public sphere, and the ways in which we are constituted by global media culture. In prompting these processes and understandings, law as record may repudiate and challenge the numbing and

apparently unending force of law's subordination to national security. Our capacity to perceive law as record, to confront law's double logic of violence, and to grapple with the relational contingencies of truth, state, and subject, engages that critical possibility of revitalising the justice held within the promise of law.

Bibliography

Appadurai, Arjun: *Modernity at Large*. University of Minnesota Press, Minneapolis 1996.

Azoulay, Ariella: *The Civil Contract of Photography*. Zone Books, New York 2008.

Azoulay, Ariella: 'What is a photograph? What is photography?' 1 (1) *Philosophy of Photography* (2010) 9-13.

Berry, David M: *Critical Theory and the Digital*. Bloomsbury, New York 2014.

Brown, Wendy: *Edgework. Critical Essays on Knowledge and Politics*. Princeton University Press, Princeton 2005.

Brysk, Alison: 'Human Rights and National Insecurity'. In Alison Brysk & Gershon Shafir (eds): *National Insecurity and Human Rights*. University of California Press, Berkeley 2007, 1-13.

Butler, Judith: *Frames of War. When is Life Grievable?* Verso, London and New York 2010.

Byman, Daniel L.: 'Why Drones Work: The Case for Washington's Weapon of Choice'. 92 (July/August) *Foreign Affairs* (2013) 32-41.

Carville, Justin: 'Intolerable Gaze: The Social Contract of Photography'. 3 (3) *Photography and Culture* (2010) 353-358.

Constable, Marianne: *Just Silences. The Limits and Possibilities of Modern Law*. Princeton University Press, New Jersey 2005.

Cover, Robert: 'Violence and the Word'. 95 *Yale Law Journal* (1986) 1601-1629.

Darian-Smith, Eve: *Laws and Societies in Global Contexts. Contemporary Approaches*. Cambridge University Press, New York 2013.

Davies, Margaret: *Asking the Law Question. The Dissolution of Legal Theory*. Lawbook Co., Sydney 2002 (2nd edition).

Douglas-Scott, Sionaidh: *Law after Modernity*. Hart Publishing, Oxford and Portland, Oregon 2013.

Douzinas, Costas: 'A Legal Phenomenology of Images'. In Oren Ben-Dor (ed): *Law and Art*. Routledge, Abingdon 2011, 247-258.

Fairclough, Norman. *Language and Power*. Longman, London 1989.

Feigenson, Neal: 'The Visual in Law: Some Problems for Legal Theory'. 10 (1) *Law, Culture and the Humanities* (2014) 13-23.

Freeman, Michael: 'Law in Popular Culture'. In Michael Freeman (ed): *Law and Popular Culture*. Oxford University Press, Oxford 2005, 1-18.

Halevi, Leor: 'Watery Grave, Murky Law'. *New York Times* 7 May 2011.

Hersh, Seymour M: 'The Killing of Osama bin Laden'. 37 (10) *London Review of Books* (2015) 3-12. Available on <http://www.lrb.co.uk/v37/n10/seymour-m-hersh/the-killing-of-osama-bin-laden> (visited on 25 February 2016).

Jackson, Richard: *Writing the War on Terrorism. Language, Politics, and Counter-Terrorism*. Manchester University Press, Manchester 2005.

Johns, Fleur: 'Guantanamo Bay and the Annihilation of the Exception'. 16 (4) *European Journal of International Law* (2005) 613-635.

Johnson, Barbara: 'Bin Laden is "Alive and Well in the Bahamas" says Edward Snowden'. 25 Aug 2015. Available on <http://worldnewsdailyreport.com/bin-laden-is-alive-and-well-in-the-bahamas-says-edward-snowden/> (visited 25 February 2016).

Kennedy, Liam: 'Seeing and Believing: On Photography and the War on Terror'. 24 (2) *Public Culture* (2012) 261-281.

Lawrence, Bruce B. & Aisha Karim (eds.): *On Violence. A Reader*. Duke University Press, Durham and London 2007.

Leland, John & Elisabeth Bumiller: 'Islamic Scholars Split Over Sea Burial for Bin Laden'. *New York Times* 2 May 2011.

Lokaneeta, Jinee: *Transnational Torture. Law, Violence, and State Power in the United States and India*. New York University Press, New York 2011.

Lutz, Catherine: 'Anthropology in an Era of Permanent War'. 51 (2) *Canadian Anthropology Society* (2009) 367-379.

Mahler, Jonathan: 'What Do We Really Know About Osama bin Laden's Death?'. *New York Times Magazine* 15 October 2015.

Manderson, Desmond: 'Klimt's Jurisprudence—Sovereign Violence and the Rule of Law'. *Oxford Journal of Legal Studies* (2015) 1-28.

Masco, Joseph P.: 'Terror as Normality'. 69 (6) *Bulletin of the Atomic Scientists* (2013) 26-32.

Mawani, Renisa: 'Law's Archive'. 8 *Annual Review of Law and Social Science* (2012) 337-365.

McVeigh, Shaun: 'Law As (More or Less) Itself: On Some Not Very Reflective Elements of Law'. 4 (1) *UC Irvine Law Review* (2014), 471-490.

Mertz, Elizabeth & Jothie Rajah: 'Language-and-Law Scholarship: An Interdisciplinary Conversation and a Post-9/11 Example'. 10 *Annual Review of Law and Social Science* (2014) 169-183.

Mirzoeff, Nicholas: 'The Subject of Visual Culture'. In Nicholas Mirzoeff (ed): *The Visual Culture Reader*. Routledge, New York 2006, 3-23.

Mitchell, W.J.T.: *What Do Pictures Want? The Lives and Loves of Images*. University of Chicago Press, Chicago 2005a.

Mitchell, W.J.T.: 'There Are No Visual Media'. 4 (2) *Journal of Visual Culture* (2005b) 257-266.

Parker, James: *Acoustic Jurisprudence. Listening to the Trial of Simon Bikindi*. Oxford University Press, Oxford 2015.

Post, Robert: Introduction: 'The Relatively Autonomous Discourse of Law'. In Robert Post (ed): *Law and the Order of Culture*. University of California Press, Berkeley 1991.

Quigley, Samantha: 'To Tap Into the Military's Arsenal, Hollywood Needs the Pentagon's Blessing'. Available on <https://www.uso.org/stories/105-to-tap-into-the-military-s-arsenal-hollywood-needs-the-pentagon-s-blessing> (visited 25 February 2016).

Rajah, Jothie: 'Sinister Translations: Law's Authority in a Post-9/11 World'. 21 (1) *Indiana Journal of Global Legal Studies* (2014) 107-143.

Sarat, Austin: 'Situating Law Between the Realities of Violence and the Claims of Justice: An Introduction'. In Austin Sarat (ed): *Law, Violence, and the Possibility of Justice*. Princeton University Press, Princeton 2001, 3-16.

Savage, Charlie: 'How 4 Federal Lawyers Paved the Way to Kill Osama bin Laden'. *New York Times* 28 Oct 2015. Available on http://www.nytimes.com/2015/10/29/us/politics/obama-legal-authorization-osama-bin-laden-raid.html?_r=0 (visited 25 February 2016).

Sherwin, Richard K.: *When Law Goes Pop*. University of Chicago Press, Chicago 2002.

Speisel, Christina, Richard Sherwin & Neal Feigenson: 'Law in the Age of Images: The Challenge of Visual Literacy'. In Anne Wagner et al (eds): *Contemporary Issues in the Semiotics of Law*. Hart Publishing, Oxford 2005.

Stahl, Roger: *Militainment Inc. War Media and Popular Culture*. Routledge, New York 2010.

Tomlins, Christopher: 'Foreword: "Law As ..." II, History as Interface for the Interdisciplinary Study of Law'. 4 (1) *UC Irvine Law Review* (2014) 1-18.

Tomlins, Christopher & John Comaroff: '"Law As ...": Theory and Practice in Legal History'. 1 (3) *UC Irvine Law Review* (2011) 1039-1079.

Vavrus, Mary Douglas: 'Lifetime's Army Wives, or I Married the Media-Military-Industrial Complex.' 36 *Women's Studies in Communication* (2013) 92-112.

Vismann, Cornelia. *Files. Law and Media Technology*. Translated by Geoffrey Winthrop-Young. Stanford University Press, Stanford 2008.

Ward, Ian: *Law, Text, Terror*. Cambridge University Press, New York 2009.

White, James Boyd: *The Legal Imagination*. University of Chicago Press, Chicago 1973.

White, James Boyd: *Justice as Translation*. University of Chicago Press, Chicago 1990.

Wilson, Scott, Craig Whitlock & William Brinigin: 'Osama bin Laden killed in U.S. raid, buried at sea' *Washington Post* 2 May 2011. Available on https://www.washingtonpost.com/national/osama-bin-laden-killed-in-us-raid-buried-at-sea/2011/05/02/AFx0yAZF_story.html (visited on 25 February 2016).

Wodak, Ruth: 'Critical Linguistics and Critical Discourse Analysis'. In Verschueren et.al. (eds): *Handbook of Pragmatics*. Benjamins, Amsterdam 1996, 204-210.

Young, Alison: *Judging the Image. Art, Value, Law*. Routledge, Abingdon 2005.