

# **The image and the terrorist**

**Oliver Watts**

## **Introduction: art, mimicry and terrorism**

A number of artists in America have been arrested and detained in the last few years on the suspicion of terrorism. Using Clinton Boisvert as a primary example this paper provides metapictures to explain the difficult job of defining and imaging 'the terrorist'. Certain issues arise at the nexus of criminology and visual culture, in relation to terrorism. First, the visual representation of terrorism and the terrorist has become an important addition and a 'dangerous supplement', in Derridean terms, to anti-terrorist legislation. Visual culture has become a primary site in which legislative terms have been confronted both as concept and affect. Second, the site of collision, where art has been mistaken as the terrorist act, helps illustrate the relationship between sovereignty and outlaw, between friend and enemy and to use more recent parlance between the patriot and the terrorist. In addition to the written character of the law, the iconic character of the law, is also seen to be a site of negotiation for legal scholarship.

The focus on the law's visual character has become a study of recent interest (Douzinas & Nead 1999, Young 2005). The importance of visual culture involves the social construction of visual experience and, as Mitchell has pointed out, also the visual construction of the social (2002: 248). What does a terrorist look like? Both artists and the law

## Watts

share an interest in attempting to make visible the invisible and a stake in wanting to image this pervasive trope in our contemporary world.

The American artists who are the actors in this paper are linked by the policing powers outlined in the *Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001)*. While in none of the cases discussed were the artists finally charged with terrorism offences (instead other charges such as ‘mail fraud’ or ‘disorderly conduct’ have been laid against some artists); the *Patriot Act* seems to have created a more highly charged atmosphere in which these works were received.

Before expanding on the process of ‘terrorism creation’ by the State it is interesting that a symptom of this societal pathology can be seen in the practice of contemporary artists. Unlike the State, however, it is one of the artist’s jobs to mimetically represent what they see around them as a way in which to understand and communicate what they see and how they see it; that they have been drawn to mirror the terrorist or the terrorist act is not surprising. Mimesis is an important term for aesthetics and it would be too difficult to outline the varied use of the term in this brief paper. To focus on Walter Benjamin’s conception of mimesis, however, Benjamin saw that unlike language or text, the mimetic capacity of man to ‘represent’ or ‘express’ mimetically in art or play is a magical process that creates a ‘sensuous similarity’ that is lost in language (1986: 336). Visual imagery embodies the terrorist, here, in a way language cannot and may provide a clearer picture of the understanding of the term in the social context.

Through mirroring certain aspects of the real world some have uneasily touched on the visual markers of terrorism. Professor Steven Mann from the University of Toronto was detained in 2002 (Guernsey 2002). Mann experiments as an artist-scientist in the discipline of cybernetics and surveillance. In this case Mann, with computer wires hanging out from beneath his clothing and a video camera in his goggles became, under the surveillance of the airport security personnel, also a potential bomb. Similarly the ongoing case of Steven Kurtz, whose work with bacteria, for interactive displays, suggested that his home

### **The image and the terrorist**

was a bomb-making laboratory to visiting paramedic and police and he was soon inundated with FBI agents (Cash 2004).<sup>1</sup> In both these cases the Government's authority, both as panoptic and military machine respectively, was parodied by these artists so closely that they became confused with the enemy other, the terrorist.

Michael Hernandez de Luna's case is also notable and shows a more wilful intention to engage with the context of terrorism through art making. One of his many 'art stamps', was delivered during the anthrax scare of 2001 with a stamp bearing a skull with 'anthrax' written underneath. In October 2001 a Chicago mailing centre was closed down due to these stamps (Hamil 2001).

However, the primary case for this paper relates to a public art project that was clearly meant to respond to an anxious New York one year after the World Trade Center bombing. In December 2002 Boisvert placed 38 black boxes with the word 'fear' painted on them in a New York subway station, during rush hour. Although at first no-one took any notice, the police were soon called and the bomb squad reacted as if to a terrorist threat. The bomb-detecting robot found that the boxes were empty. Boisvert's boxes became a mimetic representation of a parcel bomb. In a time of anxiety it is not surprising that the artwork came into being as a bomb in the public sphere. The word 'fear' as a textual representation, a sign, of the proposed phenomenological affect, of the work, becomes merely excess to the emotions of fear Boisvert's act responded to and created in the police and security forces (Hilden 2003, Flynn 2002). Boisvert, a freshman at the New York School of Visual Arts, created the perfect metapicture, probably in part due to his naivety, for the role of the State in both reacting to and creating the image of the terrorist.<sup>2</sup>

### **The look of terror: imagining and creating terrorism**

The United States is of course not the only country to have responded to the threat of terrorism with new legislation such as the *Patriot Act*. There has been a rash of new laws in Australia to deal with the threat

## Watts

of terrorism. The Australian Federal Government defined ‘terrorist act’ in the *Security Legislation Amendment (Terrorism) Act 2002* [No 2] as an act committed with the intention of advancing a political or ideological cause and that this attack is made against the government or a section of the public. This ideological framing has been highlighted more recently through the *Anti-Terrorism Act (No 2) 2005* (the ‘Act’), which added ‘sedition’ to the *Criminal Code (Cth)*. Similarly the State laws in Australia have been expanded, for example in New South Wales with the *Terrorism (Police Powers) Act 2002*. There is a general fear among legal critics that in an effort to combat the threat of terrorism these Acts by criminalising ideological ‘terrorist acts’ and augmenting the powers of law enforcement, along with other state and international ‘anti-terror’ legislation, they have also eroded many fundamental freedoms, associated with a democratic state, in the name of security (see McCulloch 2003).

There has been much analysis and criticism of the statutory definitions of ‘terrorism’ and the ‘terrorist act’ within both national and international law (see particularly Schmid & Jongman 1983, Hocking 2003, Duffy 2005, Walter 2004). An overarching criticism is that there is no agreed definition among nations, nor even between United Nations statutes (Duffy 2005: 30). Although it is difficult to come to any consensus the political nature of the crime is common to all. It is an ideological crime yet the terrorist (usually) has no State. It is a crime yet terrorism does not define a behaviour, merely an ideological position (McCulloch 2003: 288). Any crime that a terrorist may commit towards ideological ends is already covered by other statutes (for example murder). Terrorism is an amorphous term.

A key aspect of Schmid’s definition is the focus on the interconnectedness of the terrorist and the victim; he suggests the meaning of the terrorist is defined by the victim or target (1983: 96–9). This recalls the friend/enemy binary of Carl Schmitt. For Schmitt in order to define or recognise the enemy one first had to create it through imagination (1996). Following Schmitt’s analysis Derrida writes:

And today, how many examples could be given of this disorientation of the political field, where the principal enemy now appears unidentifiable!

## The image and the terrorist

The invention of the enemy is where the urgency and the anguish are; this invention is what would have to be brought off, in sum, to repoliticise, to put an end to depoliticisation (1997: 84).

Žižek, too, following Schmitt suggests:

The division friend/enemy is never just a recognition of factual difference. The enemy is by definition always (up to a point) invisible: it cannot be directly recognised because it looks like one of us, which is why the big problem and task of the political struggle is to provide/construct a recognisable image of the enemy (2002).

Our understanding of terrorism can be seen as one of imagining and imaging, a repeated process of attempting to set the terrorist apart. So it is an important process to deconstruct the received notions of the war on terror; and the question of how it is possible for an artist to be mistaken as a terrorist, becomes a pressing issue not only for visual culture but for politics and the law. As Mitchell suggests:

The idols of our time, the monumentalization of 9/11, the fetish concept of terrorism, the mythic cultural icon of immunity as “homeland security,” cannot be destroyed either. But they can be sounded, made to divulge their hollowness. They can be melted down and drunk, deconstructed, and subjected to a secular divination. This will have to do for now (2005: 925).

Mitchell following Derrida sees the making of the terrorist in terms of the medical concept of the clone (2005). Derrida uses the metaphor of the immune system fighting a viral infection until the body (politic) is overcome by an autoimmunity pathology (Borradori 2003). Both discuss a visual definition of terror that is undefinable in its sameness and similarity to the populace as a whole. Indeed Derrida suggests that the new terrorism is defined by the character of invisibility:

One will be able to do even worse tomorrow, invisibly, in silence, more quickly and without any bloodshed, by attacking the computer and informational networks on which the entire life (social, economic, military, and so on) of a “great nation,” of the greatest power on earth, depends. One day it might be said: “September 11” — those were the (“good”) old days of the last war. Things were still of the order of the gigantic: visible and enormous! (in Borradori 2003: 102)

Watts

### ***The terrorist and the sovereign***

The starting point of this cloning, mirroring and inverting is what Žižek, following Lacan, refers to as the master signifier. Following Althusser, Žižek in *The Sublime Object of Ideology* suggests, ideologies work to identify individuals with rallying political terms, the ‘master signifiers’ (Žižek 1989), similar to Deleuze and Guattari’s concept of the *mot d’ordre*, or order word.

The legislation above both in the United States and in Australia has at its heart the duality of enemy/friend and of a process of imaging the terrorist as an inversion of the dominant master signifier. It is no coincidence that the federal American anti-terrorist legislation is named the *Patriot Act*; the patriot in America becomes the Australian equivalent of the ‘anti-terrorist’ in our respective statutory titles. A deconstructive reading of the name of the Act would question the symmetry of this binary of terrorist/patriot. Art, as terrorist act, questions the privilege given to the term patriot or anti-terrorist in this system. Indeed as suggested by David Teh, one of the primary issues in Boisvert’s *Fear Boxes* was the slippage and individuality in the word used:

The artist is not allowed to play at the work of the terrorist — even in a highly abstract way ... ‘Fear’ is also an order-word, very close to ‘terror’, but not the authorised one (Teh 2004: 57).

The imaging of the terrorist is an ideological apparatus and a job for Government and the Sovereign (people) alone.

### ***Legislation, the visual and the dangerous supplement***

This bifurcated process of ‘imaging’ the friend/enemy will affect the visual culture and will be evidenced there. Obviously the reinstating of the accepted master signifier will occur with an intensification of patriotic and Sovereign imagery which, without too much assertion, has been seen. In the Australian context we saw the prevalence of the Australian flag during the 2005 Cronulla beach riots which was used to underscore the notion that the Lebanese victims were not ‘real’ Australians: ‘Alcohol, the Australian flag and raw racism fuelled a violent rampage by thousands of young residents in Sydney yesterday,’ began *The Age* report (Kennedy 2005).

## The image and the terrorist

The Government strives to complete control of the imaging of the 'enemy', the master signifier of the other (see Donohue 2005). The visual signs of terrorism, in the total absence of a useful textual definition, have become worryingly important, and have not been adequately debated or discussed by parliament, criminologists or society at large.

The Australian Government's approach is found in the very title of the national campaign from the Attorney-General's Department between December 2002 and March 2006 entitled 'Let's *Look Out* for Australia' (my emphasis). This booklet and media campaign provided images as a template for what citizens should be suspicious of in order that the community become better surveillers of the terrorist threat. These images included among other things people videotaping known landmarks such as the Opera House. In a reflection of the Schmittian process of creating your enemy, as discussed above, the Australian government literally created a collage of multiple images of the terrorist. Paradoxically the collage-like composition of the images, in the shape of Australia, signifies the non-exhaustive and multiple, nature of the grouping, as if to say, 'Looking out for Australia will be ongoing and deferred'.

Such imagery has become a powerful addendum to the statutes regarding policing powers. The effect of over and discriminatory policing of political protesters and members of targeted communities, such as the Arab community in Australia has also been highlighted (see Anderson 2003: 314, Ahmadi 2003: 177). As suggested by Anderson, in relation to the *Terrorism (Police Powers) Act* 2002 (NSW):

Police use of power (such as in Part 3 of this Bill) that enables them to search a person simply because he or she belonged to a 'target' group — without specific reason to suspect that person of specific wrong doing — would most likely breach international law (2003: 313).

The policing approach towards these groups has been heavily based on visual representation. The Reverend Fred Nile in New South Wales parliament called for the banning of the chador for security reasons (see Riley & Burke 2002). In this instance the ritual clothing of the Muslim had become not just the signification of the doubted other but

## Watts

any religious importance allotted to such dress was to be outweighed by the threat that weapons could be concealed.

Visual markers supplement the lack inherent in the textual definition of the terrorist in the anti-terrorist legislation. If there is no behaviour that defines the terrorist then you are left policing a person's ideological position; it is a paradox that the invisibility of a person's ideology has produced such an exhaustive and complex register of visual information surrounding the look of a terrorist. This discussion seems to presuppose that there is a definite 'look' of terrorism that can indeed be made out and that the artists in question have in some way copied this image. It should be noted here, as the final point on the look of terrorism, that the original image itself is not self-contained, in regard to Derrida's notion of *differance* (Derrida 1998: 36). The original referent, the image of terrorism, is itself deferred and cannot ever be wholly mimicked. Policing terrorism based on a look is to replace the disunified linguistic sign in the text of the legislation with another uncertain system.

## The artist and the law

The role of the artist in the context of a visual culture trying to image the enemy is complex. To enter into this process of visual production of the enemy/friend artists have three possible approaches. First they may continue the process of identification with the symbolic, master signifier. Second, in an act of defiance or transgression, they may attack the icons of the master signifier, through iconoclasm. One such work was the recent piece by Azlan McClelland where he presented a burnt Australian flag; the police confiscated the artwork though no charge could be laid (see Geczy 2006). To attack the symbols of Government or the Sovereign, could be seen as a seditious attack and would therefore by extension link the artist to the terrorist (Donohue 2005: 262). In Australia the sedition laws do not specify acts against icons or effigies of the Sovereign or Government. John Howard, for one, seems quite consistent in his assertions that such iconoclasm is not seditious or criminal (*SMH* 2006). There is constant pressure, however, to provide like New Zealand and other jurisdictions in the United States, laws



## The image and the terrorist

that do criminalise this offence (see *Flags, Emblems & Names Protection Act 1981* (NZ) s11, Donohue 2005: 268).

Third, the artist may imitate the terrorist and repeat the cloning or viral reproduction but in an effort to highlight this process and perhaps destabilise it. On a simple level both art and terror use this strategy of threatening or redefining the symbolic apparatuses of the State. When terrorism is textually defined as an ideological threat to society (through violence) other forms of political dissent are conflated with terrorism (Donohue 2005). Ahmadi writes: 'The attempt to legally define terrorism ineluctably ends up criminalising political dissidence, and especially activist dissent' (2003: 177). Art too, as an alternative communication, is affected in this way.

### ***The artist, mimicry and provocation***

It is, however, well to remember not only the literary meaning of the term mimesis. In medicine mimesis is the appearance, often caused by hysteria, of symptoms of a disease not actually present; these works and their appearance to the police as terrorism are symptoms of a greater pathology as discussed above. Both the artist and the State imagine the terrorist, both mimic the terrorist. It is no wonder that in the cases mentioned that the realm of art was indistinguishable from the greater societal process of mirroring the terrorist; for the moment though let us look at the works as art.

In his recent attack on the 'pitiless' nature of contemporary art, Paul Virillio suggests that:

Avant-garde artists, like many political agitators, propagandists and demagogues, have long understood what TERRORISM would soon popularise: if you want a place in 'revolutionary history' there is nothing easier than provoking a riot, an assault on propriety, in the guise of art (2003: 31).

Foucault further sees the modernist avant-garde's approach as directly linked to legal frameworks:

It was at the moment when a system of ownership and strict copyright rules were established (toward the end of the eighteenth and beginning of

## Watts

the nineteenth century) that the transgressive properties always intrinsic to the act of writing became the forceful imperative of literature (1977: 125).

An 'assault on propriety' and 'provoking a riot' are here brought together as the shock of the revolutionary. This sort of artwork would be nothing without a society or legal system to be scandalised by the transgression. That the work of Boisvert, de Luna and Mann were public is a necessary precondition; Mitchell argues that art that enters the public sphere can always be received as a provocation to or an act of violence (1994: 365). Mitchell uses the statue of the Goddess of Liberty at Tiananmen Square as an example where quite a simple and prosaic allegory of Liberty in this context was a major precipitant to violence. The terrorist legislation and the action of the security personnel in effect created the work by reacting; the law created its own subject in the shape of the terrorist/artist (see Mitchell 2002). As a final paradox, all the subjects, Mann, Kurtz, de Luna and Boisvert, stated that they had never intended their 'artworks' to be received in this way and were shocked at its reception; perhaps they felt that as artworks, their small personal transgressions of rules of surveillance, biomaterial, postal law and bomb making would be sanctioned by their investiture as artists, professors and students.

As a final example, to complicate the precarious limit these artists are traversing, using art as their motive and shield, there is the tragic case of David Buck. A former lieutenant commander in the Australian Navy, deeply distressed and distraught, he strapped a fake bomb to his back in the hope that the police would kill him in what has been termed 'suicide by cop' (Kennedy 2006: 1). Charged with 'demanding money with menaces' (*Crimes Act 1900 (NSW) s100*) he was not jailed with Finnane J noting, 'He is someone who could properly be regarded as a hero' (quoted in Kennedy 2006: 6). When he felt that his symbolic investiture as a naval officer was something of a lie, Buck was convinced that his double, the evil terrorist, would be killed by the police; unlike the artworks this was a complete mimetic display whose intention was to be seen and shot as a terrorist (see Santner 1996). As an individual unauthorised to create the terrorist he shares this field directly with the artists. Though how could Buck be so sure that the security forces would be fooled and again what does a terrorist look like?

## The image and the terrorist

### ***Boisvert, mimicry and authorship***

Unlike many of the other cases raised above, a prosecution, albeit for a relatively minor offence, was successfully brought against Boisvert. As Boisvert's boxes did not contain any bomb, and were literally empty signifiers, he was not a terrorist. A charge of terrorism could not be laid. Boisvert was, however, charged with reckless endangerment and disorderly conduct, which after intervention by the American Civil Liberties Union attorney, William Stampur, was reduced to disorderly conduct alone. In the end, Boisvert was fined, served five days of community service, and wrote an apology letter to the police (Hilden 2003).

Boisvert's work shows that at the point of reception any text or image becomes dependent on modes of interpretation, here a legal and art historical discourse. Indeed in regard to the connection of legal protection, as freedom of expression, with artistic 'transgression', following Derrida and Foucault, it could be said that Boisvert's claim to authorship was overridden by other laws that saw his artwork as disorderly conduct and therefore 'authorless'. The law did not create Boisvert as the legal subject of the author/artist but was seen 'before the law' as a prankster and lout.

Hilden has explored the poor fit of the charges brought against Boisvert under the *New York Penal Code* (2003). The charge of reckless endangerment (s120.20), which was dropped before trial, is defined as recklessly 'engaging in conduct that creates a substantial risk of serious physical injury to another person'. There was no rush towards the exits, no fear induced heart attacks; clearly the crime was not made out. Disorderly conduct under New York law requires both intent or recklessness, and, second, certain types of conduct (s240.20). The 'intention' of Boisvert is arguable and confused by the naive understanding of the reaction his work would cause; in court he said his intentions were 'innocent'. The second part more commonly relates to behaviours such as 'fighting'; 'violent, tumultuous or threatening behavior'; 'unreasonable noise'; 'abusive or obscene language'; or 'an obscene gesture'. It was under section 240.20(7) that Boisvert was

## Watts

convicted: 'He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose'. The wording of this provision being so vague to be an effective catch all for pranksters of any hue. This section is also inappropriate. Boisvert did succeed in gaining a light sentence under the laws of 'disorderly conduct', a 'violation', but it belies the fact that these laws were wholly inappropriate.

Although, particularly in America, the argument of freedom of expression could be made out for the 'artwork', this would privilege Boisvert's objects, *a priori*, as the artwork. The question of its status as 'artwork' is of course central to this case for Boisvert's object is categorically anxious, neither terrorist threat nor artwork in the eyes of the law. The work vacillates between prohibition (the inversion of its privileged position as artwork or protected cultural expression) and, at the same time, its dependency on the legal framework for its meaning (see Young 2005: 44). The perception of the law that the object was worthy of censure provides much of the strength of the work as first, an object of fear and second, questioning the limit of art (law) in the public arena.

The media apparatus mirrored this formulation of Boisvert. Boisvert names the fear by objectifying it through the painted sign on the boxes, but is disallowed to present it publicly outside the official discourse of the state and the media. Indeed as Teh suggests the harshest censoring of the work did not come from the legal framework but from the media framework, which presented the work as 'senseless' and merely a childish prank as opposed to an artistic statement about the social conditions of the possibility of terror (Teh 2004: 58). As the *New York Times* critic wrote, 'what an idiotic project ... A night in the slammer probably caused him at least as much fear as he caused straphangers' (Kimmelman 2002).

### **Art, security and the State**

The response to the Boisvert *Fear Boxes* highlights what Mitchell has characterised as the myth making behind the icons of terrorism. Although the general public were not overly concerned with the *Fear*

## The image and the terrorist

*Boxes* at Union Station once the police were called another mode of viewing was inaugurated. The *Fear Boxes* were placed at the station as part of Boisvert's class concerning public sculpture; it will never be possible to gauge the type of response the 'work' received in the few hours before the police were called by concerned rail staff and whether indeed some viewers approached the piece as an artistic work (Flynn 2002). The police once seeing the boxes as possible bombs indeed abrogated their own viewing position and assigned it to the bomb-detecting robot. It is in this action that the work certainly became 'seen' as a bomb, for that is all such a robot can see.

The train station (Boisvert), the airport (Mann), the post office (de Luna), and the suburban house when juxtaposed against unusual practices such as the production of bio-material (Kurtz) become sites of surveillance. Where sovereignty is more than usually challenged surveillance must increase, and the threat of terrorism has affected both the magnitude and type of this surveillance (see Agamben 2001). All artworks respond to their framing, or *parergon*, especially that which is intentionally site specific or public. What has occurred in these cases especially that of Boisvert, is that the work has ceased to be seen as an artwork at all by certain viewers. It illuminates that the authorities are looking for such simplistic markers of the terrorist that they can be tricked by mere representations, empty boxes and empty signifiers. But as we have seen this is exactly what the conception of terrorism is: 'hollow', deferred and shifting. The irony of the situation was summed up in Boisvert's own sarcastic response to the seizure of another one of his artworks, 'I'm turning the authorities into art handlers' (quoted in Vizzini 2003).

But as pieces of anti-art the works have been destroyed by the State, in a final violence. Similarly Mann's computer systems were also destroyed during the body search for which he has sought restitution (Guernsey 2002). It is this violence of the State, in its ways of looking, response and destruction, which finally shows the State's anxiety. It is the anxiety of a symbolic structure under stress which is unfortunately encapsulated in the figure of former officer David Buck. As Agamben notes:

## Watts

A state which has security as its only task and source of legitimacy is a fragile organism; it can always be provoked by terrorism to turn itself terroristic (2001).

The case of Boisvert not only shows how empty our visualisation of the terrorist is but how dangerous such conceptions and ways of seeing may be.

## Conclusion

The art cases above are all linked by the fact that the State has reasserted its position as the only apparatus that may name the threat of terror. An artist may not name the terror (fear). Any creative or critical engagement with the term would be seen to contaminate and debase the legislative definition on which the State rhetoric of security is founded. More importantly it has been seen in these cases as an attack, an ideological challenge, which in a circular (legislative) definition helps define the artwork as terrorism.

That is not to say that art cannot be discussed in legal terms, ‘... law has always had a visual policy and understood the importance of the governance of images for the maintenance of the social bond’ (Douzinas & Nead 1999: 9). However in these cases the *aporia* between the law and justice is made out on the limit of the juridical definitions of terror, art and crime. In the fearful society in which we live the artwork was punished for being uncategorisable and transgressive because it could not be pigeon-holed. Yet in the end, without admitting to the need for a deconstruction of the present laws, the transgressions were banally and unjustly forced into legal categories; art finally was censored through the seemingly unconnected laws of mail fraud and disorderly conduct. The legal subject that Boisvert represented was undefinable, neither author nor terrorist nor really prankster (which is not as such a legal term). Following Santner, Boisvert could be seen to have created a work highlighting the State as one in a State of emergency; like State sanctioned violence the process of enemy production/imaging is a Sovereign’s role alone. In this way Boisvert usurped, for only a decisive moment, this Sovereign role. Tentatively

## The image and the terrorist

he can be seen as a metaphor for the terrorist who is punished and detained by 'laws' that merely administer the anomic situation that the terrorist is in; there are machinations of justice but the terrorist still remains, for the State, uncategorisable.

When artwork becomes terrorist activity through the lens of recent anti-terrorist legislation the distinction of Sovereign/outlaw is placed in question. In a society with no clear understanding of what a definition for terror might be the reliance on superficial visual signs has meant that any strange sight becomes terror. The outlaw has returned from exile and is now apparently in our midst. But we have been burning the terrorist/exile at the stake *in effigio* for so long that it is merely this effigy we expect to see. Boisvert's effigies become the real thing.

## Notes

- 1 Steven Kurtz is an Associate Professor of Art at the University at Buffalo, SUNY, and one of the founders of the Critical Art Ensemble, an artists' collective that explores the intersections between art, technology, radical politics and critical theory. According to information on the Critical Art Ensemble website, Steve Kurtz's wife died of heart failure in their home on 11 May 2004. The FBI were alerted to the presence of various items in Kurtz's home, including Petri dishes and scientific monitoring equipment. The FBI detained Kurtz the following day, raided his house and seized items including computers, manuscripts, books, artworks and his cat. While initially there were attempts to bring terrorism related charges against Kurtz, he was eventually charged with mail fraud and wire fraud. Robert Ferrell, a former head of the Department of Genetics at the University of Pittsburgh's School of Health was also indicted for allegedly assisting Kurtz to obtain the bacteria used in one of Kurtz's art projects. The case against Kurtz appears to be still pending. See <[www.caedefensefund.org/faq.html](http://www.caedefensefund.org/faq.html)> accessed 28 September 2006.
- 2 Unfortunately due to the unprofessional nature of Boisvert's practice there are only limited images available of the actual boxes available. The image reproduced at the end of this paper appears on a number of internet blogs, including <<http://blogs.salon.com/ooo1381/2002/12/19.html>> accessed 28 September 2006.

## References

- Agamben G 2001 'Security and Terror' *Theory and Event* 5/4 Trans C Emke: <[http://muse.jhu.edu/journals/theory\\_and\\_event/v005/5.4agamben.html](http://muse.jhu.edu/journals/theory_and_event/v005/5.4agamben.html)>
- Ahmadi A 2003 'Terrorism: Political, Not Legal' *Current Issues in Criminal Justice* 15: 176–9
- Anderson T 2003 'Terrorist Laws in NSW: disproportional and discriminatory' *Current Issues in Criminal Justice* 14: 310–15
- Benjamin W 1986 'On the Mimetic Faculty' in *Reflections: Essays, Aphorisms, Autobiographical Writings* Schocken Books New York
- Borradori G 2003 *Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida* University of Chicago Press Chicago
- Bouchard D F ed 1977 *Language, Counter-Memory, Practice* Cornell University Press Ithaca NY
- Cash S 2004 'Artist Ensnared by Patriot Act' *Art in America* September
- Derrida J 1987 *The Truth in Painting* Trans G Bennington and I McLeod University of Chicago Press Chicago
- 1997 *The Politics of Friendship* Verso London
- 1998 *Of Grammatology* Trans G Spivak John Hopkins University Press Baltimore
- Donohue L 2005 'Terrorist Speech and the Future of Free Expression' *Cardozo Law Review* 27/1: 233–341
- Douzinas C and Nead L eds 1999 *Law and the Image: The Authority of Art and the Aesthetics of Law* University of Chicago Press Chicago
- Duffy H 2005 *The 'War on Terror' and the Framework of International Law* Cambridge University Press Cambridge
- Flynn K 2002 'Art Student's Project On "Fear" Becomes A Lesson in the Law' *New York Times* 17 December: 5
- Foucault M 1977 'What is an Author?' Trans D F Bouchard and S Simon in Bouchard 1977
- Geczy A 2006 'The artist, the thief, the flag and sedition' *Art Monthly* 190 June
- Guernsey L 2002 'At Airport Gate, A Cyborg Unplugged' *New York Times* 14 March
- Hamil S 2001 'ANTHRAX stamp has feds going postal' *The Chicago Tribune* 19 November



## The image and the terrorist

- Hilden J 2003 'Fear Factor: Is Art that can be mistaken for terrorism protected by the first ammendment' *Entertainment Law* 2/3 Autumn: 130–5
- Hocking J 2004 'Terror laws: ASIO, counter terrorism and the threat to democracy' University of New South Wales Press Sydney
- Holly M and Moxey K eds 2002 *Art History, Aesthetics, Visual Studies* Yale University Press New Haven and London
- Kennedy L 2005 'Rascist Furore as Mobs Riot' *The Age* 12 December: 1
- 2006 'Court told how Timor unhinged navy hero' *Sydney Morning Herald* 5 June: 1, 6
- Kimmelman M 2002 'Critic's Notebook; In New York, Art Is Crime, And Crime Becomes Art' *New York Times* 18 December
- Mann S 2003 'Sousveillance, not just surveillance, in response to terrorism' <[www.chairetmetal.com/cm06/mann-complet.htm](http://www.chairetmetal.com/cm06/mann-complet.htm)> accessed 18 February 2003
- McCulloch J 2003 "'Counter-terrorism", human security and globalization — from welfare to warfare state?' *Current Issues in Criminal Justice* 14/3: 283–97
- Mitchell W J T 1994 *Picture Theory: Essays on Visual and Verbal Representation* University of Chicago Press Chicago and London
- 2002 'Showing Seeing: A Critique of Visual Culture' in Holly and Moxey 2002
- 2005 'Picturing Terror: Derrida's Autoimmunity' *Cardozo Law Review* 27/2: 913–25
- Riley M, Burke K and AAP 2002 'PM's veiled comments on how Muslim women dress' *Sydney Morning Herald* 22 November
- Santner E 1996 *My Own Private Germany: Daniel Paul Schreber's Secret History of Modernity* Princeton University Press Princeton
- Schmid A P and Longman A J 1983 *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature* Revised edn North-Holland Publishing Co New York
- Schmitt C 1996 *The Concept of the Political* University of Chicago Press Chicago
- Sydney Morning Herald* 2006 'Burning flag should not be criminal: PM' 27 January

## Watts

- Teh D 2004 'Art and the Veil: Censorship after 9/11' *Australian and New Zealand Journal of Art* 5/2: 53
- Virilio P 2003 'A Pitiless Art' Trans J Rose *Art and Fear* Continuum Press London
- Vizzini N 2003 'The "Fear" Box artist strikes again' *New York Press* 16/23 December
- Walter C 2004 'Defining Terrorism in national and international Law' *Terrorism as a Challenge for national and international Law : Security versus Liberty?* Springer 23–43
- Young A 2005 *Judging the Image* Routledge New York
- Zizek S 1989 *The Sublime Object of Ideology* Verso London and New York
- 2002 'Are we in a war? Do we have an enemy?' *London Review of Books* 24/10 23 May

## Statutes

- Anti-Terrorism Act* (No 2) 2005 (Cth)
- Crimes Act* 1900 (NSW)
- Criminal Code* (Cth)
- Flags, Emblems & Names Protection Act* 1981 (NZ)
- New York Penal Code* (2003)
- Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*
- Security Legislation Amendment (Terrorism) Act* 2002 [No 2] (Cth)
- Terrorism (Police Powers) Act* 2002 (NSW)

