Dark Archive: The Afterlife of Forensic Photographs[*]

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ABSTRACT: This chapter explores what happens to old police photographs. When taken, these photographs capture the aftermath of a crime and are intended to have an evidentiary purpose. After the conclusion of proceedings, or the closure of the police file, these images sometimes acquire new value, separate from their role in a criminal investigation. Drawing upon the work of Luc Sante and Peter Doyle, this chapter seeks to understand what is *forensic* about forensic photographs and *what else* they might contain. It examines the effects of exhibiting police photographs in the cultural sphere, in their afterlife, exposing the aesthetic and affective attributes of evidentiary photography.

In Sydney's Justice and Police Museum, tucked away in a colonial courthouse beside the bustling harbour quays, one of the world's most important collections of police photographs is held in a closed collection. Known as the Forensic Photography Archive, it contains 130,000 glass plates and flexible negatives made by or for New South Wales Police between 1910 and 1964. The photographs have, over time, become separated from the documentation that might have explained the criminal investigations for which they were taken. These images are beautiful, violent, humiliating, distinctive, disturbing, banal, surprising and often inexplicable. Only partially surveyed and not fully catalogued, this 'dark archive' is now in the early stages of digitisation.[1] Over the last decade or so, the Archive has accumulated a charged public fascination, largely associated with several major exhibitions and books curated from its contents. This chapter seeks to understand what is *forensic* about forensic photographs and *what else* they might contain. It examines the effects of exhibiting police photography in the cultural sphere, exposing the aesthetic and affective attributes of evidentiary photographs and the personal lives captured within them.

[INSERT IMAGE #1: HALLWAY AND STAIRCASE]

[CAPTION: Details and date unknown. NSW Police Forensic Photography Archive, Justice and Police Museum, Sydney Living Museums.]

Evidence is law's epistemology and the means by which the law proves facts. Through the production of evidence, and its subsequent use and interpretation, facts are found, disputes are resolved and law is enforced. Law sometimes tries to prove facts from photographs, having done so since the first photographs were taken.[2] By deploying these images in legal fact-finding

processes, they become *forensic* photographs. Law has always assumed that photographs capture things in the world, and law seeks to attach itself to things in order that those things might then be arranged into law's categories. This is law's ontology. Each classified thing is then ascribed a legal status, and moves incrementally through law's doctrines until a legal judgment is reached.

Identity, recognition, act, omission, intention, corroboration, motive, credibility, tendency; each of these legal concepts – and others – might be proven with photographs. Law takes literally Susan Sontag's epigram that "photographs furnish evidence", without then seeking to classify photography as a form of evidence; the form dictates how an item of evidence is examined and interpreted.[3] Ignoring over one century of scholarship on photography, the law looks at photographs as if they were natural, neutral or benign; as if there were nothing impeding law's capacity to see what is in a photograph. In law's taxonomy, there are three primary forms of evidence: real evidence, documents and witnesses. The photograph might be a document when tendered to prove a fact arising from its contents, or it might be real evidence when its own physicality is somehow in issue. And yet the history of photography's jurisprudence also reveals that the photograph is always also tethered to a witness, a person whose testimony authenticates or narrates the image. Whilst the law was swift to absorb photography within its evidentiary fold, the evidentiary form of the photograph has remained slippery and unstable.

Of course, looking at a photograph is not the same as viewing a chart, nor hearing the testimony of an eyewitness, nor dusting a crime scene for fingerprints. Law has never been adequately sceptical about photography's relationship with the truth. The evidentiary capacity of the image is complex.[4] Law makes difficult demands of images: for example, they may be asked to narrate, illustrate, condemn or contradict. But this complexity is compounded by assuming that the questions at the centre of a legal dispute – Who is this? What happened here? – can be

answered without being distracted by *what else* the image contains, and what else we have grown used to demanding from images.

Since at least the middle of the nineteenth century, photographs have been given evidentiary uses in policing and prosecution. John Henry Wigmore, in his landmark compendium *A Treatise on the System of Evidence in Trials at Common Law* (1904),[5] cited the wide range of purposes for which photographs had been adduced into evidence before 1904 (not all of which were admitted or accepted by the courts at the time). These included photographs of the corpse of a homicide victim, the scene of a railroad injury, a sidewalk, a highway, arson, flood, personal features as to wearing of whiskers, bastardy and the likeness of the alleged father, an alleged insane person, a photograph of the defendant from the rogues' gallery, a lumber-pile, a pump, the plaintiff as injured and suffering, the position of the plaintiff when run over, wounds, injured limbs, flooded land, and photographs of the plaintiff's grandfather admitted on an issue of negro ancestry.[6]

In 1889, a Massachusetts lawyer argued that "[t]he photograph is something more than a copy; it is a fac simile, and it is a perfect record of facts, not subject to prejudice, bias, or defective memory".[7] But the early role of photographs in litigation was limited, when "judges declared that this form of evidence could be used only for illustrative purposes, rather than as independent proof".[8] This limitation was an early acknowledgement that the photograph could not speak for itself. In his *Treatise*, Wigmore encouraged law's embrace of new technologies, recognising photography as "a superior substitute for words",[9] but he stressed that photographs were tethered to witness testimony, and not independent from it. From the outset he was alive to the "danger and fallacy" that visual evidence be assumed to speak for itself. It did not; images demanded a human being, a witness, a testimonial sponsor, to stand behind them, to verify them, or testify to their contents and meaning. An image untethered from a witness, Wigmore wrote, was "mere waste paper, -- a testimonial nonentity".[10]

For Sontag, the "muteness" of photographs was what made them so desirable.[11] Whilst her point was to expose the role of images in the aestheticisation of lived experience, her claim that the image is 'mute' has been challenged. Photographs are not mute: they testify, they corroborate, they contradict. The problem with photographs – the *forensic* problem with photographs – is that despite popular assumptions that they are self-evident, evidentiary photographs do not speak for themselves. For John Tagg, an historian of photography, "[t]o serve as evidence and record, the image had to be said to speak for itself, though only qualified experts could read its lips".[12] Criminologist Alison Young said that "crime's images should be imagined as a response; that is, part of a dialogue that is always already taking place".[13] For Roland Barthes, the photograph's role was to ratify what existed in our consciousness; for Pierre Bourdieu, the photograph was an accompaniment to memory and recollection.[14] And so, despite contemporary social and juridical assumptions to the contrary, forensic photographs demand either captions or champions. An image without a testimonial sponsor is insufficient, manipulable and vulnerable.

Perhaps the best-known testimonial sponsor of forensic photography is the writer Luc Sante. His book *Evidence* (1992) is the result of Sante's research in the New York Municipal Archives, where a fragment of the New York City Police Department's photo collection had been salvaged; an apocryphal rumour suggested the bulk of the archive was dumped in the East River.[15] Sante's *Evidence* consists of 55 photographs taken by police photographers at crime scenes, most of them depicting murder victims. Men lie sprawled in pools of blood; a woman has fallen across a kitchen table; many of these people have been killed in bed. We see the bodies of people who were murdered on staircases, in hallways, in the street. There is a dead dog. Three children lie together in bed, covered with a quilt, dead. The photographic plates are book-ended by two short essays titled 'Archive' and 'Documentary', which have helped to

establish Sante's role in the spectacular break-out of police photography into the cultural landscape. What kind of 'evidence' is this?

Sante wrote:

> As evidence, [these photographs] are mere affectless records, concerned with details, as they themselves become details in the wider scope of police philosophy, which is far less concerned with the value of life than with the value of order. They are bookkeeping entries, with no transfiguring mission, and so serve death up raw and unmediated.[16]

It is a view of evidence which confronts the lawyer as somewhat askew. It seems that Sante has conflated the 'record' with the 'system' from which it emerged, and the 'document' with 'proof'; he says that 'evidence' is 'affectless', 'raw and unmediated', which every lawyer knows is not true. Yet Sante's approach to 'evidence' cannot be dismissed. While he was not the first to re-present legal evidence in an artistic context, his *Evidence* was the influential harbinger of what are now well-established curatorial and publishing genres, in which administrative photographs are seen as legitimate subjects for exhibitions, collections, and lavishly-produced coffee-table books. A burgeoning market now exists in which evidentiary artifacts are revived and circulated. Described as 'the cultural afterlife of evidence', it is dominated by mugshots and crime scene photographs, but also includes other surviving evidence from the criminal process, which can now be found in galleries, museums, high-end publications and online.[17] This contemporary fascination relies, at least in part, upon Sante's retrieval of photographic evidence from the administrative archive.[18]

Whereas Sante is the narrator publicly associated with the New York City Police Department photographs, the person most closely associated with the Forensic Photography Archive in Sydney is Peter Doyle, who has curated exhibitions, and produced books drawn from the

Archive.[19] Doyle explained his first encounters with the Archive: "Photos of just an empty street, or through an open window, and what the hell is inside the window? You can't really tell. … That's kind of typical of what I was seeing early on, was the cryptic importance of so much of it".[20] For photographs that *do* document the aftermath of criminal conduct, but *do not* tell us what that conduct was, 'cryptic importance' accurately captures their status. As Doyle conceded, "The things that the photo is really about, are outside the frame most of the time". Something happened. That's all we know: "Records were kept, a file was started". But Doyle holds onto one key inference: "nonetheless people at the time were moved by something. There are quite strong emotions off-camera". This is what motivates his work, beginning with the emotions that summoned the police photographer, and working his way back from there.

In his *Treatise* Wigmore noted that sometimes photographs would be insufficient, and sometimes they could misrepresent. Importantly, he recognised that sometimes photographs could be *too much*. That is, some images could be so powerful as to be dangerous. By this he meant that some representations could be "calculated *unduly to excite sympathy* for one party and *unfair prejudice* against another".[21] In an evidentiary sense, this arises where the probative force of the image is over-valued because it invites an emotional, rather than a rational, response. Susan Bandes and others have noted that not all emotional responses to evidence are necessarily prejudicial, or unfairly so, but that emotion always complicates our interaction with evidence.[22] The persuasive power of images is necessarily related to their emotional impact but this, too, is complicated.[23] Colour or black-and-white; silent or with sound; moving or still; real or simulated; live or mediated: there are no processes for sorting the relative probative and persuasive force of these different visual formats. There is an extensive jurisprudence of what makes an image "gruesome",[24] but there is no real way of knowing whether the gruesome image really is more prejudicial than probative, or whether it is possible – or even desirable – to distinguish its emotional from its evidentiary heft. As Bandes and Salerno have argued, "The

informational value of each [evidentiary] medium is closely intertwined with its emotional impact".[25] There is probably a visual spectrum that separates the 'vivid' from the 'harmful', but it is difficult to see distinct points along that trajectory, and always possible to find images which conflate or collapse it entirely.

For the legal scholar Richard Sherwin, the "aesthetic gratification" we experience when we encounter evidentiary images pushes us swiftly, *too swiftly*, towards "the natural human craving for certainty",[26] with the effect that, in the words of the legal scholar Michael Pardo, "the visual persuasiveness of the evidence may not track its epistemological warrant".[27] The danger, in Sherwin's analysis, is that the probative value of images will be over-estimated by jurors, legal counsel, judicial officers or citizens, each of whom has been acculturated to conflate seeing with believing.

Pardo reminds us that trial narratives, including those narrated with visually persuasive material, remain constrained by the evidence, and also by the rules of evidence. Legal participants know – or are required to believe – that "events in the real world" do not unfold with cinematic coherence; in the words of the legal scholar Robert P. Burns, evidence "resists the sheer coherence of art".[28] Law generates legal fictions which hold its doctrines together and, as Pottage and Mundy write, all of law's participants suspend disbelief and proceed on the assumption that these fictions fill the gaps "between legal propositions and the 'things' to which they refer".[29] Viewing police photographs demands a similar response, with the urge to form narratives from jumbled clues and inadvertent fragments. In adversarial litigation, the criminal trial is two stories at war with each other (*"I didn't do it"; "Yes you did"*). The laws of evidence constrain the parties as to what they can include in their stories, and the narratives are woven together with skilful advocacy. When viewing historical police photographs today, outside of the criminal trial, we continue to rely on the persuasive story-telling of those who serve as their testimonial sponsor.

Each photograph in the police archive is like a tiny museum cabinet, displaying a lost life and a past world. Sante has described police photographs as "superior if usually neglected anthropological documents", because "crime scenes are rigorously ordinary, since crime can occur anywhere, since people do not have the opportunity to clean up for company".[30] Looking at old police photographs, we are immediately struck that people don't look like this anymore; they no longer dress like this, people don't live in homes like these, they don't live these lives anymore. For most of the people who *did* lead these lives, their lives mostly passed un-photographed and un-recorded unless their lives collided with a serious crime or an unexplained death; serious enough to summon a police or morgue photographer. When they did, these astonishing images were made, recording alongside the crime all of the otherwise-lost little facts of their lives. For Peter Doyle, forensic photographs are rich sources of cultural information precisely because of the technical and procedural requirements of police photography. These images, he said, "capture everything, every little detail".[31]

[IMAGE #2: ROOM WITH MIRRORED DRESSING TABLE; ARMCHAIR; LARGE CHINTZ PILLOW ON FLOOR.]

[CAPTION: Bedroom, with bloodstained bed reflected in dressing table mirror. Details unknown, late 1930s. NSW Police Forensic Photography Archive, Justice and Police Museum, Sydney Living Museums.]

Of course, capturing everything demands capturing people's transgressions and secrets, their violated bodies, their poverty and desperation, giving rise to the dangers of humiliation, indignity, or worse. These are images of people who were loved, or who suffered, or who did bad and unforgivable things, or who did nothing at all and were wrongly accused. Debates have

not yet resolved whether any or all of the people captured in police photographs require legal protection and, if so, how that might be achieved or enforced.

[IMAGE #3: CRAMPED ROOM; DINING TABLE WITH FLOWERS; RADIO TIPPED SIDEWAYS.]

[CAPTION: Dining room with blood spatters and signs of struggle, scene of shooting murder of Alice Isabella Anderson by Maurice Reuben John Anderson, and the subsequent suicide of the latter, at Waverley, 2 May 1944. NSW Police Forensic Photography Archive, Justice and Police Museum, Sydney Living Museums.]

In the absence of clear legal principles, Doyle's working presumption has been that because the Archive contains images, they are always implicitly intended to be looked at. All images are made to be looked at, but these images were not made to be looked at now, nor by us. Whilst the Archive's custodians, Sydney Living Museums, has been developing protocols for access and use, Doyle has for some time been working with the notion of the "showable", and has tested techniques for rendering historical police photographs showable. Some of these techniques demand historical inquiry, and some involve aesthetic judgment. He refers repeatedly to "doing the work", by which he means research into providing facts about an image, what is in it, why it was made, the context in which it was taken, and what happened next. Importantly, Doyle believes that audiences require preparation and warning, and a hallmark of his exhibitions is his spoken narratives accompanying a slideshow of images, during which he leads viewers through the photographs they are seeing. Doyle also tests other methods of display: black-and-white or colour; the whole frame or a cropped section; single images or series'; big or small; up on the wall or reproduced in a book or on a digital screen?

An important feature of Doyle's work is his writing, which appears in publications associated with his exhibitions as well as in scholarly outlets, and it is through the writing that he tests different ways of doing things with police photographs, which includes true crime writing, creative non-fiction, crime fiction and more recently, memoir. [32]

[IMAGE #4: CRAMPED ROOM; MANTELPIECE IN CENTRE; DINING CHAIR FALLEN DOWN]

[CAPTION: Dining room with blood spatters and signs of struggle, scene of shooting murder of Alice Isabella Anderson by Maurice Reuben John Anderson, and the subsequent suicide of the latter, at Waverley, 2 May 1944. NSW Police Forensic Photography Archive, Justice and Police Museum, Sydney Living Museums.]

Sante's presentation of police photographs has always been in the context of writing: in *Evidence* the writing prepares us for the images that follow; in his other work the images appear occasionally, and embedded within the text.[33] Sante explained that when he first encountered the NYPD photographs he was interested in "piecing together a life from these photographs".[34] He described the homicide scenes, in particular, as "spooky, because they are life interrupted", these are rooms that are "suspended for all time"; here we have the dead surrounded by their possessions, like Egyptian pharaohs, but obviously violently awry.[35] Police photographs, whatever they document, capture something that happened. Whether we can ever know what happened, or whether we even want to know, poses challenges for their testimonial sponsor. For Doyle, the not-knowing, the decision not-to-know, is often the most significant point in his work; he reasons, "because it's nice not to catch every fish in the lake".

When Doyle and Sante appreciate the capacity of the police photograph to capture a hitherto uncatalogued event or scene, they identify a unique genre of image-making that is demanded by the rules of police procedure. Sante has described criminal investigation as "an intense critique of style",[36] for its need to catalogue unconsciously-left clues, patterns and signatures, and whilst the work of Walter Benjamin and Roland Barthes offers support for this claim, it is something that no detective would ever say.[37] The genre of police photographs is difficult to name. They seem to exceed what we might describe as administrative records or procedural artefacts, but they are not folk art nor vernacular photography. For Sante, old police photographs are distinguished by "certain off-register kinds of beauty",[38] but both he and Doyle express considerable anxiety about appreciating them aesthetically.

[IMAGE #5: UNMADE BED]

[CAPTION: Unmade bed and dresser in the bedroom where Edward Weyman was murdered, Surry Hills, 1 January 1945. NSW Police Forensic Photography Archive, Justice and Police Museum, Sydney Living Museums.]

Doyle makes the important observation that police photographs are "the opposite of Weegee" because with press photography "you are getting everything of importance in the frame", whereas with police photography "key knowledge is outside [the frame]". By this he means that crucial information for interpreting police photographs – the allegation, the personnel involved, statements of witnesses, observations recorded by police, events in the investigation – are elsewhere, in the police file. Today we are familiar with the genre of police photography, indeed it has been eclipsed by newer police image-making technologies using digital photography and video, but these historical images remind us of the incremental development

of techniques for visually capturing key moments in the criminal investigation. Looking at a crime scene photograph, Doyle observes, "just the randomness and the haphazardness of the inclusions, it sort of transcends composition". He also makes the important observation that "it's never the case that everything's inside the frame". A coherent narrative of the crime, the perpetrator's motive, the police investigation and its conclusion, law's judgment; all of these remain outside the frame. Whereas police photographs were made for the explicit purpose of generating these exterior effects, for Doyle, "as time goes by, what's outside the frame diminishes in importance". By this he means that, with the passage of time, it becomes possible to see police photographs untethered from the crime that was under investigation. These images have since become valuable sources for historians of domestic life, the working classes, architecture, fashion, and other scholars. Whilst Doyle denies the possibility that police photographs can be regarded solely for their aesthetic impact ("No, I don't think so. I think that's really corrupt and sickening"), others have not been so squeamish. For example, selected mugshots from the Forensic Photography Archive were acquired and magnified and displayed on walls in Ralph Lauren's flagship menswear stores, with the criminal suspects later serving as muses for one of his men's workwear collections.[39] In other instances, photographers, designers, stylists and actors have engaged in playful aesthetic citations of the Archive.[40]

In the earlier stages of his curatorial work, Doyle was seeking to understand why these photographs were taken, what crime they were hoping to solve, and what they could teach us about the world from which they emerged. As his project developed, however, he came to recognise that sometimes the crimes were trivial or banal ("the most boring photos", "fucking boring", "total bullshit", "just so dull", "the disappointment"), and sometimes they might be catastrophic ("very, very strong, very pronounced, and huge"). Also, of course, there were crimes that could now not be retrieved ("that David Lynch sort of quality of, yeah, there's something really big here but fucked if I know").

More significantly, he was beginning to understand the manner in which police photographs were unlike other photographs. He said, "We're so trained for our eye to be guided", but with crime scene photographs "there's a pleasurable confusion as to what we're supposed to be looking at", they're "oddly refreshing".[41] He acknowledged that new tools, or new methods, were needed to manage his encounter with police photographs: both the pleasure and the confusion they presented. True, he learned how to catalogue the items gathered within the frame and how to locate the image within the genre of police investigation: a homicide photo looked different from a break-in, a prowler, a confidence trick or a cache of stolen goods. But more distinctively – and more important for our understanding of photographic ontology – he recognised that every police photograph recorded a catastrophe which had already occurred, some criminal allegation which had summoned the police photographer, captured the image, and opened an investigation file. Invoking Roland Barthes,[42] Doyle concluded about the photographs in the Archive: "They're nearly all punctum, that's what I'm saying. They're *nearly all punctum*". Barthes' punctum is a wound, prick, sting or cut that the photograph perpetrates upon its viewer. The punctum is uninvited and accidental; we didn't see it coming and we didn't seek it out. Nevertheless, despite our distance or detachment from the events photographed, it seizes us in some intimate manner.

Doyle's conclusion – that police photographs are not actually 'about' anything that they document – appears to mirror some contemporary theories of law's ontology that acknowledge law's fabrication of persons and things. Recently, legal scholars have exposed and challenged some assumptions that underpin Western legal systems: that persons and things appear in the world, that they are arranged into categories named by law, and that these categories "*correspond* to nature or social facts".[43] Now regarded as "untheorized assumptions"; "problems rather than presuppositions", their status as legal fictions is coming to the fore, exposing law's "methodological commitment" to them as unsupportable.[44] Photography, too,

has relied upon assumptions that its apparatus is invisible and neutral. This draws attention to the tools that enable photography to 'make' or materialise persons and things, and challenges its purported indexical relationship with the photographed world. These assumptions unravel in police photographs. Susan Sontag, John Tagg, Vilem Flusser and others have demonstrated the impossibility of untethering institutional photography from the power of the state,[45] and both Luc Sante and Peter Doyle have, in their writing and curatorial practices, assumed that the presence of police irrevocably unsettles our encounter with police photographs. Police photographs didn't just 'happen', and the crimes they purport to investigate didn't just 'happen' either. They were 'made', just like the law makes persons and things. Indeed police photographs generate one method by which the law makes itself material: through the production of criminal evidence. Police photographs might be regarded as a cascading series of 'makings', one of which is to enable law's self-production.

Police photographs accumulate facts, fictions, patterns and accidents. As these photographs accumulate in police files, law is gradually accrued. Jacques Derrida observed this when he wrote that law is produced in the archive.[46] Where these accumulations conform with law's categories, they may become evidence, and through the production of evidence law is created, defended and enforced. It can be difficult to perceive the materialisation of law during law's slow, sometimes glacial, processes. Bruno Latour attempted to make law 'visible' during its production, and immersed himself in one of France's superior courts, observing the creeping, purposeful encounters between papers, files, shelves, pigeonholes, desks and conference rooms that marked law's progress from dispute to judgment.[47] Latour taught us that it is difficult to isolate the moment in which law is produced. Michel Foucault observed something similar in the production of knowledge, admitting that we would be able to perceive it only in retrospect: "History is that which transforms *documents* into *monuments*".[48] In the New York Municipal Archive and the Forensic Photography Archive, this is made manifest. Because these

photographs are found in the police archive, they are *already* monuments, *already* law. This, then, becomes their least interesting attribute, and we rely on Sante, Doyle, and others,[49] to help us to understand *what else* they contain and what else we can learn from them.

For Doyle, who has spent over one decade researching the crimes, the biographies, the subcultures and the worlds captured in the Archive, he eventually came to the view that "they're sort of inexhaustible in many ways". After a while, he began to see the entire Archive as a single body of work, police work, "with its own repetitions and its riffs and its own internal archetypes, motifs". He reflected on his own training in social semiotics, undertaken with Gunther Kress:[50] "Gunther's thing back then was, when things start repeating, you know your analysis is finished. You're starting to find the same things. I went ah, very good". Doyle challenged himself to put the legal categories to one side, and create new categories, new patterns, which enabled him to see the Archive afresh. Grouping images in new ways, and giving each group a name, was productive. One category, for example, is "Men in suits looking at stuff". He produced a surprisingly large series of images of detectives visiting crime scenes, grimly conscientious as they go about their job. The formality of their duty confronts the blackly comic title of their category, but also locates them – in cheap, tailored suits and not disposable police-issue coveralls – firmly in the past.

Both Doyle and Sante are now coming to view their respective archives through new visual categories. Whilst they both maintain the importance of honouring the context in which these images were made, they are both now looking for signs of something else that these photographs might be 'about'. Watching both Doyle and Sante reading historical forensic photographs now, they find the clues, piece together what might have happened, shape a story from these tawdry or sad remnants, and then – which marks a new turn – each of them veers away in another direction. After decades of immersion in violent and traumatic photographs, neither of them wants to inhabit this world anymore; they want to float above it. As Doyle said

recently, "It's almost too easy to write about these people. […] Biography is endless. Everyone has a life". He has become more interested in constructing dreamscapes, seeking out a collective unconscious, cultural or professional acts of repetition or self-citation, patterns, habits, riffs and anomalies. Of one of his new groupings, made from photographs taken in suburban Sydney in the 1960s, he suspects he might have "unwittingly re-assembled a psychic landscape" from his childhood.

Sante is doing something different, but again he is now moving away from telling the stories behind these photographs. Recalling his first response to the NYPD photographs, "The pictures shocked me, haunted me, showed up in my dreams. I had to know everything about them".[51] After living alongside these images for years, he began to "recognize patterns",[52] learning to see with "a historian's eye and a detective's eye".[53] In his more recent work, he concedes "The stories are gone… What's left are shards of unknowable stories".[54] What remains for Sante, what now interests him is abstraction, and he is actively seeking it out. He found a cache of crime scene photographs from the 1930s on eBay, and he bought them from the now-elderly daughter of a Brooklyn detective. When he showed them they captured exactly the kind of 'cryptic importance' described by Doyle. Something happened, but the photograph gives us no clue of where or how to look. Sante has written a series of pieces – he calls this project "The Empty Room" – about the experience of looking for something in these images. In one iteration, he wrote:

> And you couldn't call the photos cinematic, a popular adjective for crime-scene photos. They might as well be going out of their way to be anticinematic, showing you the backsides and armpits of everything, and tilting up to the ceiling and down to the floor like drunks or people with stiff necks. These are photographs of agitation. They are all about the places you look when you're desperate. You're looking for where to climb into the house, where to hide the evidence, where to start the

accelerant, where to find the party you want to shake down, where to look for items dropped by the suspects in their flight, where the perpetrators found a point of access, where you left that piece of paper you were carrying around that had the directions on it, where you last saw your wallet, where you were standing when you suddenly felt dizzy, the last sight you remember before everything went black.[55]

That Sante found these 'abstract' police photographs on the internet marks an important shift in our relationships with police photographs. Further, that he was able to purchase them for his private collection represents another challenge to our understandings of public records and their enduring custodianship. This new sense of the dark archive – a limitless, perhaps illicit online marketplace – is at odds with the dominant contemporary socio-political discourses of transparency and openness. Whereas both the New York Municipal Archive and the Forensic Photography Archive are undergoing time-consuming and expensive processes of digitisation and public release, the effects of these projects are difficult to predict. A digital image is much less physically fragile than a glass plate negative, but it is more vulnerable to manipulation, distortion, sharing and copying, and to dissemination beyond the control of the state. Regimes of open justice and freedom of information are intended to facilitate accountability, enabling citizens to see and to scrutinise what the state knows and possesses. Yet they give rise to the danger that Wigmore foreshadowed in 1904 when he warned that photographic evidence might be too much: overwhelming, suffocating and dark. Whereas in the regime of evidence laws, photographs that are too much are inadmissible, in the regime of transparency, everything is visible.

The cultural practitioner, the curator, the critic, the citizen activist, each of them wants to enter the dark archive and see everything within it, even if it is too much; *especially* if it is too much. Releasing police photographs from their administrative files unleashes evidence that proves so much more than crime. A disorienting perspective, a spark that triggers a memory, a psychic

leak, a recovered dream, things that are important but cryptically so. Police photographs

document what happened, but they challenge our capacity to understand it.

ENDNOTES

* The title 'dark archive' was suggested to me by Nerida Campbell, Curator at Sydney Living Museums, custodian of the Forensic Photography Archive at Sydney's Justice and Police Museum. She used the term to capture all that is currently unknown – and perhaps unknowable – about these photographs, and I use the title with her permission. Some of the ideas in this chapter were formulated in collaboration with Nerida Campbell, Peter Doyle and Kate Rossmanith, and I acknowledge their warmth and generosity during our work together. Unless otherwise cited, all quotations from Peter Doyle arise from interviews conducted with the author, approved by University of Technology Sydney, Human Research Ethics Committee (HREC reference number 2014000090). This research is supported by an Australian Research Council Discovery Grant DP130102224.

[1] Sydney Living Museums, the agency which is custodian of the Forensic Photography Archive, has a designated position for Curator of Digital Assets, currently held by Holly Schulte who undertakes digitisation, management and research of the Archive.

[2] The early history of photography used in legal proceedings is set out in Jennifer Mnookin, "The image of truth: Photographic evidence and the power of analogy", *Yale Journal of Law & the Humanities* 10(1) (1998): 18. She cites an 1852 publication in the United States which seeks to draw attention to an extant practice in France where "the lawyers are using daguerreotypes as a means of convincing the judge and jury more eloquent than their words": at 8, footnote 21.

[3] Susan Sontag, *On Photography* (London: Penguin, 1971), 5.

[4] See, for example, Katherine Biber, *Captive Images: Race, Crime, Photography* (Abingdon: Routledge-Cavendish, 2007); Richard K. Sherwin, *Visualizing Law in the Age of the Digital Baroque* (Abingdon: Routledge, 2007).

[5] J.H. Wigmore, *A Treatise on the System of Evidence in Trials at Common Law* (Boston: Little, Brown and Company, 1904).

[6] Wigmore, *A Treatise*, §792.

[7] Mnookin, "The image of truth", 18.

[8] Mnookin, "The image of truth", 13.

[9] Wigmore, *A Treatise*, §790.

[10] Wigmore, *A Treatise*, §790, §793.

[11] Sontag, *On Photography*, 24.

[12] John Tagg, *Grounds of Dispute: Art History, Cultural Politics and the Discursive Field* (London: Macmillan, 1992), 129.

[13] Alison Young, *Imagining Crime: Textual Outlaws and Criminal Conversations* (London: Sage, 1996): 16.

[14] Roland Barthes, *Camera Lucida: Reflections on Photography* (New York: Hill and Wang, 1981): 85; Pierre Bourdieu, *Photography: A Middle-Brow Art* (Cambridge: Polity Press, 1990): 22.

[15] Luc Sante, *Evidence* (New York: Farrar, Straus and Giroux, 1992).

[16] Sante, *Evidence*, 60.

[17] Katherine Biber, "In Crime's Archive: The Cultural Afterlife of Criminal Evidence", *British Journal of Criminology* 53(6) (2013).

[18] Katherine Biber, "Evidence from the Archive", *The Sydney Law Review* 33(3) (2011).

[19] *Crimes of Passion*, Justice and Police Museum, Sydney (exhibition) 2001; *City of Shadows: inner city crime and mayhem, 1912-1945*, Justice and Police Museum, Sydney (exhibition) 2005-2007, re-launched with additional material, with co-curator Nerida Cambell, July 2013; *Suburban noir*, Museum of Sydney (exhibition) 2013-2014. Peter Doyle, *City of Shadows: Sydney police photographs 1912-1948* (Sydney: Historic Houses Trust, 2005); Peter Doyle, *Crooks Like Us* (Sydney: Historic Houses Trust, 2009).

[20] Unless otherwise cited, all quotations from Doyle are taken from interviews conducted with the author.

[21] Wigmore, *A Treatise*, §792, emphasis in original.

[22] Susan A. Bandes and Jessica M. Salerno, "Emotion, Proof and Prejudice: The Cognitive Science of Gruesome Photos and Victim Impact Statements", *Arizona State Law Journal* 46 (2014): 1005.

[23] Bandes and Salerno, "Emotion, Proof and Prejudice", 1007.

[24] Bandes and Salerno,"Emotion, Proof and Prejudice", 1015-1016.

[25] Bandes and Salerno,"Emotion, Proof and Prejudice", 1017.

[26] Sherwin, *Visualising Law*, 112.

[27] Michael S. Pardo, "Upsides of the American Trial's 'Anticonfluential' Nature: Notes on Richard K. Sherwin, David Foster Wallace, and James O. Incandenza". In *Imagining Legality: Where Law Meets Popular Culture*, ed. Austin Sarat, (Tuscaloosa, AL: The University of Alabama Press, 2011), 135.

[28] In Pardo, "Upsides", 143.

[29] Alain Pottage, "Introduction: The Fabrication of Persons and Things." In *Law, Anthropology and the Constitution of the Social,* ed. Alain Pottage et al. (Cambridge: Cambridge University Press, 2004), 13.

[30] Luc Sante, "Further Evidence", *Contrapasso* (Noir issue, December 2013): 74.

[31] "An Unintentional Record – City of Shadows", Sydney Living Museum, (YouTube channel). Accessed June 16, 2017. https://www.youtube.com/watch?v=8rqZC2n29pc Of course, much of the available detail in these photographs is captured due to the equipment used, including large format cameras and glass plate negatives.

[32] Doyle, *City of Shadows*; Peter Doyle, *Echo and Reverb: Fabricating space in popular music recording, 1900-1960* (Middletown CN: Wesleyan, 2005); Doyle, *Crooks Like Us*; Peter Doyle, *The big whatever* (Portland: Dark Passage, 2015); Peter Doyle, *Amaze your friends* (Sydney: Random House, 1998); Peter Doyle, *Get rich quick* (Melbourne: Minerva, 1996) Peter Doyle, "Private eye, public eye: Sydney Police mug shots, 1912-1930", *Scan* 2(3) (December 2005), accessed June 16, 2017, http://scan.net.au/scan/journal/display.php?journal_id=67; Peter Doyle, "Detective writing: Mapping the Sydney pre-war underworld", *Southerly* 72(2) (2012); Peter Doyle, "The kibitzing archive", *Text* 18 (October 2013), accessed June 16, 2017, http://www.textjournal.com.au/speciss/issue18/Doyle.pdf.

[33] See for example Luc Sante, *Low Life: Lures and Snares of Old New York* (New York: Farrar, Straus and Giroux, 1991) and also Sante, *The Other Paris* (New York: Farrar, Straus and Giroux, 2015).

[34] Luc Sante, "Forensics in Art and Literature" (program session with Peter Doyle and Kate Rossmanith at the Sydney Writers' Festival, Sydney, May 19, 2016.

[35] Sante, "Forensics".

[36] Sante, "Further Evidence", 72.

[37] Benjamin's identification of an 'optical unconscious' is set out in his essay "A short history of photography". In *Classic Essays on Photography*, ed. Alan Trachtenberg. (New Haven: Leete's Island Books, 1980). Barthes' description of a photograph's 'punctum' appears in his book *Camera Lucida*.

[38] Sante, "Further Evidence", 72.

[39] Ralph Lauren's diffusion line, RRL, based its Fall/Winter 2011 collection on the Forensic Photography Archive, and its catalogue is an extraordinary aesthetic citation of the archival images, with fashion models superimposed onto images taken directly from the Archive.

[40] For example, the artist Matt Loughrey has colorised mugshots from the Forensic Photography Archive: see Jonny Weeks, "Razor gangs: eerie mugshots paint picture of Sydney's criminal past", *The Guardian (Australia)*, March 17, 2017, accessed July 18, 2017, https://www.theguardian.com/artanddesign/2017/mar/17/razor-gangs-eerie-mugshots-paint-picture-of-sydneys-criminal-past In another example, the photographer Luke Stambouliah has styled contemporary Australian actors to look like the subjects of mugshots from the Forensic Photography Archive: see Elizabeth Fortescue, "Aussie stars like you've never seen them before", *The Daily Telegraph (Australia)*, April 30, 2017, accessed July 18, 2017, http://www.dailytelegraph.com.au/entertainment/arts/aussie-stars-like-youve-never-seen-them-before/news-story/d95ad3c074ffc39f53fc272e5f55f573

[41] Katherine Biber, Peter Doyle and Kate Rossmanith, "Perving at Crime Scenes: Authenticity, Ethics, Aesthetics", *Griffith Law Review* 22(3) (2013), 809.

[42] Barthes, *Camera Lucida*, 27.

[43] Pottage, "Introduction", 2.

[44] Pottage, "Introduction", 2, citing Margaret Davies and Ngaire Naffine. Emphasis in Pottage; 2; 1.

[45] Sontag, *On Photography*; Tagg, *Ground of Dispute*; John Tagg, *The Burden of Representation: Essays on Photographies and Histories* (London: Macmillan, 1988); Vilem Flusser, *Towards a Philosophy of Photography* (London: Reaktion Books, 2000); Ariella Azoulay, *The Civil Contract of Photography* (Cambridge MA: The MIT Press, 2008); Biber, *Captive Images*.

[46] Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. Eric Prenowitz (Chicago: University of Chicago Press, 1996), 7-8.

[47] Bruno Latour, *The Making of Law: An ethnography of the Conseil d'Etat*, trans. Marina Brilman and Alain Pottage (Cambridge: Polity, 2010), 70.

[48] Michel Foucault, *The Archaeology of Knowledge*, 2nd. English ed., trans. A.M. Sheridan Smith (London: Routledge, 2002) 8, Emphasis in original.

[49] In late 2017 a new exhibition drawn from the Forensic Photograph Archive will open at the Museum of Sydney, *Underworld: Mugshots from the Roaring Twenties*, curated by Nerida Campbell.
[50] Gunther Kress is a scholar of social semiotics and author of books including *Literacy in the New Media Age* (New York: Routledge, 2003) and *Reading Images: The Grammar of Visual Design* (New York: Routledge, 2006).
[51] Sante, "Further Evidence", 72.
[52] Sante, "Further Evidence", 74.
[53] Sante, "Further Evidence", 72.
[54] Sante, "Further Evidence", 76.
[55] Sante, "Further Evidence", 76.

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