

When criminal evidence goes viral

May 19 2014, by Wendy Frew



The scene of this woman's death, circa 1942, was photographed by NSW Police and is now part of the state's forensic photography archives. Credit: Sydney Living Museums

Should we be able to watch a man being tasered to death? That's a question being asked by legal scholar Katherine Biber who is researching what she calls the cultural afterlife of criminal evidence.

Last December, at the request of his family, a video of Brazilian student Roberto Laudisio Curti being tasered by NSW Police in a violent and ultimately lethal arrest was released by the coroner inquiring into his death and widely disseminated by Australian and international media.

Previously subject to strict rules of evidence during a trial and rarely seen by anyone outside of court confines, an increasing amount of material – everything from crime scene photos, police interview tapes and CCTV footage – is finding its way onto media websites, social media platforms, into scholarly works, and even museums and art galleries.

The more sensational material often takes on a cultural life of its own, appropriated for artistic or entertainment purposes that have nothing to do with its origins.

Crime scene photography has long been a staple of the tabloid news industry, a form of entertainment that has evolved into a noir aesthetic adopted by fashion, art photography and cinematography.

But Professor Biber, an associate professor in the Faculty of Law at the University of Technology, Sydney (UTS), asks whether some of the ways this material is used is insensitive or even dangerous. Her research, which is supported by a discovery project grant from the Australian Research Council, asks what is at stake when we prolong the life of [criminal evidence](#).

"The release of this kind of material feeds our hunger to see more and feeds the media's desire for more of it to be released and to show that material to the public," she says.

The lecturer in evidence and criminal procedures says it seems courts are increasingly making sensitive material public because of pressure on the media to produce stories more quickly, with reporters sometimes not even turning up to hear the trial.

Courts are also guided by a principle of "open justice", a belief that the judicial process should be open to the public and that such access

achieves transparency and accountability.

"Understanding that the public is unlikely to be present during a court case, courts still accept that the public has a right to know what goes on," says Professor Biber.

In the case of the murder of Victorian ABC radio journalist Jill Meagher, the Melbourne Magistrate's Court, guided by the principles of "open justice" released crime scene photos to the media before they were shown as evidence in court.

At the committal hearing for Adrian Bayley, the man later convicted of her murder, media agencies requested the release of the evidence, even though the prosecution had not yet shown the photos to the court. A number of media outlets then used the photos online.

Photos of the bedroom Bayley shared with his girlfriend were included in the package of images released to the media.

"What about that woman's privacy?" asks Professor Biber. "Why are we shown photos of their bedroom, their lounge room, their laundry full of buckets, with no explanation of their significance?"

Professor Biber was especially disturbed by a photo of Meagher's handbag: "I do question whether because she was a victim of a terrible crime that entitles us to rummage through her handbag".

There is a long tradition, too, of artists appropriating criminal evidence. In one particularly controversial case, in 2008, visual artist William E. Jones screened footage in art galleries that had been shot by Ohio State police in 1962 during a crackdown on public sex.

Jones argued it was important for gay men to know the history of police

surveillance. But the faces of many of the men in the footage – who may still be alive – are clear and could identify them to friends and family.

"Can you put criminal evidence in an art gallery and call it art?" asks Professor Biber. "I don't say that you can't but I do ask if that is the way families should find out about the secrets of one of their relatives."

The question also interests Dr Peter Doyle, a crime writer and media lecturer at Macquarie University who is working with Professor Biber on the limits of what is "showable" in forensic photographic evidence.

Dr Doyle has spent countless hours looking at old black and white photographs taken at crime scenes and accidents, including images of blood-spattered bedrooms and abandoned corpses. He has also examined thousands of police mug shots of alleged swindlers, robbers and murderers.

Some of those 130,000 photographic negatives that make up the NSW Police forensic archive became the basis of several hugely popular exhibitions curated by Dr Doyle at Sydney Living Museums, and of two best-selling books on crime in inner-city Sydney between the 1920s and 1940s.

"The historical and social aspects of the material made the photographs hard to resist because they depicted a world that few would remember," says Dr Doyle.

But the question always in the back of his mind is what is decent and "what is a fair thing when it comes to exhibiting these images in the public sphere"?

He says the newer the material, the more there is to consider, such as the chance that relatives of victims or perpetrators would be upset, as well as

privacy legislation and archives law.

"You can go to Pompeii and see people frozen in lava and you can imagine the horror, but it is death in the abstract. It is almost allegorical."

In collaboration with the Justice and Police Museum in Sydney, the experimental writing group Penguin Plays Rough and performance group Unhappen last year commissioned short stories, video art works and music ensembles that responded to a 1940s photograph in the museum's forensic archive of a murdered woman in her apartment.

Professor Biber asks whether the historical value or aesthetic effects of this kind of criminal and court material trumps any sensitivity about its public exposure.

"Does this material lose sensitivity over time? Are crime scene photos less sensitive if they are in black and white? We have to weigh the value against the potential harm, or clarify the ethics of showing this material."

Provided by University of Technology, Sydney

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