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Visualizing Violence: The Ethics of Photographic Evidence in the Domestic Violence  
Trial and Popular Culture

A dissertation submitted in partial satisfaction for the degree Doctor of Philosophy

in

Communication

by

Kelli D. Moore

Committee in charge:

Professor Patrick Anderson, Chair  
Professor Lisa Cartwright  
Professor Kelly Gates  
Professor Marcel Henaff  
Professor Roshanak Kheshti

2013

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Chair

University of California, San Diego

2013

## DEDICATION

This dissertation is dedicated to my family.

## EPIGRAPH

The extent to which the solution of theoretical riddles is the task of practice and effected through practice, just as true practice is the condition of a real and positive theory, is shown, for example, in *fetishism*.

--Karl Marx, *Economic and Philosophic Manuscripts of 1844*

Pictures are the things that have been marked with the stigmata of personhood; they exhibit both physical and virtual bodies; they speak to us sometimes literally, sometimes figuratively

--W.J.T. Mitchell, *What Do Pictures "Really" Want?*

In an analogy both terms are on an equal footing; ontologically and semiotically. They belong to the each other at the most profound level of their being

--Kaja Silverman, *Flesh of My Flesh*

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Professors Valerie Hartouni and Robert Horwitz provided guidance at the early stages of my doctoral work. Your questioning of my thought was devastating and inspired me to think harder about that stakes of my project and why it matters to the world. I will always be grateful for the rigor you demanded of my work.

I could not have asked for a better dissertation committee: Professor Patrick Anderson; Professor Lisa Cartwright, Professor Kelly Gates, Professor Marcel Henaff and Professor Roshanak Kheshti. Patrick, thank you for the enthusiasm you always brought to our discussions. Your steadfast encouragement nurtured my will to not merely finish the project, but to finish well and to continue to thrive.

I owe a tremendous intellectual debt to Lisa Cartwright. Your thought and professional generosity gave me the courage to stake out political positions through my

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I have also benefitted from the generosity of Kelly Gates and Marcel Henaff. Thank you for setting a fine teaching example and for recommending me for opportunities to workshop and publish my work.

This dissertation would not have been possible without the contributions from administrative and law professionals working in a variety of institutions. My work in these pages is dedicated to the efforts of those who took the time to explain the work they do to me. In particular, Attorneys and Administrative Staff at: the San Diego Office of the Primary Public Defender; Office of the San Diego City Attorney; San Diego County Superior Court; San Diego Police Department; Family Justice Center; San Diego Museum of Photography; Center of Court Innovation and, Laboratory of Comparative Human Cognition.

A number of kindred spirits read (or listened to me talk about) my work over the years and were steadfast friends and to whom I will always be grateful: Acadia, Alana Zilberg, Ali, Bernake, Benjamin Balthaser, Lauren Berliner, Michael Cole, Charlotte Dereppe, Desdemona, Dayo Gore, Sora Han, Monica Hoffman, April Huff, Emma Johnson, Nadine Kozak, Olga Kuchinskaya, Robert Lecusay, Liz Losh, Alain Loute, Erin Malone, Arianne Miller, Amy Motlagh, Chandra Mukerji, Pixel, Leonora Paula, Andy Rice, Sage, Scribbles, Jonathan Shafran, Pawan Singh, and Sabrina Strings.

## VITA

### Education

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Master of Arts, University of California, San Diego, 2009

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### Research Areas

Visual culture; law and society; feminist jurisprudence; performance studies; science and technology studies; aesthetics

### Work in Progress

My current project examines the communicative practices between legal actors, institutions and interpretive communities as they make presumably collective decisions about how to remedy crimes of gender-based violence. I focus on the visual culture of domestic violence adjudication and prevention. This work traces the entry of photography in to the court system as a novel form of evidence. I then examine historical representations of domestic violence in public health media. I am particularly interested in the production of digital images of battered women as evidence photography and the court procedures they engender to protect their status as ‘evidence.’

### Publications

Forthcoming. Moore, Kelli. “Visualizing the Complex Agency of Battered Women: Legal Practices of Surveillance through Photography,” in *Feminist Surveillance Studies*, Rachel Dobrofsky and Shoshana Magnet, eds. (under contract, Duke University Press)

In Press. Moore, Kelli. “Photographie Feminine: Exile and Survival in the Photography of Ana Mendieta, Donna Ferrato, and Nan Goldin,” *Anglistica: An Interdisciplinary Journal* Wanda Balzano and Silvana Carotenuto, editors.

Moore, K. 2004. *Op Data, 2001: Red Hook, Brooklyn: Community Assessment and Perceptions of Quality of Life, Safety, and Services*. New York: Center for Court Innovation.

Moore, K. D. 2007. "Views of Safety and Quality of Life: Results of an Annual Survey in Red Hook, Brooklyn." Pp. 267-278 in *Documenting Results: Research on Problem-Solving Justice*, eds. G. Berman, M. Rempel, and R. V. Wolf, New York: Center for Court Innovation.

## **Conference Presentations**

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*International Conference on Human Rights and the Humanities*

Panel Organizer/Presenter: "Trauma Re-read and Embodied: Enunciating the Subject of Human Rights," American University of Beirut, Lebanon, May 2012

*Cultural Studies Association*

Presented: "Visualizing the Battered Woman Syndrome: Affinities between the Science of Expert Testimony and Visual Evidence,"  
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*Association for the Study of Law, Culture & The Humanities*

Presented: Images and Law Panel, "Visualizing the Battered Woman Syndrome: Affinities between the Science of Expert Testimony and Visual Evidence"  
Texas Wesleyan School of Law, Forth Worth, TX March 2012

*Performance Studies International 16: Performing Publics*

Presented: "Performing Wounds: Liveness and Performance in Imaging Battered Women;" Respondent: "Performative Responses to Trauma" panel  
York University & Ontario College of Art and Design, Toronto, Canada June 2010

*The Archive and Everyday Life, the John Taylor Douglas Conference*

Presented: "Visualizing Battered Women: The Politics of Spectatorship in Popular Media and Legal Observation" McMaster University, Hamilton Ontario May 2010

*Gender, Bodies, and Technology*

Presented: "Visualizing Battered Women: A Digital Archive of Evidence Photography in Legal Observation," Virginia Institute of Technology April 2010

*Off the Beaten Path: Violence, Women and Art*

Chair: Violence and Culture panel

University Art Gallery, University of California, San Diego November 14, 2009

## **Workshops**

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2007 Funded Participant Northwestern Workshop on Rhetoric  
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### **Research Assistantships**

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President, Wellesley College Club of San Diego, 2010-  
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Research Associate 2001-2003, *Center for Court Innovation* NY, NY  
Research focused on treatment program outcomes among drug and batterers' intervention alternative to incarceration treatment populations; also conducted research on neighborhood perceptions of public safety; designed and conducted focus groups for youth HIV/AIDS education program

Research Associate 1998-1999, *Institute for Children and Poverty* NY, NY  
Research focused on the role of foster care in future homeless status, homeless families and bureaucracy

Research Archival Intern 1990-1994, *Judge Baker Children's Institute, Harvard University* Cambridge, MA

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## ABSTRACT OF THE DISSERTATION

Visualizing Violence: The Ethics of Photographic Evidence in the Domestic Violence  
Trial and Popular Culture

by

Kelli D. Moore

Doctor of Philosophy in Communication

University of California, San Diego, 2013

Professor Patrick Anderson, Chair

Since its 19<sup>th</sup> century inception, photography has altered the image of law, changing how we make legal judgments and the role of seeing in the discovery of justice. Using the electronically networked domestic violence courtroom as a case study, this dissertation explores how the image came to remediate the function of traditional legal paperwork. The domestic violence trial emerged nationally primarily in the 1980s -90s and operates according to a special choreography of legal rhetoric and image display. In cases of domestic abuse, digital evidence proves decisive in criminal conviction rates. Drawing upon literatures in critical legal studies, visual culture and science and technology studies, the dissertation argues that the production of images of battered women signals an invitation of battered women into humanity. Yet, this body of

photography simultaneously discloses itself as a racial project through the historical evacuation of women of color from social science and police investigations of domestic violence. State photography of battered women institutionally emerges in an attempt to normalize the diverse and contradictory language and feelings that battered women display in clinical milieus. Through trial observations conducted at the San Diego County Superior Courthouse, I examine how color, feeling and display screen animate the psychic transformations constitutive of spectatorship among juries and law professionals. The dissertation proposes that this body of photography arose from of misalignments between feminist political struggles around agency and embodiment and state legal reforms. Domestic abuse trials and persons whose evidentiary photos of biological damage accumulate as stored data modernize our conceptions of citizenship, knowledge and law.

## Introduction

*Visualizing Violence: The Ethics of Photographic Evidence in the Domestic Violence Trial and Popular Culture* critiques the state institutional emergence of police photography of battered women in the post-criminalization era of domestic violence. Photographs of battered women in this instance are images taken by police, social service workers and medical professionals when responding to domestic abuse incidents. They are also inclusive of support service media campaigns advertising 911 hotlines. In the legal system, photographs of battered women depict physical injury and are processed by law enforcement and distributed to attorneys for trial. In popular culture, images of battered women are often simulated through cosmetic masquerade in ways that advertise support for abused women and appear to unsettle the meanings of visual evidence in official legal settings.

With disruption of the image in mind, the dissertation traces the role of state looking practices in the de-politicization of abused women's struggles for self-expression. I examine the emergence of photography of battered women as a state institutional translation of earlier discourses of battered women's subjectivity that do not emphasize the visual. The problem of remaking and representing battered women's voice stems from the criminalization of domestic violence that ultimately coerces abused women to participate in the court system as victims of violence when they may have other priorities and ideas about recovery, redress, and resolution. I demonstrate that photography of battered women de-politicizes the struggles for self-expression of abused women in therapeutic and law enforcement settings just as it claims to represent them.

Offering a reading of affect in the courtroom milieu, I explore how images of battered women reduce the problem of gender violence and political judgment to what I call the “the banality of epidermal reading,” a concept meant to echo Hannah Arendt’s banality of evil.

I trace the development of images of battered women across three arenas: science, art, and law to pursue the following in chapters:

1. I trace the academic study of battered women to psychology and animal behaviorism in Chapter 1. The chapter inquires after controversies in studying and naming the communication deficits of abused women. I begin by asking how battered woman syndrome became a proxy for battered women’s complex agency, voice, behavior and experience.

2. Chapter 2 traces the political origins of photography of battered women to a white feminist avant-garde. This chapter argues that photography of battered women was incorporated by appropriating white feminist avant-garde photography practices of Donna Ferrato, Ana Mendieta, and Nan Goldin whose practices span 1970s through 1990s. These “proto photographers” of battered women lent political visibility to the plight of battered women during the decades of the 1980s and 1990s while simultaneously highlighting the ethical and moral stakes of bearing witness to violent trauma via the camera.

3. Chapter 3 examines advertising campaign imagery promoting domestic abuse support services during the 1990s and early 2000s. The chapter investigates the technical production of simulated images of domestic abuse in the context of legislative reforms about violence against women in the 1990s and 2000s. The use of cosmetics to simulate abuse is theorized as a form of camp in which volunteers perform empathetic labor that signals both the communication deficits of battered women and the fact that the referent of abuse has become unhinged from the real in our digital era. The chapter speculates as to why digital images of battered women have been relatively free of controversy by examining law enforcement and mainstream cultural production strategies of representing battered women during this period.

4. Chapter 4 discusses findings from observations of domestic violence court trials at the San Diego County Superior Courthouse between 2010 and 2012. This chapter discusses how the state demands the live testimony of abused women through law and policy. The chapter then theorizes the idea of photography as testimony and the nature women's testimony understanding co-presence and intersubjective communication as concepts that include photography, rather than understanding photography as supplemental to speech as voice and/or textual inscription.

Circulating in a variety of media contexts, images of battered women have become iconic symbols of domestic violence. A query of Hollywood cinema, for example, reveals that the battered woman's film, in which the abused woman discovers her repressed voice and is able to take action around traumatic experience, is a standard vehicle. Each decade seems to offer a new variation of the battered woman's film.

Examples include “The Burning Bed” (Metro Goldwyn Meyer, 1984), starring the late Farrah Fawcett as Francine Hughes, a Michigan woman acquitted of murdering her abusive husband in 1977; “Sleeping with the Enemy” (Twentieth Century Fox, 1991), featuring Julia Roberts as a wealthy and besieged housewife trying to escape her controlling husband; “What’s Love Got to Do with It?” (Touchstone Pictures, 1993), starring Angela Bassett in the biography of R&B singer Tina Turner, and, featuring her struggles with fame and abuse from her husband, Ike Turner; “Fear” (Universal Pictures, 1996), focusing on dating violence among teenagers and featuring Mark Wahlberg and Reese Witherspoon; “Enough” (Columbia Pictures, 2002), starring Jennifer Lopez as a battered woman who physically trains to fight her abusive husband; and a recent music video for the single “Take Care” (2012), which features a duet between pop singer Rihanna and rapper Drake that appears to publicly redress the abuse Rihanna publicly suffered from former boyfriend Chris Brown. These Hollywood women’s films, save that of “The Burning Bed,” however, largely ignore the legal realm in which domestic abuse is investigated and adjudicated. The question operating across the genre concerns the complex agency of abused women and the triumphant path each woman journeys *as an individual* toward “fighting back.” Though produced throughout the 1980s and 1990s when serious activism and legislative reform around violence against women flourished, these films elide the central antagonism between women and the law, between women’s bodies and procedures, documents and paperwork. Moreover, these films avoid discussion of the racial antagonism structuring the investigation and adjudication of violence against women.

In their germinal anthology *Survivor Rhetoric: Negotiations and Narrativity in Battered Women's Language* (2004) Christine Shearer-Cremean and Carol L. Winkelmann examine the architecture and pattern of abused women's language, drawing on the work in trauma studies by Elaine Scarry<sup>1</sup> and Judith L. Herman.<sup>2</sup> Shearer-Cremean and Winkelmann identify battered women's trauma narrative as coveted testimony for what these accounts reveal about the capacities of violence for structuring subjectivity. These narratives so coveted, the editors observe, because language is precisely that which has been evacuated from the victim of torture. The pain of violence unmakes the world of the subject; breaking language as the subject agonizes, *unmaking* language into grunts and groans that speech once shamed (Scarry). For the abused woman the return to health and to life begins with the reconstruction of the trauma story, the constitution of a new self through dialogical speech with a therapist/advocate (Herman). For the abused woman language must be *remade*.

Feminists in the U.S. have argued that a key problem resulting from the criminalization of domestic violence is that the exigencies of police fact-finding places pressure on battered women to conform their discourse to police knowledge-making practices instead of foregrounding their own healing process. As Shearer-Cremean and Winkelmann write, the narrative of trauma is "multi-layered, dialogic, situated, and re-situated discourse that defies categorical response" (Shearer-Cremean and Winkelmann, 2004: 5). The epistemology of the police however is considered by Shearer-Cremean and Winkelmann to be a form of male-dominated scientific discourse oriented toward

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<sup>1</sup> Elaine Scarry. 1985. *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press)

<sup>2</sup> Judith Lewis Herman. 1992. *Trauma and Recovery* (New York: Basic)

transcribing the body's private pain onto the abstract police report. While reforms to policing practices around domestic violence address the history of police inaction on matters of gender violence, the bureaucratic priorities of police work inevitably discriminate against women. The present study is concerned to move beyond the site of speech as oral and written expression to examine how the elusive language of abused women resurfaces in the form of state institutional photography, and further considers how photographs contribute to the setting in motion of evidence-based domestic violence prosecution.

## **Methodology**

Although this dissertation traces the institutionalization of photography of battered women my focus on the photographic image has not removed the politics of subjectivity from methodological and ethical concern. Several interdisciplinary methods inform this study which involves the politics of subjectivity in networked institutional settings. The dissertation traces the institutionalization of photography of battered women using two approaches after Michel Foucault's two-pronged analyses of power. As noted by Italian philosopher Giorgio Agamben, Foucault's research directives on the problem of power concerned "the study of the *political techniques* (such as the science of the police) with which the State assumes and integrates the care of the natural life of individuals into its very center" and examination of "*technologies of the self* by which processes of subjectivization bring the individual to bind himself to his own identity and consciousness and, at the same time, to an external power" (Agamben 1998:5). This

project draws together these two lines of thought in order to understand the convergence between law and policy on domestic violence and the bodies and consciousness of battered women. The dissertation method is designed to bridge the gap between an understanding of battered women as subjects that see and speak and a conception of the subject as one who is also seen and heard by a variety of spectators.

Battered women are an elusive subjectivity. This is confirmed by the history of silence on the issue and, in the last thirty years, an emerging science on the issue. From silence to science, absence to presence; disappearance to appearance, battered women now constitute a well-discussed literature on the unique communication deficits they often experience as a result of trauma. The increasingly mediatized appearance of visual representations of battered women in public and legal settings is also, ironically, testament to a new expression of state power that organizes the interior of not only abused women but those individuals brought to adjudicate the injustice of her wounds. What is the function of the image in the adjudication of domestic abuse? What disciplinary struggles and investigations animate this new frontier of politicizing domestic violence? What histories of photography practices and relations of power might claim ancestry to images of battered women? In other words, how does the body of photography of battered women negotiate, manage or normalize abused women?

My investment in a political critique of photography of battered women first required that I attend to the historical emergence of this body of photography. I approached this problem as a genealogical one, tracing the discourse on battered women through a variety of Congressional legislation and Supreme Court decisions, newspapers, journals of art, medicine, and law, photography trade magazines and websites, anti-

domestic violence public media campaigns, as well as identifying its presence in feminist theory from the 1980 through 1990s, when feminists tackled the intersecting questions of embodiment, representation, and femininity within white capitalist hetero-patriarchal culture. I saw that the contents of these archives documented the politicization of domestic violence and the bodies of battered women in particular.

The genealogical analysis of images of battered women pursued in this dissertation created a philosophical open that exposed the racism, sexism and classism embedded in the very disciplines researching and adjudicating domestic violence. I am engaged throughout the dissertation with second-wave feminism whose theory and practice culminated in political action that politicized gender violence and, equally important for this study, informed academic study of domestic abuse and the circulation of this body of photography in art, science, and law. My approach to state photography of battered women is thus particularly inspired by late twentieth century feminist art criticism encompassed by the second-wave movement. Feminist art criticism of this period moved to evacuate the female body from artistic representation in order to radically challenge centuries of Western art tradition in which male artists colonized the female body, resettling its mute form across canvas, marble, and ultimately film.<sup>3</sup> Of

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<sup>3</sup> I am thinking here principally of the brilliant work of Amelia Jones and the cadre of feminist artists, art critics and historians who have built a thriving feminist art practice. See *Body Art/Performing the Subject* (Minneapolis: University of Minnesota Press, 1998); Griselda Pollock, "Screening the Seventies: Sexuality and Representation in Feminist Practice—A Brechtian Perspective," *Vision and Difference: Femininity and the Histories of Art* (New York and London: Routledge, 1988); Judith Barry and Sandy Flitterman. "Textual Strategies: The Politics of Art-Marking" in *Screen* 21(2): 35-48; Linda Nochlin, "Why Have There Been No Great Women Artists?" *Art and Sexual Politics*, ed. Thomas B. Hess, Elizabeth C. Baker (New York, Macmillan 1973); Thalia Gouma-Peterson and Patricia Mathews, "The Feminist Critique of Art History," in *The*

methodological significance here is the fact that a powerful lobby in feminist theory during this period attempted to *disappear* the female body from artistic representation at the same that time more women's bodies were *appearing* in a variety of state institutions: the shelter system and the prison industrial complex in particular. This movement of women's bodies, appearing and disappearing within art, science, and law, is suggestive of mutual disciplinary struggles for power involving how we conceive of the body in terms of presence, absence, and the matter of representation and the negotiation of structural violence within institutions. I use the concept of intersectionality advanced by black feminists to critically read the development of photography of battered women in art, science, and law. I demonstrate how both art, social science, and legal practices have placed the body in representation at the center of each discipline in ways that both reinforce and productively efface the distinction between photographic/scientific evidence and art object.

As feminist scholar Andrea Smith (2005; forthcoming) argues, the power of the white supremacist hetero-patriarchal state relies on an official gaze that performs seeing and not seeing; state surveillance sees deviant populations while obscuring the state's own role in the production of subordinate and fungible categories of subjectivity. In the wake of multiple investigations within the disciplines of social science and law the emphasis on *seeing* battered women functions as a familiar state alibi: domestic violence itself shifts to a visual epistemology that manages the discourse of battered women

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*Art Bulletin*, vol. 69, no. 3 (September, 1987) 326-357; Lucy Lippard, "Sexual Politics: Art Style," in *From the Center: Feminist Essays in Women's Art*, ed. Lucy Lippard (New York, Mass Market Paperback, 1976) 28-37; and Lucy Lippard. *The Pink Glass Swan: Selected Essays on Feminist Art* (New York: New Press, 1995)

through photographic representation, *not the trauma narratives of abused women*. Left unseen by the discourse on domestic violence and battered women are 1) abused women's own language and 2) the intimacy of the scene of technical production and circulation of images of battered women. Gayatri Spivak's (1988) path-breaking critique of the subaltern deeply challenged and influenced my thinking on the production of knowledge about domestic violence and its relationship to battered women. Following her argument about the racism and hetero-normativity structuring western cultural studies in which the western subject positions himself to speak on behalf of the subordinate cultural other, I disarticulate the assumed relationship between clinical and other social scientific discourses on battered women from women who are compelled to testify in court with co-present portraits of their injured bodies. Here, a secondary archive suggested itself to me in the spaces of the courtroom, social service agencies, and domestic spheres where photographs of battered women are produced and publicly displayed alongside live testimony.

Let me clarify here that the second axes of this dissertation is driven by a principle concern for the police photograph of battered women, specifically how it orders the discourse and moral spectatorship (Cartwright 2008) of the courtroom. I am guided by Spivak's assertion that the subaltern cannot speak. Yet, the discourse on domestic violence appears nevertheless replete with state desire for the *live* bodies of abused women to do precisely that, in some instances through appearance. The impact of Spivak's thinking led me to focus primarily on the photography practices of the police, which raise for me serious questions about what constitutes speech and political expression—to what extent does, and does not, photography constitute political

expression approximating speech. Though I position the photograph as part of battered women's subjectivization, I do not make an argument about battered women's identity as such. My method did not include seeking the discourse or opinions of battered women. It was important not to presume knowledge of battered women's subjectivity beyond the court-ordered appearance in the domestic violence trial. In order to mind the gap between what Agamben observes of the state's integration of "techniques of subjective individualization" and its own "procedures of objective totalization" I attuned myself to the live performance or enunciation of battered women and their co-present images in the courtroom. Here the ontological reading of performance by Peggy Phelan (1993) and Phillip Auslander's (2008) situational and contingent approach to mediatized performance provide the theoretical horizon structuring the live-mediatized testimony of battered women and the function of her co-present images.

Building a critique of the emergence of photography of battered women demanded attention to the live production and circulation of the photographs of battered women. My observations of the live testimony of battered women and their co-present injury photographs incorporate the methodological approaches to affect or feeling of Silvan Tomkins. In 1995 Eve Sedgwick and Adam Frank introduced Tomkins' analyses of the affect motivational system to feminist theory to immediate interest.<sup>4</sup> Tomkins' theory positions affect or feeling as the very substance, the precise content of the live. This is significant to feminist theories of embodiment and speech. Yet, Tomkins published his major work on feeling, *Affect, Imagery Consciousness* in 1962, predating

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<sup>4</sup> Eve Sedgwick and Adam Frank eds. *Shame and its Sisters: A Silvan Tomkins Reader*(Durham: Duke University Press, 1995)

Frantz Fanon's *Wretched of the Earth* by a year and *Black Skin White Masks* by five years. Fanon's germinal texts on the ontology of black experience under colonial violence draw on psychoanalysis and are thus disciplinarily linked to Tomkins' inchoate descriptions of the black as collective object of distress formulated outside the African context. I use Fanon's work to further develop a reading of affect with respect to blackness in the domestic violence investigation and rhetorical practices in the trial courtroom.

My choice to use his work also comes from an institutional link between Silvan Tomkins and Lenore Walker, who formulated the battered woman syndrome that I contend is implicated in the increased need to manage the complex trauma narratives of battered women. Walker was a graduate student at the Rutgers University Psychology Department at Livingston College, where Tomkins ended his career. My observations of domestic violence trials in which battered women testify speculates about how we might understand domestic violence differently if Lenore Walker's theory of the battered woman syndrome had explicitly followed Tomkins' work rather than the American psychologist of motivation, Martin Seligman, who is also disciplinarily linked to Tomkins. Or, perhaps Walker's theory of battered woman syndrome was more in tune with Tomkins' approach than she and others have acknowledged. These ideas are discussed across the dissertation chapters.

The second axis of the dissertation was set at the San Diego County Courthouse where I observed criminal misdemeanor domestic violence trials for one year. These observations are supplemented by interviews of attorneys employed at the Office of the City Attorney and the Office of the Public Defender. I also conducted interviews at the

Family Justice Center, a non-profit agency specializing in social services for battered women including the production of photographic evidence of sustained wounds. I did not interview battered women. My decision not to interview battered women is informed first by my theoretical disarticulation of the clinical-scientific discourse on battered women from battered women who testify in court. Second, distancing the clinical narratives of domestic abuse from the court appearance on domestic abuse matters allowed me to attend more directly to the evidence photographs that are co-present with battered women ordered to court. This is a dissertation that examines how empowered state and law enforcement agents rationalize and manage battered women through photography production, display practices and legal rhetoric. Law enforcement, attorneys, clinical experts and the photographic image are thus the ethnographic focus in this study. Political theorist and science studies scholar Annemarie Mol states that method, or “doing” ethnographic theory is concerned “not to propagate rationalization strategies in general terms, neither is it to warn against them in equally general terms. Instead it is to investigate what they bring along. What they do. It is to open up the question of *how* rationalization strategies alter what they interfere with” (Mol 2002: 161). Following Mol, my interest is not in how battered women explain their identity but in how it is produced and foreclosed through epistemologies of the visual. I prioritized how battered women’s subjectivity is produced and facilitated through and across state photography because my intention was to demonstrate how battered women are produced as an object of distress *by and for the state*.

The dissertation methods draw upon interdisciplinary work in several fields. In science studies Bruno Latour and Steve Woolgar’s *Laboratory Life: The Construction of*

*Scientific Fact* (1979), Lisa Cartwright's *Screening the Body: Tracing Medicine's Visual Culture* (1995) and Annemarie Mol's *The Body Multiple: Ontology in Medical Practice* (2002). Each of these texts shares an engagement with the production of medico-scientific facts about disease. I am guided by the way their analyses attend to the ways in which subjectivity is distributed across the bodies of others and technologies. In particular, Cartwright and Mol's respective studies of the visual politics of tuberculosis and atherosclerosis research and media representation also implicate the role of technologies of vision in mediating gendered experiences of illness. In surveillance studies John Tagg's germinal texts *The Burden of Representation* and Alan Sekula's essay, "The Body in the Archive" have been updated for the networked digital age by David Lyon's *The Electronic Eye: The Rise of the Surveillance Society* (1996), Jonathan Finn's *Capturing the Criminal Image: From Mug Shot to Surveillance Society* (2010) and Kelly Gates' *Our Biometric Future: Facial Recognition Technology and the Culture of Surveillance* (2011). This work on surveillance continues the limited academic scholarship on the representation of the criminal and or deviant identities by the state. These analyses were important to my study because they integrate analyses of new technologies of representation among the police but also draw connections to the corporate private industries designing and producing these technological objects and the cultures of *technophilia* and *technostalgia* along with it. Each of these analyses link the work of surveillance to nineteenth century processes of criminal identification which were shot through with racist ideology. Finally two works from the discipline of law and society were crucial methodological guides for how to study courtroom interactions. Neil Feigenson and Christina Spiesel's *Law on Display: The Digital Transformation of Legal*

*Persuasion and Judgment* (2009) and Richard Sherwin's *Visualizing Law in the Age of the Digital Baroque* and *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* (2000) take as axiomatic that our age of ubiquitous computing has fundamentally changed how we seek and discover justice. Both texts are germinal studies of the rhetoric of the networked courtroom and make significant arguments toward a visual jurisprudence for the digital courtroom.

### **A note on terminology**

I have already mentioned that *battered women* in this study refers to women who are court-ordered to testify in a domestic violence trial in which they are asked to authenticate an image of themselves with a physical injury. Several other terms and concepts are used throughout this study which requires some elaboration.

The dissertation studies a problem in battered women's communication and the role of photography in inhibiting and facilitating communication. Throughout the dissertation I reference battered women's *complex agency* to capture the differentiated language and experiences battered women disclose during person-to-person and group interactions. This term derives from sociologist Carrie Baker who argues that battered woman syndrome "obscures the complex agency of battered women." Complex agency affirms the contradictory, temporal and contingent nature of battered women's narratives of trauma. In this sense, the negotiation of complex agency is the concept this dissertation traces through law, art and the social sciences.

*Passive subjectivity* is also used in the dissertation. Like *complex agency* it is a term meant to home in on the passivity encompassed within battered women's complex agency. For my purposes, there is no antagonism between *complex agency* and *passive subjectivity*. Rather passive subjectivity tracks the deficits in communication leading battered women to feel disempowered and not in control of what happens to them; the term speaks to what appears as chronic inaction on the part of abused women. Passive subjectivity constitutes the phenomenon under scientific investigation in the work of Lenore Walker, Martin Seligman and Silvan Tomkins. Moreover, passive subjectivity is the existential phenomenon partly constitutive of the experience of the black, elaborated principally by post-colonial theorist and revolutionary Frantz Fanon.

The critique of state photography of battered women as a racial project derives from the related concepts of *blackness* and *anti-blackness* and white supremacy. I adopt philosopher Lewis Gordon's argument that blackness is the problem object resulting from global historical anti-black racism. Blackness in this study refers to that which is excluded from social scientific analyses of domestic violence in general and battered women in particular. Blackness in this sense concerns racial blackness and women of color. Yet, I also use blackness to mean that which is excluded from evidence photographs of battered women's injuries through adjustments to camera lighting. Here blackness concerns the vitality of skin hue as it appears in analog and digital photography that is ultimately excluded from social scientific and legal observation. I use blackness to encompass both racial blackness and skin hue in order that we continue to link how processes of anti-blackness transfer from the phenomenal world in which battered women live and the virtual world in which battered women's images accumulate within storage

space in digital technologies—cameras, computers, projectors, fax machines, the Internet etc. These two forms of anti-black discrimination in the real and virtual worlds are of the same persuasion. Anti-blackness emerges as the rational process of evacuating and otherwise discriminating against racial and blackness and dark skin.

*Co-presence* and *intersubjectivity* are related concepts used throughout the dissertation and derive principally from the work of Lisa Cartwright and Silvan Tomkins. By co-presence I refer specifically to moments or scenes in which battered women are ordered into a testimonial interaction with photographs of their injuries. In this sense, co-presence is used to describe the encounter of human and non-human agents whereas in performance studies it means live bodies. Intersubjectivity in this study pertains to the emergence, movement and flow of intensities of feeling during communicative interactions with the other. Following Cartwright, the technological artifact has a mediating and therefore constitutive role in the production of subjectivity; this is in keeping with the actor-network theory dictum that artifacts and technologies have agency.

## **Dissertation Overview**

Several scholars study the adoption of new “evidence-based” policing strategies for combating domestic violence, noting how these reforms infantilize battered women by removing their decision-making capacity in such matters (Ford 1991, 2003; Mills,

2003)<sup>5</sup> and how such reforms widen the political gap between community responses to abuse and state police power<sup>6</sup> and further deteriorate the relationship between the poor, communities of color and the police.<sup>7</sup> Though controversial, legal reforms such as mandatory arrest and no-drop prosecution combat two problems: One, evidence-based reforms to law enforcement remove discretion from the police, historically egregiously inactive on matters of domestic abuse due to personal attitudes and sexism in the law. Two, these reforms relieve abused women of the burden of acting herself to involve law enforcement, i.e., the state is authorized to bring the case against abusive partners, even when women refuse, resist and recant their story of abuse. This tendency to denial is the very character of abused women's discourse discovered in clinical, social service and legal settings.

Noticing a dearth of knowledge about the effects of these reforms in practice, Keith Guzik (2009) analyzed mandatory arrest and evidence-based prosecution.<sup>8</sup> Guzik observes that evidence-based prosecution policies “do disrupt abusive intimate relationships and result in convictions of most suspects, [however] they do not affect the violent subjectivities of most intimate abusers. The policies fail to disrupt abusers’

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<sup>5</sup> See David Ford, “Persecution as a Victim Power Resource: A Note on Empowering Women in Violence Conjugal Relationships,” 25 *Law and Society Rev.* 1991, 313-34; and, Linda Mills. 2003. *Insult to Injury: Rethinking our Responses to Intimate Abuse* (Princeton: Princeton University Press)

<sup>6</sup> Shamita Dasgupta, 2003. *Safety and Justice for All: Examining the Relationship between the Women's Anti-Violence Movement and the Criminal Legal System*. New York: Ms. Foundation. [http://www.ms.foundation.org/user-assets/PDF/Program/safety\\_justice.pdf](http://www.ms.foundation.org/user-assets/PDF/Program/safety_justice.pdf) (accessed August 24, 2012)

<sup>7</sup> Donna Coker. 2001. “Crime Control and Feminist Law Reform in Domestic Violence Law,” 4 *Buffalo Criminal Law Rev.*, 801-60

<sup>8</sup> Keith Guzik. 2009. *Arresting Abuse: Mandatory Legal Interventions, Power, and Intimate Abusers*(DeKalb: Northern Illinois University Press)

evasions of responsibility for violence and mostly fail to deter.”<sup>9</sup> Guzik’s analysis is an important one for highlighting the problems of legal reform in practice. However, as his study focuses on how abusive men negotiate their arrest under evidence-based prosecution reforms, it thus fails to see the big picture, as it were, when it comes to the possibilities that obtain for the police and abused women in the moments of investigation due to mandatory arrest and evidence-based prosecution policies. Though these policies “disrupt abusive intimate relationships” for a brief time and bring the batterer under the dominion of the court, the pertinent matter for the present study is how evidence-based prosecution creates the conditions under which battered women are routinely and systematically photographed.

This dissertation attends to the interaction between battered women and law enforcement conceptualized as *animated by evidence-based prosecution* reforms. I argue the encounter between battered women and law enforcement is organized by what Charles Goodwin (1994) terms “professional vision,” referring to those discursive practices—highlighting, coding schemes and the production of graphic representations professionals utilize to “see” and record the flow of work.<sup>10</sup> As noted by Goodwin, “central to the social and cognitive organization of a profession is its ability to shape events in the domain of its scrutiny into the phenomenal objects around which the discourse of the profession is organized”.<sup>11</sup> Evidence photography of battered women constitutes a form of “professional vision” through which law enforcement produces

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<sup>9</sup> Ibid., 1

<sup>10</sup> Charles Goodwin. 1994. “Professional Vision,” *American Anthropologist* 96 (3): 606-633

<sup>11</sup> Ibid., 29

photographic evidence that shapes the future events of a domestic violence investigation and trial. Evidence-based prosecution policies create the conditions in which the domestic abuse investigation is *productive of material and digital artifacts*.

Building upon Guzik's analysis of evidence-based prosecution policies *in practice*, the dissertation argues that the institutional emergence of images of battered women is a relatively new form of "professional vision" whose effect includes the dual surveillance of police officers and abused women. Evidence photography of battered women's injuries is a new component of police reporting that allows law enforcement to demonstrate accountability in combating domestic abuse in the context of historical inaction on the issue. For abused women, police photographs of their faces and bodies participate in what surveillance studies scholar Roger Clarke (1994a) calls the "digital persona,"<sup>12</sup> where electronically collected and stored transaction data appears as a model of the individual's identity and behavior. The crucial matter for Clarke is how the "digital persona" is always already "intended for use as a proxy for the individual".<sup>13</sup> A goal of this dissertation is to contribute to the emergent field of feminist surveillance studies by tracing, through examples from legal settings and popular culture, how shifts in the "professional vision" of law enforcement inform women's "digital persona" in the networked late twentieth century.

Two acts of government—one legislative the other judicial set the legal course for shifts in police professional vision and the emergence of state institutional photography of abused women. First, the 1996 authorization of the Violence Against Women Act

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<sup>12</sup> Roger Clarke, "The Digital Persona and its Application to Digital Surveillance," *The Information Society* 10,2 (June 1994) 77-92

<sup>13</sup> *Ibid.*, 3

intensified the investigation of domestic violence. Introduced into Congressional debate in 1990 by then Senator Joseph Biden (D-DE) the VAWA was part of the Violent Crime Control and Law Enforcement Act. Attached to a criminal justice reform bill, the VAWA increased coordination between criminal justice agencies across state boundaries; funded research and prevention initiatives on the nature of domestic violence as a criminal offence, as well as medical and social services for victimized women and children. The Act passed in 1996 with overwhelming bi-partisan support, authorizing \$1.6 billion in federal grants for law enforcement and prosecution as well as anti-child abuse enforcement and new shelters for battered women. Funding also supported the establishment of the National Domestic Violence Hotline which created new hotlines and increased resources and staffing capabilities to extant hotlines.

Testimony at the Violence Against Women Congressional hearings implicated police and court practices in the escalation of dangers facing women that sought legal action from violent partners. Many stories of orders of protection that went un-honored once women crossed state lines were exposed as well as many stories about the routine lack of response to domestic incidence calls and frequent in effectiveness of the police when they did respond to emergency calls. The VAWA measures removed police discretion, a significant source of power, from the process of investigation in domestic violence cases. No-drop procedural action requires police to pursue charges, provided there is evidence of probable cause, with or without the victim's consent, while mandatory arrest demands that police responding to domestic disturbance calls arrest abusive partners. Effectively, VAWA policing reforms invigorated the institutional and juridical production of contemporary domestic abuse claims. Together, these policies

represent what Sally Engle Merry (2001) has called a “new regime of domestic violence governmentality.”

Second, *Crawford v. Washington* 541 U.S. 36 (2004) participates in the *afterlife*<sup>14</sup> of the Violence Against Women Act by indirectly shaping policing practices in domestic abuse cases. The Supreme Court decision in that matter involved the Confrontation Clause of the Sixth Amendment and altered standards for admitting hearsay evidence in trials. Evidence-based criminal prosecution generally relies on the hearsay statements of crime victims to reproduce the effect of live testimony. Domestic abuse cases present an ideal circumstance in which the standard was helpful because abused women are typically uninterested in seeking redress in court against their batterer. There are many reasons abused women do not want to participate in legal processes that concern time, cost, their relationship status, their community status and, so on. The *Crawford* decision ruled that, under the Confrontation Clause of the Sixth Amendment all defendants have a Constitutional right to confront their accusers, therefore testimony admitted under hearsay exceptions are inadmissible without cross-examination of the witness issuing the hearsay statements. For battered women, this means they must testify in court against their batterers. The effects on battered women are that they too are criminalized when they refuse to participate in state proceedings against their accused batterers.<sup>15</sup>

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<sup>14</sup> I borrow the term *afterlife* from Saidiya Hartman’s diligent tracing of the logic of slave law and its perpetuation in contemporary legal policy and practice. Hartman argues that we understand slavery, not as a dead process of violence, or some ancient terror but rather a founding property relation in Western metaphysics that continues to structure and be generative of human society, economy and politics.

<sup>15</sup> *Crawford* involved the admissibility of hearsay testimony in the context of a married couple, Michael and Sylvia Crawford, who confronted Kenneth Lee for allegedly raping Sylvia Crawford. Michael Crawford stabbed Lee and claimed self-defense, saying that

A basic premise of this dissertation is that the evidence-based prosecution reforms brought by the Violence Against Women Act and the decision in *Crawford v. Washington* routinized and professionalized police investigation techniques, including mandatory arrest and no-drop prosecution policies in ways that criminalize battered women and their families. The reforms of the Violence Against Women Act fostered the conditions under which photographs of battered women are produced and circulated as crucial objects of police epistemology, or, “professional vision”. The Violence Against Women Act authorizes the rehearsal of colonial practices of surveillance, defined by

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Lee had drawn a weapon that initiated the stabbing. Lee avowed no weapon was present. Upon police questioning Michael Crawford said he was not sure if Lee had a weapon, but he believed he did so at the time of the confrontation. Sylvia Crawford, when questioned, initially reported that she did witness the attack but upon further questioning claim that she did in fact see the struggle and Lee indeed employed no weapon. At trial, Sylvia Crawford could not be compelled to testify against her husband under the state of Washington spousal privilege law which held that spouses cannot testify in court without the consent of the defendant spouse. Prosecutors sought to introduce Sylvia Crawford’s testimony as evidence the Michael Crawford had no reason to believe that he was in mortal danger from Lee. Generally, because the statement was made out-of-court it would be excluded from evidence on the ground of hearsay. The court however allowed the Sylvia Crawford’s statement to be admitted on the basis of its reliability, assured by Michael Crawford’s statement. Michael Crawford’s defense counsel objected to the admission of Sylvia Crawford’s statement on the grounds that Crawford would not be allowed to cross-examine Crawford without abnegating spousal privilege. To admit Sylvia Crawford’s statement without confrontation violated the Confrontation Clause secure by the Sixth Amendment. The statement was allowed into evidence and Michael Crawford was convicted. Crawford’s conviction was overturned by the Washington Court of appeals and later reinstated by the Washington Supreme Court with the Supreme Court ultimately agreeing to hear the case November 2003.

*Crawford v. Washington* swiftly and dramatically intensified the burden of prosecutors to prove their cases. Writing for the majority opinion, Justice Antonin Scalia argued that “the Framers would not have allowed the admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had not had a prior opportunity for cross-examination” (53). Previously hearsay evidence could be admitted by making exceptions to the hearsay rule. Under *Crawford*, prosecutors need the physical presence of the witness in court in order to prove their cases.

David Lyon as the “focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction”<sup>16</sup> by funding aggressive evidence-based prosecution measures. The Supreme Court’s decision in *Crawford*, occurring just over a decade after the 1996 VAWA authorization increased the prosecution of domestic violence, intervened to bring battered women into the courtroom milieu, into direct physical contact with police photographs of their injuries and into greater contact with their accused batterers. By situating the emergence of institutional photography of battered women within these two significant acts of government I designate the political field in which battered women are brought into a confrontational scenario with the photographs of their injuries and the various spectators in the courtroom. The Violence Against Women Act and the *Crawford* decision interact across space and time upon the bodies of abused women which is the adversarial character of U.S. law making.

On this point about the interplay between these two federal legal decisions, the dissertation implicates the adversarial legal tradition in the U.S. in coercing battered women into the domestic violence trial. Now ordered to testify in court through *Crawford*, battered women experience different forms or registers of co-presence, a term I borrow from performance studies, that has significant implications for how the appearance of battered women is managed by the court and law professionals. Battered women’s testimony in domestic violence trials entails a labor split across a live physical presence and that of visual evidence of the abject self. In other words, battered women’s testimony is remediated by photographic evidence; both are forms of performance. In

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<sup>16</sup> David Lyon, *Surveillance Studies: An Overview* (Cambridge: Polity, 2007)p 14

studies of performance co-presence is conceptualized as a moment or scenario of interpenetration, “being-togetherness,” intersubjectivity. Co-presence implicates other foundational concepts in the field such as liveness, disappearance, performativity and theatricality and the dissertation draws upon the field in order to make its claims about the encounter between abused women and their images.

In her examination of the ontology of performance Peggy Phelan writes, “The other arts, especially painting and photography, are drawn increasingly toward performance”.<sup>17</sup> For Phelan the intersubjective interaction achieved between art object and spectator is increasingly realized as performance. Using the example of the artist Sophie Calle’s replacement of paintings stolen from the Isabella Stuart Garner Museum with photographs of the gallery and transcribed descriptions of the artworks given by gallery employees and visitor Phelan argues that the interaction between spectator and the art object is performative. She writes:

The speech act of memory and description (Austin’s constative utterance) becomes a performative expression when Calle places these commentaries within the representation of the museum. The descriptions fill in and thus supplement (add to, defer, and displace) the stolen paintings. The fact that these descriptions vary considerably—even at times wildly—only lends credence to the fact the interaction between art object and spectator is, essentially, performative and therefore resistant to the claims of validity and accuracy endemic to the discourse of reproduction. While the art historian of painting must ask if the reproduction is accurate and clear, Calle asks where seeing and meaning forget the object itself and enter into the subject’s own personal meanings and associations. Further her work suggests that the forgetting (or stealing) of the object is a fundamental energy of its descriptive recovering.<sup>18</sup>

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<sup>17</sup> Peggy Phelan. 1993. *Unmarked: The Politics of Performance* (London, New York: Routledge) p. 146

<sup>18</sup> *Ibid.*, 146

For Phelan political possibilities obtain from the subject's "memory of performance." As live performance disappears into memory, it is not readily open to forms of regulation; the ontology of live performance allows it to function as a counter or oppositional discourse. Realized through disappearance and the subsequent termination of co-presence, performance is constitutive of a politics of hope. The persistent memory of performance—contingent, a-temporal, unique, subjective—is where political resistance resides.

Against this reading, Philip Auslander's (2008) study of legal standards of evidence as they play out in live courtroom testimony questions the status of "memory of performance" as the reliable location of political resistance.<sup>19</sup> His investigation of the court's treatment of testimony turns Phelan's attention to "memory of performance" on its head. The resistant quality of persistent memory of performance Phelan wants to invest in is, in fact, more remote than she (or Calle, for that matter) intimates. Auslander contends that legal trials and the testimonies that issue therein are ontologically live events. The management of live testimony constitutes the professional vision of the courts. He finds that, in practice, the courts define testimony as live "performance of memory" or recollection. This differs significantly from Phelan's view of 'memory of performance' because "memory is both a site policed by the law and a central mechanism of law enforcement".<sup>20</sup> The case law discussed by Auslander illustrates that far from existing outside the realm of state ideological regulation, "[l]ive performance and memory both enter into the service of the law in the form of testimony, the live

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<sup>19</sup> Philip Auslander, *Liveness: Performance in a Mediatized Culture* (London, New York: Routledge, 2008)

<sup>20</sup> *Ibid.*, 186

performance of memory retrieval”.<sup>21</sup> The law can order the subject to testify; the law can even breathe life into testimony of witnesses who are technically defined as “unavailable,” as in the case of hearsay testimony by the comatose or aphasiac witness, for example. This distinction is crucial for the question of memory *qua* political resistance and worth considering for its impact on the testimony of battered women in relation to their evidentiary images.

The view of testimony promoted in the present study draws from both Phelan and Auslander’s analyses. Auslander’s central objection to Phelan’s position concerns the ontological nature of her analysis and the distinction she makes between live and mediatized performance. Auslander’s critique of the law importantly shows that it is the arena that regularly commands, enforces and supplements the performance of memory that is live testimony—even when circumstances arise in which the liveness of witness testimony is extremely debatable. Phelan, for her part, wants the subject to access *jouissance* through performance. A pleasure that is difficult to translate, *jouissance* emerges through performance to shatter the coherent identity of the subject and the spectator. In this study, Phelan’s argument about performance is generative of a philosophical open while Auslander sets its practical limit.

If, with respect to performance, it may be said that Phelan and Auslander occupy opposing positions, Lisa Cartwright’s analysis (2008) of film genre and controversies in facilitated communication clarifies the relationship between the psychic life of the

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<sup>21</sup> Ibid., 186

individual and the “intersubjective production of feeling, action and agency”.<sup>22</sup> Cartwright admits, “[I] have not been able to put down the question of how we can think about how subjects form when the faculties of sight, hearing, and speech are impaired”.<sup>23</sup> This dissertation is haunted by a similar question about the negotiation of battered women’s subjectivity, one that inquires after the role of trauma in the deformation of subjectivity and its later re-routing across the photographic image in court. Cartwright draws upon the affect theories of cognitive psychologist Silvan Tomkins and psychoanalyst André Green to read ‘the place of touch and voice’ in the deaf woman’s film. A similar goal motivates the present study’s analysis of images of battered women that circulate in official legal and more public settings.

Within the horizon set by the work on performance by Phelan and Auslander, Cartwright traces the flow of affect across technologies of representation in facilitating communication among those with communication deficits. The deaf woman’s film genre analyzed by Cartwright resonates with the battered woman’s films I mentioned briefly at the outset. Both genres melodramatically stage women’s communication deficits as socially abject, or as what Karen Shimakawa (2002) refers to as “national abjection,”<sup>24</sup> to be worked through in this site of public fantasy.<sup>25</sup> Following Julia Kristeva’s influential writing, Shimakawa theorizes abjection as constitutive of the state and its processes of racial formation. I mobilize Cartwright’s theoretical attention to the role of technologies

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<sup>22</sup> Lisa Cartwright, *Moral Spectatorship: Technologies of Voice and Affect in Post-War Representations of the Child* (Durham: Duke University Press, 2008) p. 3. See also, “Photographs of Waiting Children: The Transnational Adoption Market,” *Social Text* 74, vol. 21 no. 1, Spring 2003

<sup>23</sup> *Ibid.*, 3

<sup>24</sup> Karen Shimakawa, *National Abjection* (Durham: Duke University Press, 2002)

<sup>25</sup> Cartwright *ibid.*, 7

of representation in mediating intersubjective deaf-hearing communication to show how the technological artifact participates in formation of abject or “spoiled identity” (Goffman 1974). Cartwright’s work is a major intervention whose insights structure the present study of images of battered women as a form of coercive facilitated communication. I argue that images of battered women figure in controversies facing the production of battered women’s identity and voice are about the national negotiation of what are in fact global anxieties about the agency, authorship and independent rational thinking of the liberal subject.

Phelan, Auslander and Cartwright’s respective contributions to the study of intersubjectivity each employ methodological approaches that I adopt to read the production of images of battered women in the domestic violence courtroom post-*Crawford v. Washington*. In the post-*Crawford* domestic violence trial abused women are federally ordered into voice. This is unlike the deaf child Cartwright demonstrates is “brought into voice” through non-juridical intersubjective exchanges with maternal caregivers and technological artifacts. Nevertheless, similar controversies about the agency, authorship, and voice of the liberal subject apply. I contend that the production and circulation of visual evidence photography constitutes a form of social death experienced by abused women. Battered women are legally ordered into encounters with the court system and made to speak in ways that affirm rather than challenge the epistemology of the police. Coerced into testifying on behalf of the state, battered women’s subjectivity is constituted in intersubjective interactions between the self, law professionals who act as “play-back mirrors” to elicit and negotiate testimony, and the co-present injury photograph. Guided by scholarship in theater and performance studies,

visual culture studies, feminist studies of surveillance, and affect theory, this dissertation reads the production and circulation of images of battered women in the domestic violence courtroom and other public settings in order to track the production of social death among abused women. The loss of battered women's language through the experience of trauma is conceived as a form of social death that is lived out again in the courtroom milieu and popular culture.

Because battered women's court testimony is split across her live presence and that of her co-present image this study, of course, returns to earlier feminist debates about the oppressive normalization of the female body through visual representations that secure the authoritative male gaze<sup>26</sup> as well as the disciplinary gaze of white supremacy.<sup>27</sup> Yet, feminist research on subjectivity is not restricted to visual paradigms. Jacqueline Rose (1986) highlighted Freudian psychology's nineteenth-century rejection of exclusively visual modes of knowing the traumatized subject in favor of the "talking cure".<sup>28</sup> Kaja Silverman<sup>29</sup> and Mary Ann Doane<sup>30</sup> both use psychoanalytic theories to examine the relationship between sound and image in terms of gender in classical cinema. Cinematic movement is also crucial to the observation and further development

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<sup>26</sup> Laura Mulvey, "Visual Pleasure and Narrative Cinema," *Screen* 16, no. 3 (Autumn 1975)

<sup>27</sup> bell hooks, *Black Looks: Race and Representation* (Boston, South End Press, 1992)

<sup>28</sup> Jacqueline Rose, *Sexuality in the Field of Vision* (London: Verso, 1986)

<sup>29</sup> Kaja Silverman, *The Subject of Semiotics* (New York: Oxford University Press, 1993); *The Acoustic Mirror: The Female Voice in Psychoanalysis and Cinema* (Bloomington: University of Indiana, 1988)

<sup>30</sup> Mary Ann Doane, "Film and the Masquerade: Theorising the Female Spectator," *Screen* 23: 3-4 (Sept-Oct.1982): 74-87; see also, *The Voice in the Cinema: The Articulation of the Body in Space in Film Theory and Criticism*, ed. Mary Ann Doane, Patricia Mellencamp, and Linda Williams, 67-80. Frederick, Md.: American Film Institute/University Publications of America (1986)

of “forms of life” in the human sciences (Cartwright 1995).<sup>31</sup> For example, a variety of new medical imaging technologies lead to new relations of power and identification among medical experts and the female patient, in particular (Treichler, Cartwright and Penley 1998).<sup>32</sup> Feminist debates about the female body and representation thus play out in the arts and sciences. Engaging a genealogical historical analysis of the emergence of battered women as a genre of state institutional photography, this dissertation draws upon two feminist debates that occurred within the disciplines of social science and art during the 1980s:

- In psychology, Lenore Walker’s research on the trauma narratives of abused women and debate about her subsequent formulation of the battered woman syndrome, adapted from Martin Seligman et al. theory of learned helplessness,
- In art history, feminist artists and critics debated the role of the female body in the history of Western art representation

First, the work of Lenore Walker figures prominently in my examination of the institutional photography of battered women. A well-known pioneer in research on battered women, Walker drew upon work in animal behavior conducted by Martin

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<sup>31</sup> Lisa Cartwright, *Screening the Body: Tracing Medicine’s Visual Culture* (Minneapolis and London. University of Minnesota Press, 1995)

<sup>32</sup> Paula Treichler, Lisa Cartwright and Constance Penley eds., *The Visible Woman: Imaging Technologies. Gender and Science* (New York: New York University Press, 1998)

Seligman at the University of Pennsylvania in order to theorize the formation of battered women's identity in relation traumatic response. In 1967, Seligman et al. conceived of the theory of "learned helplessness" to describe the isolated trauma response of cats and dogs to the administration of electrical shocks. Unable to control or escape harm laboratory animals became passive and listless, refusing to escape even when their cage doors were re-opened by scientists. Walker adapted learned helplessness theory in 1979 to explain the behaviors and narratives of battered women whom she treated in therapeutic settings. Battered Woman Syndrome--Walker's adaptation of learned helplessness—proved to be one of the earliest controversies surrounding the politicization of domestic violence. Walker argued that traditional gender prescriptions socialize women to invest in their own helplessness. Applying learned helplessness to the passivity of abused women, Walker conceived of battered women syndrome to represent the identities of women within clinical and legal discourses that blamed them for the violence they repeatedly experience. This dissertation examines what happened to battered woman syndrome after it was taken up within the discourse of law. I argue that Walker strategically adopted Seligman's theory because it originated in animal behavior experiments. The discipline of psychology continues to be split in terms of humanist and behaviorist paradigms. In a world that privileges the scientific method as a mode of knowing linking the behaviors of battered women to findings in the animal behavior laboratory articulated the claims of abused women through the authorial narrative of science. For Walker, the discourse of science would enhance the validity of the unique communication deficits of battered women.

This dissertation uses the production of abused women within scientific discourse to speculate further on the role of race, in particular blackness, in formulating the concept of battered women's subjectivity. The institutionalization of photography of battered women has implications for the study of racial formation (Omi and Winant 1994; Fanon 1967).<sup>33</sup> In the study of battered women, race, racial blackness in particular, is both included and excluded from analyses provoking critiques of state handling of domestic violence as frustrating both intersectional and transcultural approaches to the problem (Crenshaw 1989; Volpp 2006).<sup>34</sup> The present study traces the function of racial blackness in the scientific analyses of battered women's trauma narratives and the emergence of institutional photography of battered women. To this end, I take up Walker's initial study of abused women that included only white, middle class women dealing with domestic violence as a point of departure into the discourse of battered women as a racial discourse.

Walker's formulation of the battered women syndrome is informed by work in cognitive and behavioral psychology completed during the 1960s. The dissertation draws upon the institutional production of what I call theories of "passive subjectivity." As previously mentioned, Lenore Walker applied Seligman's theory of learned helplessness to the contradictory and passive behaviors of battered women. Seligman et al. (1967,

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<sup>33</sup> Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* (New York: Routledge, 1994); Frantz Fanon, *Black Skin, White Masks* (New York: Grove Press, 1967)

<sup>34</sup> Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color," *Stanford Law Review*, (1989) vol. 143:1241-1299; Leti Volpp, "Disappearing Acts: On Gendered Violence, Pathological Cultures and Civil Society," in *The Humanities in Human Rights: Critique, Language, Politics* (2006) 1631-1636, PMLA Conference: Graduate Center City University of New York October 21-22

1968 and 1971) isolated key factors producing inappropriately passive behavior during the civil rights movement. Seligman's study of learned helplessness in laboratory animals was conducted at the University of Pennsylvania Psychology department, the same program briefly attended by cognitive psychologist Silvan Tomkins in 1933. Tomkins ultimately left the Penn Psychology department and pursued his doctorate in Philosophy; however, he has become a major theorist of affect whose significance to feminist theory, psychoanalysis and media studies continues to emerge. The work of Seligman and Tomkins shares more than institutional and disciplinary affiliations. Both psychologists share inhibitions and disruptions of the motivational affect system as a research thematic. Their respective investigations on affect occurred during the political context of the civil rights movement. More importantly, both Seligman and Tomkins engaged in writing practices that repeatedly figured the black American in analyses of passive subjectivity in the work of Seligman and the distress object in that of Tomkins (Tomkins 1963; Sedgwick and Frank 1995). Seligman and Tomkins respectively write the black body into studies of passive subjectivity within the social sciences whereas Walker's initial study of battered women excluded black women. The black body appears and disappears within analyses of motivation and passive subjectivity.

The present study thus positions the civil rights movement as a significant context animating scientific research on passive subjectivity and its implications for understanding domestic violence. In this way interventions such as the Violence Against Women Act and the *Crawford v. Washington* Supreme Court decision are critiqued as neoliberal policies that constitute the *afterlife* of the civil rights movement and slavery, a term I borrow from Saidiya Hartman's stirring analysis of life and creative expression on

the southern plantation and during Reconstruction. As it turns out, Walker's pioneering collection of battered women's trauma narratives and their translation into battered woman syndrome derives its force from prior social science investigations of passive subjectivity that referenced the social, economic and political conditions of black folks. We can see this in the work of Seligman et al. and Tomkins, two institutionally and disciplinarily linked figures in psychology working on passive subjectivity and the role of motivation in negotiating human suffering taken up by Walker.

Interestingly, Seligman (1993) disagreed with Walker's application of learned helplessness theory to abused women. He instead argues that learned helplessness applies very well to the predicament of black folk in the U.S. Walker's application of the theory of learned helplessness to battered women was instead a middling example of the particular display of "inappropriate passivity" "in the wake of uncontrollable events" which are "mediated by particular cognitions acquired during exposure to uncontrollable events and inappropriately generalized to new situations" (Seligman 1993: 229). According to Seligman, abused women do not demonstrate learned helplessness as exhibited according to the factors isolated in the laboratory. For his part, Tomkins argued the predicament of the Southern Negro to be one of the most remediable social problems through the negotiation of 'objects of distress.' Blacks figure in key moments in Tomkins's analyses of the 'negative affects,' he writes, "If and when positive affect is experienced by whites about Negroes, then the distress and anger which are necessary to mobilize remedial action will be more easily activated and sustained. No one has to urge distress upon anyone who becomes aware that a beloved is suffering" (Tomkins 1963:55). For Tomkins, objects of distress are important figures or artifacts in the

development of the individual and the group. The loss and recovery of the distress object is important to the actualization of human potential.

My goal on this point is to examine the ways in which photography of battered women operates as an object of distress that re-routes racial antagonisms through the digital image. Here the dissertation examines the technical conditions under which battered women are photographed by the police. This objective expands on the first dissertation objective centering on the emergence of photography of battered women and the de-politicization of the complexity of abused women's trauma narratives. Images of battered women black-box the enunciation of complex agency after repeated traumatic experience, but their very creation is a racial project whose origins are traceable to nineteenth century colonial surveillance practices (Finn 2010; Wexler 2000; Smith 1999).<sup>35</sup> The *production* of images of battered women, its *mise en scène*, reveals an explicit racial project at the level of the camera apparatus. The technical production of state images of battered women positions dark-skinned women into an antagonistic relationship to photographic light (Dyer 1997; Wilderson 2010).<sup>36</sup> The dissertation argues that this is a unique expression of social death in the era of ubiquitous computing. Tomkins' work is relevant here not only in the context of the civil rights movement but also, and significantly, within mid to late twentieth century innovations in global

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<sup>35</sup> Jonathan Finn.2010. *Capturing the Criminal Image: From Mug Shot to Surveillance Society* (Minneapolis: University of Minnesota Press); Laura Wexler, *Tender Violence: Domestic Visions in an Age of U.S. Imperialism* (Chapel Hill: University of North Carolina, 2000); Shawn Michelle Smith. 1999. *American Archives: Gender, Race, and Class in Visual Culture*

<sup>36</sup> Richard Dyer, *White* (London and New York: Routledge, 1997); Frank B. Wilderson III., *Red, White, and Black: Cinema and the Structure of U.S. Antagonisms* (Durham: Duke University Press, 2010)

computing. As Sedgwick and Frank's (1995) introduction to Tomkins's work observes, Tomkins's writing was situated within the "cybernetic fold" that characterizes "the moment when scientists' understanding of the brain and other life processes is marked by the concept, the possibility, the *imminence*, of powerful computers" (12).<sup>37</sup> I use Tomkins' work to read affect through multiple registers of spectatorship of digital images of battered women in the era of computerization.

My use of Tomkins is guided by Cartwright's emphasis on affect and communication technologies in the representation, agency, and the constitution of the subject. The dissertation examines how digital images of battered women produce an empathetic identification in which the state is able to "recognize and even *facilitate* the otherness of the other" (Cartwright 2). In this instance, the 'otherness of the other' is facilitated by he or she who, among other things, adjusts the lighting conditions to photograph battered women who are dark skinned. Photography procedures that digitally evacuate blackness from view are constitutive of moral spectatorship Cartwright argues is formative of the subject. In this way the state's ability to "facilitate the otherness of the other"—battered women of color—is fraught with ambivalence: Are battered women invited into humanity through photography lighting practices that lighten their skin color so that injuries may be seen, or are they excluded from it? The dissertation posits that black women are invited into humanity, in one iterative formula, precisely through the evacuation of dark skin. Further, the lightened appearance of dark-skinned abused women briefly houses them within a category of feminine victimhood traditionally held by white women. Cartwright notes that "to appear and survive, one must also blend in"

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<sup>37</sup> Sedgwick and Frank *ibid.*, 12

(223). I demonstrate that while images of battered women analogize the contradictory discourse represented by battered woman syndrome they simultaneously establish black women as the limit of that analogy through color adjustment.

### **Dissertation Plan and Chapter Outline**

The critique of state photography practices of battered women offered in this dissertation proceeds along two axes: archival research on the political origins of photography of battered women, using genealogical method; and ethnographic, or, praxiographic observations of live testimony in domestic violence trials, including interviews of law professionals and advocates who produce and circulate evidence photography of battered women. The second axis of draws upon archival and ethnographic methodologies from science studies, surveillance studies, and dramaturgical studies of networked medico-legal settings. Though the dissertation is shaped by two lines of argumentation, both axes and their methodologies are integrated throughout the dissertation chapters. Chapters 1 through 3 do primarily derive from archival sources including that of the San Diego Photography Museum. Chapter 4 principally derives from observations of misdemeanor domestic violence trials as well as judicial monitoring hearings for batterers sentenced to community restitution and battered intervention programs—all conducted at the San Diego Superior Court. Chapter 3 and 4 also include interviews of camera operators working in the arenas of state and art photography as well as City Attorneys and Public Defenders.

Theories of affect link the two lines of research pursued in the dissertation. They are incorporated throughout the dissertation to read the archive of domestic violence and battered women's discourse. The live achieves presence through descriptions of affect's unfolding in and through the production and circulation of images of battered women, specifically, the stress between the *political time* of battered women's live court testimony and the *biological time* that is arrested by her injury photographs. This disjuncture between liveness and the increasingly mediatized character of politics is worked out on the bodies and photographs of battered women in ways that expose the racial antagonism structuring the adjudication of domestic violence. The dissertation chapters also rely on theories of affect and spectatorship to critique state photography of battered women as the racial project that it is.

Chapter 1 *Visualizing the Complex Agency of Battered Women: Translating Battered Women's Trauma Narrative into State Photography* traces scientific and legal discourse on battered women's language. The chapter explores academic research on the trauma narratives of battered women and their translation and incorporation into the discourse of law. Chapter 1 elaborates key affinities between battered woman syndrome and evidentiary photographs of battered women drawing upon clinical narrative and U.S. case law. Beginning with psychologist Lenore Walker's construction of battered woman's syndrome, I examine the contours of this subjectivity according to the narrative of power and domination proposed by the syndrome. Although Walker's adoption of "learned helplessness" theory from animal behavior experiments meant to incorporate women's needs within the waning U.S. discourse of civil rights and recovery from trauma, her work was vigorously critiqued for pathologizing women as well as

challenging legal rules of evidentiary reliability. I discuss the resulting controversy about the clinical and scientific validity of battered woman syndrome, tracing it through U.S. case law and legal procedures. Battered woman syndrome is considered in context of the *Daubert* evidentiary standard (replacing the *Frye* rule in 1993), that empowered judges to determine whether scientific evidence is “generally accepted” by the scientific community.

After considering battered woman syndrome through legal precedents involving standards of evidence and expert testimony I discuss the production and circulation of visual documentation of abuse in U.S. courts. I argue that practices of surveilling battered women using photography are crucial to the gradual normalization of battered woman syndrome despite strong claims to its weak scientific validity. Paying close attention to the transition from analogue to digital photography of battered women and the emergence of new medical camera instruments, the chapter details several innovative policing strategies that visually document battered women using color photography in order to stabilize complex subjectivity. Such initiatives and techniques achieve the “look” of domestic abuse that positions dark-skinned women in adversarial relation to light.

Chapter 2 *Photographie Feminine: Exile and Survival in the Photography of Ana Mendieta, Donna Ferrato, and Nan Goldin* positions the photojournalism of Donna Ferrato, who famously documented an act of performed domestic abuse within a cohort of body artists working in the Anglo-American art tradition during the 1960s through 80s. I tie together thematically an early performance installation by body artist Ana Mendieta and the art photography of Nan Goldin in order to link their respective photographic

gazes to the emergence of photography of battered women. I demonstrate how the practice of photographing battered women came into the world through the photography of an Anglo-American feminist avant-garde that also includes photojournalism. The work of Ferrato, Mendieta and Goldin are figured as “proto” photographers of legal evidence of domestic abuse whose work, I argue, prefigures the official legal ways in which battered women’s visible bodies are made to “survive” through the affirming capacities of the evidentiary photograph. The chapter problematizes the evidentiary photograph of battered woman as presenting a visible body in the courtroom that is not necessarily or wholly constitutive of battered women’s subjectivity.

Chapter 3 *Advertising the Law: Anti-Domestic Abuse Support Service Advertising Campaigns* turns explicitly to questions of perception within the political economy of representation of battered women. In this chapter I describe domestic abuse support services advertising campaigns that use a form of masquerade to simulate the injuries sustained through relations of abuse. Using anthropological theories on the function of dramaturgical masks, I argue that the cosmetic simulation of domestic abuse is a kind of mask whose cultural ritual function opens a space of ambiguity and lawlessness in which a subject may work through, or “come into voice” through an alternate, usually deviant, identity position. I use anthropological theories of masking and masquerade to link the cosmetic simulation of domestic abuse to nineteenth century racist minstrel performance of the black in the nineteenth century. In the case of black minstrelsy, blacks were forced to perform on the threat of violence. Whatever pleasures the live antics of the minstrel stage presented were in fact scenes of racial formation in which whites imagined and

controlled the appearances of the black through entertainment. I take the cosmetic techniques white minstrel performers used to simulate black skin as a point of departure into how the cosmetic simulation of battered women's injuries ideally imagines the look of domestic abuse through a particular physical appearance forged through masquerade. In this way the state's marketing of support services for domestic violence sutures photographic evidence in the courtroom to art and cosmetic photographs of women, and individualizing techniques of feminine masquerade. I argue that the state creates a monopoly on the particular form of masquerade used to simulate the injuries of battered women. In doing so, the state shores up evidence photography by managing the production and circulation of "faked" or simulated images. This argument is supplemented by interviews with two photographers of battered women, one with a registered nurse practitioner working for the police and an art photographer whose pro bono work includes a 1999 subway train advertising campaign in New York City. Using these examples, I ask about the capacity of a form of camping of domestic abuse to perform political solidarity and empathy. I ask what happens when camp is recorded through photography such that it resembles the effects of "real" domestic abuse. Chapter 3 concludes by reading that the cosmetic simulation of domestic abuse is a form of camp appropriated by the State.

Chapter 4: *Epidermal Reading in the Domestic Violence Courtroom* presents insider ethnographic observations of domestic violence court trials judicial monitoring hearings in San Diego California. The ethics of domestic violence courts are examined through clinical narrative, observations and interviews with prosecutors, defense attorneys and

judges and other court-room actors. Photographic evidence in misdemeanor and felony domestic abuse cases emerges as the site of discursive contestation of not only proof of violence but also the technical rendering of the epidermis on camera. I argue that battered women survive through evidentiary photographs such that technical questions about camera resolution inform racialized judgments of images of battered women. These arguments reference the Violence Against Women Act that intensified police domestic violence investigations and Supreme Court's decision in *Crawford v. Washington*, which led to battered women being court-ordered to testify in domestic abuse cases. I argue that both these political techniques create photography of battered women as a fetish object whose power is realized in conjunction with the live testimony of battered women. Chapter 4 then explores the problem of adjudicating domestic abuse through, what I claim are, banal procedures of reading the epidermis. Here images of battered women are figured as a racial formation in which women of color are invited into humanity through the exclusion of blackness.

Conclusion: *Visualizing Violence: Photography, Subjectivity, Co-Presence and the Legal Post-Modern* ends the dissertation with final reflections about the production and circulation of photography of battered women as a subject of international human rights discourse. The transnational character of photography practices involving battered women is discussed in this short chapter. These concluding remarks pivot away from the particular circulation of images of battered women in the U.S. to discuss how international non-government organizations invite battered women globally into humanity through the colonial technology *par excellence*—photography.

## Chapter 1 Visualizing the Complex Agency of Battered Women

In 1967 at the University of Pennsylvania Psychology Department graduate students Martin E.P. Seligman and Steven F. Maier proposed the theory of “learned helplessness” to explain the loss in voluntary agency in animals after repeated exposure to physical trauma. Working in the area of animal learning the finding was the result of several torture experiments on rats, dogs, cats and fish in which it was consistently discovered that a deadly form of passivity set in when animals learned that their self-initiated actions had no influence on their environment. In his experiments, Seligman administered random and varied electric shocks to dogs confined to a shuttlebox. Under these conditions the animals naturally tried to escape, although to no avail. After prolonged administration of the shocks that occurred despite voluntary escape actions, the dogs adopted a submissive and passive position that continued even after they were shown how to exit the shuttlebox. Over the course of the study, Seligman and fellow researchers found themselves dragging the animals to the exit, eventually resulting in the restoration of the dogs’ voluntary escape reaction. Seligman conducted his study with older and younger dogs, finding that the earlier the animals experienced the administration of shock the longer it took to reestablish the voluntary capacity to avoid danger and harm.

While Seligman and fellow researchers focused on animals and did not film or photograph any moments from their experiments, the objectives and narratives of the

experiments are a testament to more wide-scale shifts in the ideology of self and the emergence of personal control as key factors directing *human* behavior. Whereas the stimulus-response (*S-R*) paradigm of 1950s behaviorism previously argued that seemingly intentional acts could be reduced to an *S-R* analysis, Seligman's work was a move toward *avoidance learning* where the human could unlearn destructive stimulus-response reactions, thereby freeing the individual from the tyranny of entrenched disordered *S-R* reactions. Seligman's work in animal learning was completed during the 1960s in the context of the Kennedy-King-Kennedy assassinations, a time when many mourned the efficacy of both political institutions and of collective political action, including those in large scale social movements. In this context, extrapolating research on animal learning for the human was an ideal direction for a nation turning toward investments in ideologies of the psychic capacity and personal control of the individual.

The theory of "learned helplessness" proved to be controversial from the start with several rebuttals published soon after Seligman's initial results in the field of psychology. None of these rebuttals, however, would be as controversial as Lenore Walker's *application* of "learned helplessness" theory to explain the passive behaviors of women who had been repeatedly beaten within marriage, an issue occupying more and more of the public culture in the United States and abroad during the 1970s. Seligman's study in animal behavior was adapted by Walker to construct a view of agency, an issue that persists in current debates about human and animal rights, legal culpability and, the experience of trauma and recovery among soldiers and other survivors of violent conflict and catastrophe. Walker's employment of "learned helplessness" theory would move

away from a theory of animal learning into a gendered description of disordered sexuality and desire.

Seligman's theory of learned helplessness elaborated a theory of subjection to torture. In animals the experience of torture was found to alter several cognitive capacities. Researchers encountered animal subjects whose nature had, in some cases, changed irrevocably; the shifts in the cognitive abilities in the animal could be produced by the behaviorist through serial administrations of shock. The theory of learned helplessness thus explained a deeply entrenched personality change at the cognitive level that was generally observable. The formulation of learned helplessness was a research program that meant to explain crucial alterations of the human condition brought about through the experience of torture. Learned helplessness explained a shift in the animal subject as a result of transfers and intensifications of affect. Hence, it should not strike us as at all odd that social scientists should take up the findings of Seligman et al. and apply them to the human populations and circumstances as did Walker.

It is with the application of scientific findings in animal behaviorism to human populations and experience that I open my discussion of Battered Woman Syndrome (BWS). This chapter examines the relationship between BWS and its role in the bureaucratic surveillance of battered women. I consider the emergence of a genre of photography in the context of scientific knowledge on BWS and its incorporation into the discourse of law through photography. The chapter traces and reads the development of a genre of photography—images of battered women—to claims about the weak scientific validity of battered women syndrome as a form of evidence in cases of domestic abuse. The institutional purchase of BWS has been destabilized by doubts about its underlying

scientific method. I argue that the production of images of battered women emerged as a scientific object that consolidates contradictory elements of BWS produced in the clinic, social service agency and women's encounters with law enforcement. Battered Woman Syndrome makes institutionally legible battered women's complex agency as the disorder simultaneously describes both dangerous passivity and deadly aggression toward batterers. Although BWS has been subject to feminist analysis and critique for some time, I suggest that the rise of photography of battered women is partially responsible for the process in which the term is gradually made obsolete. In other words, I propose that photography of battered women functions as an icono-text signaling and normalizing BWS in the adjudication of domestic abuse.

By focusing on the emergence of a body of photography I claim images of battered women constitute a gendering technology of surveillance. Several studies of state photographic gazes discuss how women's bodies have figured in constructing narratives of illness and disease, social deviance and criminality. My examination of evidence photography in domestic abuse cases demonstrates that the emergence of new genres of photography make new aesthetic conventions appear in the world that play a crucial role in establishing rights discourse as visual culture. In terms of the experiences of battered women, photographs of their injuries have become how we recognize and confirm the reality of domestic violence. As a genre, photography of battered women constitutes an important work product used by law enforcement to adjudicate the violation of women's rights. The production and circulation of photographic evidence are practices through which the police and other law professionals oversee individuals prosecuted for domestic abuse. Often after the experience of violence battered women's

survival—understood institutionally-- includes medical attention, emotional support and shelter at some geographical distance from abuse. I draw upon work in feminist psychoanalysis that studies the relationship between identity and the field of vision. Akiko Shimizu, who draws heavily on the work of Kaja Silverman, uses the notion of “survival” to examine how “the self is always faced with the threat of being absorbed, through its visible body, into social and cultural meanings that do not belong to it, that are beyond its control.”<sup>38</sup> Similarly, I use the term “survival” to understand how domestic abuse claims survive institutionally through the management and movement of the photographic image. This chapter traces the development of photography of battered women as a political reality.

Beginning with Walker’s construction of battered woman’s syndrome, I focus on the contours of an identity category and the narrative of power and domination proposed by the syndrome. I examine battered woman syndrome because of its controversial status in constituting domestic violence as an area of legal, policy and clinical. Battered Woman Syndrome (BWS) describes complex agency in the context of repeated subjection to violence originally observed through acts of laboratory and clinical surveillance. BWS profiles women’s passivity and non-cooperation in prosecuting batterers and frequent return to abusive relationships as well as describes instances where battered women kill their partners. Battered woman syndrome is an embodied mode of resistance that challenges liberal ideals of the self, agency and independent thinking. For these reasons,

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<sup>38</sup> Akiko Shimizu, *Lying Bodies: Survival and Subversion in the Field of Vision* (New York: Peter Lang, 2001) pp. 5.

researchers of domestic violence have been eager to explain why women remain in violent intimate partnerships and why some kill their partners.

I describe a series of key moments in the emergence of studies of domestic violence and ongoing research on the institutionalization of photography of battered women through practices among the police, medical and law professionals. Although Walker's adoption of "learned helplessness" meant to incorporate women's needs within the emerging discourse of self-help and recovery from trauma, her work was vigorously critiqued for pathologizing women as well as challenging legal rules of evidentiary reliability. I discuss the controversy over the clinical and scientific validity of BWS, tracing it through U.S. case law and legal procedures. In particular, I look at BWS in the context of the *Daubert* evidentiary standard (replacing the *Frye* rule in 1993), which empowered judges to determine whether scientific evidence is "generally accepted" by the scientific community.

After considering battered woman syndrome through legal precedents involving standards of evidence and expert testimony I discuss the production of visual documentation of abuse in U.S. courts. I argue that practices of surveilling battered women using photography are crucial to the gradual normalization of BWS despite strong claims to its weak scientific validity made by women's advocates and law professionals. Paying close attention to the transition from analogue to digital photography of battered women and the emergence of new medical instruments, I detail several innovative policing strategies that visually document battered women in order to stabilize battered women's complex identity. I conclude that these forms of surveillance are themselves

constitutive of battered women's subjectivity as they configure social and legal settings in ways battered women both resist and embrace.

Twenty years ago, Kimberlé Crenshaw argued that sexism and racism mutually colluded against women of color in the fight to politicize violence against women.<sup>39</sup> In her formulation, both discourses ultimately privileged white women's claims for redress and adjudication of domestic violence while simultaneously oppressing women of color. Intersectionality has been a primary analytic for thinking through difference since Crenshaw's coined the term. Yet when thinking about battered women and the lens of psycho-pathology in which they are read the rubric of intersectionality may not take us as far as we need. Due to the centrality of visualization in the contemporary adjudication of domestic violence it is vital that we turn a more critical eye toward the circumstances that both animate and inhibit the materialization of battered women's bodies and identity. In "Mapping the Margins" Crenshaw's intervention was directed toward women of color and their troubled and troubling movement through racist and patriarchal institutions meant to respond to their experience of domestic abuse. The patriarchal sexism of the black community and racist, classist, English-language only social services agencies figure prominently in the recapitulation of black women's traumatic experience. The institutional delegitimization of black women's traumatic experience is rehearsed in public culture as well; Crenshaw devotes several passages to critiquing the rap group Two Live Crew for popularizing the denigration of black women through verse. In my reading of Crenshaw women as subjects of desire does not emerge; Crenshaw does not

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<sup>39</sup> Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color," *Stanford Law Review*, vol. 143:1241-1299, (1991)

offer a dynamic reading of battered women's subjectivity. While her depiction of the repeated abuse women of color experience at home and in public are accurate, the complex and conflicting desires of women are not examined.

I find a reaction to Crenshaw similar to my own in Wendy Brown's 2005 essay, "The Impossibility of Women's Studies." In that essay Brown identifies a problem with Crenshaw's account of subject formation. In a reworking of Crenshaw's traffic intersection experiment where she offers an example of the concept-- provocatively placed in a footnote--Brown writes, "The woman is not an intersection, nor is she intersectional; rather she lives at an intersection of naming in the law, as do most people. 'Intersectionality' describes a phenomenon of address and interpellation, and offers a potential strategy for navigating it. Black women as such are not 'intersectional'; rather, their legal position is."<sup>40</sup> Brown's subtle and, I think, suppressed critique is that Crenshaw's concept of intersectionality is not an explanation of subject formation. Intersectionality does not account for the complex desires and identifications battered women have produced in the clinic, social service agency and the courtroom. Moreover, as Jasbir Puar points out by employing Brian Massumi's cybernetic analysis of the increase in domestic abuse on Super Bowl Sunday, Crenshaw's intersectionality reads domestic violence as a discrete event rather than inquiring after the "affective conditions necessary for the event-space to unfold."<sup>41</sup> Similarly, Brown wants to suggest that the

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<sup>40</sup> Wendy Brown, *Edgework: Critical Essays on Knowledge and Power* (Princeton: Princeton University Press, 2005) pp152n3.

<sup>41</sup> Jasbir Puar has recently articulated a critique of intersectionality, arguing that the concept is less robust when A) theorizing concepts like gender and sexuality in the global South and B) thinking of violence against women as not occurring in discrete temporal events where blame is easily assessed but instead occurring within a nexus of different

structures that politicized domestic violence not only oppress or privilege the subject but are *productive* of the same. To be sure, Crenshaw was writing in 1991 at the beginning of the criminalization of domestic violence at the legislative and institutional levels. Domestic violence was gaining momentum as an object of social scientific inquiry only since the late 1970s and early 80s. The task of understanding why cybernetic approaches to domestic abuse were paths not taken during the early 1980s is outside the bounds of the current study.

My analysis of laws' visual culture of battered women insists that the power of this genre of photography consists of its capacity to produce battered women's subjectivity on behalf of the state. Such images do not merely oppress some women and privilege others; rather, photographic evidence of abuse has a subject-producing power that is informed by the debates about BWS and the contingent histories of photography in the courtroom and the requirements of evidence. This chapter takes a cybernetic approach and situates the emergence of BWS and photography of battered women as a techno-scientific discourse. Furthermore this discourse has links to eighteenth-century rules of evidence corroboration. I relate BWS discourse to a recent Harvard study of university sexual assault and policies. Currently, the university campus exists within a state of exception on matters of gendered sexual violence. As Michelle J. Anderson's

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temporalities in which affects are intensified and materialized in bodies ultimately folding in upon one another. See, "I would Rather be a Cyborg than a Goddess: Intersectionality, Assemblage, and Affective Politics" <http://eipcp.net/transversal/0811/puar/en> and Brian Massumi. *Parables of the Virtual: Movement, Affect, Sensation* (Durham: Duke University Press, 2002). See also Jennifer C. Nash. (2008) "Re-thinking Intersectionality" in *Feminist Review* vol. 89: 1-15 for a discussion of the problems befalling the concept of intersectionality including: methodological approaches that reify marginalizing regimes of power/knowledge.

study of university sexual assault policies demonstrates, contemporary corroboration requirements shift responsibility away from the institutions in which assault often occurs and onto claimants. While the majority of states have altered antiquated corroboration requirements for the benefit of rape victims, college assault policies are now often more severe than the states in which they are seated. Corroboration rules formed in the eighteenth century, and the incorporation of photographic evidence through analogy with dominant artifacts of knowledge-production during the nineteenth-century, are two legal histories that anchor contemporary adjudication of domestic violence.

### **Applications of Learned Helplessness: Battered Woman Syndrome**

Cartwright pinpoints a crucial distinction made by physiologist Claude Bernard between the “observation” and the “experiment” of laboratory animals. In Bernard’s formulation the observation is associated with the scientist who takes a passive notation of witnessed phenomena; the experiment, by contrast, requires a much more invasive posture where natural phenomena are actively suppressed or destroyed by the scientist in order for the “function of an activity to be known.”<sup>42</sup> “Experiments of destruction” was a term used by Bernard to capture precisely that nature of the experiment as a mode of scientific looking. I argue that learned helplessness theory is situated within the mode of “experiments of destruction” in which observational knowledge about human learning was achieved through suppression and destruction of normal animal functioning. The following from Seligman offers an account of the experimental procedure documenting

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<sup>42</sup> Ibid., pg. 26

learned helplessness that would place battered women's identities within the realm of scientific knowledge with legal consequences:

[B]ecause, this was classical conditioning, the dogs were unable to alter the sequence of events or the events themselves. Our first experiments investigated just which aspects of this classical conditioning procedure were critical. Were the tones necessary? Did the shocks have to be brief? And so on. These studies revealed that the essential feature was that the dog be given a sufficient number of shocks that it could do nothing to prevent or terminate. The occurrence of the tones and the duration of the shocks were not essential. Indeed, the delivery of eighty 5-second inescapable and unavoidable shocks became the standard procedure used to produce and study later failure to learn in the shuttlebox.<sup>43</sup>

And later:

To conduct this experiment most appropriately, the researcher must arrange exactly equally exposure to shock in those animals that do and do not have control. Otherwise, any subsequent behavioral difference can be attributed to the difference in shock rather than to the control dimension. To meet this requirement, we introduced the *triadic design*. One group of animals is exposed to a series of escapable shocks, each of which can be terminated by some response such as pushing a lever or turning a wheel. A second group receives a series of inescapable shocks that are yoked to those delivered to the first group. That is, each member of this second group is paired with a member of the "escape" group and given the identical series of shocks. Each shock begins and ends identically for both animals, with the duration of course determined by when the escape animal responds. A third group of animals receives no shock at all, which allows the researcher to assess the effects of shock per se.<sup>44</sup>

Here, Seligman's research emphasized the degree of inescapable shock required to produce the learned helplessness effect. The nature of self-control and the capacity for voluntary action is knowable through subjection. This has important implications for the perception of visual evidence of wounds and psychological state of battered women by

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<sup>43</sup> Petersen, C, Maier, S., Seligman, M., *Learned Helplessness: A Theory for the Age of Personal Control* ( New York: Oxford University Press, 1993)p. 20

<sup>44</sup> *Ibid.*, 26

authoritative viewers of battered women's portraiture which I develop throughout this chapter.

The contours of learned helplessness included observable changes to four psychological processes—incentive motivation, cognition, associability and emotion. Seligman intended the theory of “learned helplessness” to be applied to a variety of human populations and social circumstances. Lenore Walker drew upon the experiences of Seligman's shocked dogs and drowned rats in her formulation of the battered woman syndrome.

In *The Battered Woman* (1978) and *The Battered Woman Syndrome* (1984) Walker sought to bring women's perspective into the dynamic proposed by learned helplessness theory. Walker's research, based on a sample of 110 middle class Anglo-American women emphasized duration and repetition as structuring elements in relations of domestic abuse. Three phases produced psychological paralysis in battered women, similar to learned helplessness demonstrated in animals from Seligman's laboratory. The first phase is a period of tension-building, followed by a violent event, which results in the display of loving contrition post-violence. This third phase, commonly understood as the contrition or “honeymoon” period circulates positive affect that both closes and restarts the cycle of violence. This pattern of tension, violence, and positive affect constitute the interaction in which women learn they have no control over the violence they experience.

Walker tried to diagnose psychological and sociological dimensions of battered women's action in domestic violence by collecting battered women's autobiographical narrative in therapeutic settings. She believed in learned helplessness theory, but also

understood that it left women's perspectives out of the picture. Walker's research and many subsequent investigations by other psychologists and sociologists tried to establish how battered women organized their discourse about their abuse.<sup>45</sup>

### **Scientific Validity of Battered Woman's Syndrome**

In addition to questioning the dynamism of intersectionality and its relationship to the experience of battered women Wendy Brown has also expressed concern for subjugated knowledges that risk re-colonization by the very structures of power that created them as oppositional discourses in the first place. Recalling Foucault's observations about the equation of power with speech and oppression with silence in modern culture, Brown suggests that issues such as multiculturalism, the "pre-menstrual syndrome" diagnosis and certain strains of the anti-pornography debate are forms of political speech that function similarly to battered woman syndrome in that they operate on a dichotomous model that situates oppression and freedom as polar opposite without grasping their mutual constitutions, their necessity to one another. In Brown's analysis, battered woman syndrome is a form of subjugated knowledge that attempts to intimately know battered women through confession, the bringing into voice oppression as an enactment of freedom. One problem with such a model of knowledge is that battered woman syndrome becomes a form of speech that unifies women's experience in law. In what follows, I show that the pressure for battered women to speak also situated women's

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<sup>45</sup> See Angela Browne, "The Victim's Experience: Pathways to Disclosure." *Psychotherapy* 28 (1991): 150-6; Judith Lewis Herman, *Trauma and Recovery* (New York: Basic, 1992); Christine Shearer-Creman, Christine and Carol L. Winkelmann, eds., *Survivor Rhetoric: Negotiations and Narrativity in Abused Women's Language* (Toronto: University of Toronto Press, 2004).

experience within the master discourse of science.<sup>46</sup> The emergence of the science of battered woman syndrome would then come under legal scrutiny, resulting in a strange pact between law and science where photographic evidence resolves the problematic dichotomous model of battered women's *silence or speech*.

In clinical and legal settings researchers found that battered women displayed complex agency, leading to both feminist and non-feminist critiques of Walker's research that had connected battered women's behavior to mental illness. The aggressive behaviors of women who killed their batterers, for example, contradicted the theory of battered women's learned helplessness. Several studies subsequent to Walker's found that battered women did many things to end or control when and where violence occurred, challenging the cycle of violence and learned helplessness theories.<sup>47</sup> Resourcefulness demonstrated by many women was found to be inconsistent with the passivity associated with battered woman syndrome.<sup>48</sup> As a legal defense, battered woman syndrome was also found to have racial, class and heterosexual biases.<sup>49</sup> Arguing

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<sup>46</sup> Brown references *State v. Kelly*, 97 NJ 178, 478 A2d 364 (1984) which codified the scientific basis of battered woman syndrome and admitted expert testimony on the syndrome.

<sup>47</sup> See David Faigman, "The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent." *Virginia Law Review* 72 (1986): 619-47; Regina A. Schuller, and Neil Vidmar, "Battered Woman Syndrome Evidence in the Courtroom." *Law and Human Behavior* 16 (1992):273-91.

<sup>48</sup> See Holly Maguigan, "Battered Women and Self-Defense: Myths and Misconceptions in Current Reform." *University of Pennsylvania Law Review* 140 (1991):379-486; Mary P. Koss, et al. *No Safe Haven: Male Violence against Women at Home, Work and in the Community*. (Washington, D.C.: American Psychological Association, 1994); Patricia Gange, *Battered Women's Justice: The Movement for Clemency and the Politics of Self-Defense*. (New York: Twayne, 1998)

<sup>49</sup> Denise Bricker, "Fatal Defense: An Analysis of Battered Woman's Syndrome Expert Testimony for Gay Men and Lesbians Who Kill Abusive Partners" *Brooklyn Law Review* 58 (Winter 1993): 1379-1437; Julie Stubbs and Julie Tolmie, "Race, Gender, and

against Walker's data, Carrie Baker writes: 'The battered woman syndrome does not 'work' for poor and minority women because the standard is based on the experiences of white, middle class women.'<sup>50</sup>

Critiques of the battered woman syndrome model contest it on the basis of the embodied performances of battered women in addition to the durational aspects of the abuse they endure. These studies pondered the question of what kind of body could interpret battered woman syndrome. In doing so, they established that battered woman syndrome inventoried its various meanings through therapeutic and legal encounters with battered women where narratives of race, class and sexuality circulate.

Donavan and Wildman (1981) discuss how court testimony on battered woman syndrome inevitably leads to a distinction between reasonable, "good" and "normal" victims of abuse and others—a model that has in effect resulted in discrimination against battered women who are lesbian and/or of color—identity groups traditionally excluded from conceptions of which subjects may embody reason. Elizabeth Bochnak (1981) analyzes domestic abuse court cases and finds that in predominantly white juries, women of color often do not fit the category of passive victim captured by the battered woman syndrome model. In response, Sharon Allard (1991) calls for more work that considers the intersectionality of race, class, and sexuality in investigating the dynamics of domestic abuse and its constituent diagnoses. Still others like Posch (1988) and Johann

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Battered Woman Syndrome." *Canadian Journal of Women and Law* 8(1995): 122-58; Elizabeth Schneider, *Battered Women and Feminist Lawmaking*. (New Haven: Yale University Press, 2000

<sup>50</sup> Carrie N. Baker, "Complex Agency of Battered Women Who Kill" in *Survivor Rhetoric: Negotiations and Narrativity in Abused Women's Language* Christine Shearer-Creman, and Carol Winkelmann, Carol L. eds., (Toronto: University of Toronto Press, 2004) pp. 51.

and Osanka (1989), argue that battered woman syndrome pathologizes women; they instead advocate that interpretations of battered women's behavior in court focus on how the structure of gender inequality informs women's behavior, whether it is apparently passive or aggressive.

These studies focus on the role that practices of looking play within networked institutional settings: courtrooms, battered women's shelters, police stations, hospitals, and home. They question the emphasis placed on battered women's psyche relative to the politics shaping her environment.

### **Generally Accepted? The Development and Contestation of Battered Woman Syndrome in the Court**

The discourse of BWS organized battered women's court testimony against their batterers. It was also deployed as a legal defense for women who killed their abusers. The use of the battered woman syndrome defense has contributed to a deep ambivalence concerning the behaviors and subject positions of battered women. As a descriptive term, battered woman syndrome captured the psychological paralysis discussed in Seligman's theory and Walker's subsequent application of that theory. However, when deployed as a legal defense for abused women who killed their abusive partners, the discourse collided with a tradition of American law that reads the act of murder as an expression of agency albeit of the worse kind.

As research on the syndrome found that battered women often attempted to direct the course of anticipated violent conflict through a variety of planned acts and ruses, the

defense strategy founded on battered woman syndrome became difficult to support. The large number of women incarcerated for murdering battering husbands and the attendant clemency movement and activism on behalf of these women, a significant number of whom are on death row or serving life sentences without parole, is a testament to the ambivalent efficacy and logic of battered woman syndrome as a legal defense.

The difficulty of convincing juries of battered woman syndrome as a legal defense has led courts and the public to condemn the majority of battered women who kill to the prison industrial complex. A model dubbed Battered woman syndrome survivor theory II emerged in the 1990s, out of studies of domestic violence that focused on the non-passive survivor behaviors exhibited by battered women. These were in most cases battered women who killed or otherwise physically aggressed toward abusive partners. In the early nineties Schuller and Vidmar suggested that juror misconceptions about domestic violence invigorated the science of battered woman syndrome and its discursive circulation via expert testimony. Citing Gillespie<sup>51</sup> they argue that “[g]iven the potential interplay between jurors’ beliefs and the lack of fit between the woman’s actions and the existing laws of self defense, establishing that a woman’s behavior was reasonable can be a formidable goal for the defense to achieve.”<sup>52</sup> In their account of early research on battered woman syndrome, Schuller and Vidmar show that the role of expert testimony supplemented juror’s lay beliefs about domestic violence. In cases in which battered woman are deemed culpable for not avoiding repeated violence earlier with an alternative

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<sup>51</sup> Gillespie, C.K. *Justifiable Homicide*. (Columbus: Ohio State University Press).

<sup>52</sup> Regina A. Schuller and Neil Vidmar, “Battered Woman Syndrome Evidence in the Courtroom: A Review of the Literature,” *Law and Human Behavior*, vol. 16, no. 3, 1992. p. 277

account. This alternative recognizes the complex agency demonstrated by abused women without equating agency with freedom. Expertise on battered woman syndrome in this stage of the model provides a “social framework” for assessing the actions and state of mind of abused women on trial for killing their partners.

Some legal scholars have nevertheless written against battered women syndrome as a legal defense, calling into question the science of battered woman syndrome in its entirety. They turn to a well developed case law in which is traced the proper methods and standards for assessing evidentiary admissibility. These legal scholars specifically contested the research methodology behind survivor theory II, arguing that its continued use in the courts would lead to the erosion of standards of evidence in self defense legal strategy. This scholarship also targeted the role of expert testimony on the science informing the battered woman syndrome to support then critique. In 1986 David Faigman addressed the question of the validity of expert testimony on battered woman syndrome, arguing that the weakness of the scientific methodology behind the disorder endangered the doctrine of self defense in American courts.<sup>53</sup> Four elements comprise the doctrine of self defense in the U.S.: the defendant must believe themselves to be in imminent physical danger; the defendant must use only reasonable counter-force against the threat; the defendant must not be the aggressor of the violence; and the defendant must have experienced circumstances which afforded no opportunity for escape. Faigman cited case law in which American courts struggled over the admissibility of expert testimony.

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<sup>53</sup> David Faigman, “The battered woman syndrome and self-defense: A legal and empirical dissent.” *Virginia Law Review*, 72: 619, 1986.

The legal history of testimony on the battered woman syndrome is currently organized largely by another reference to the Daubert test (and previously with respect to the findings in *Frye v. United States*).<sup>54</sup> Under the *Frye* rule four cases in particular challenged the validity of expert testimony on battered woman syndrome in terms of both the scientific soundness of its methodology. In this process, psychologist Lenore Walker's credibility as an expert witness was discredited. In *Martin v. State* Lenore Walker intended to provide expert testimony on battered woman syndrome for a wife who had hired someone to murder her husband. Helen Martin was convicted of murder, a conviction she appealed by arguing that the trial court refused to enter evidence that she suffered battered woman syndrome and that her actions were committed in self defense—

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<sup>54</sup> See *Frye v. United States*, 293 F. 1013 (1923) and *Daubert v. Merrill Dow Pharmaceuticals, Inc.* 113 S. Ct. 2786, 2795 (1993). In 1993 Daubert rejected the general acceptability test of evidence for expert testimony previously established in *Frye*. Under the current Daubert precedent, judges must themselves be convinced of the validity of a given scientific research upon which expert testimony is presented. *Frye* involved the admissibility of evidence from a systolic blood pressure deception test—a precursor to polygraph technology—given to a defendant standing trial for murder. The court ruled that the deception test was inadmissible because the technology was not “generally accepted” within the scientific community, thus creating the *Frye* rule. Congress adopted the Federal Rules of Evidence in 1975, leading to a question as to whether the Federal Rules invalidated the standard of expert testimony using novel scientific evidence set by *Frye*. *Daubert v. Merrill Dow Pharmaceuticals* was a case in which the Supreme Court resolved this question. The case involved the role of the drug Bendectin in causing a birth defect in two boys, Jason Daubert and Eric Schuller. The defendants Merrill Dow presented published evidence that their drug did not cause birth defects. Daubert and Schuller presented evidence of their own that suggested the drug could indeed cause birth defects. The Daubert and Schuller research was based on reanalysis of Merrill Dow's published research and new *in vitro* and *in vivo* research on animals—experiments of destruction. The Court concluded that the methodologies used by Daubert and Schuller to produce evidence was not “generally accepted” by the scientific community. Plaintiffs petitioned the court arguing that the Federal Rules of Evidence took precedent over the *Frye* standard. The Supreme Court agreed however endowed judges and not juries with the responsibility to ascertain the general acceptability of new scientific evidence. See Tal Golan. *Laws of Men and Laws of Nature: The History of Scientific Expert Testimony in England and America*. (Cambridge: Harvard University Press, 2004)

evidence that relied on Walker's theory to hold the significance that the defense intended, even though Walker had not testified in this particular case. Faigman argues that Walker's willingness to testify as an expert witness in a case such as *Martin* discredited her expertise in the science of battered woman syndrome. Not only was there a preponderance of evidence against Helen Martin—including her confession--in the murder of her husband, Ronald Martin,<sup>55</sup> the temporal aspect of the "cycle of violence" component was unspecified by the science of battered woman syndrome, leaving Walker's method an insufficient one on which to build a defense.

Faigman's criticism of Walker concluded that in *Martin v. State* the psychologist was too sympathetic to battered women; although Walker never testified in the case, the fact that she intended to suggests that she misjudged her role as objective expert witness for an advocacy role on behalf of the wife-defendant.<sup>56</sup> Turning to scientific methodological concerns, Faigman discussed the requirements for admitting novel scientific evidence into court, ultimately reading battered woman syndrome as an example of novel scientific evidence. *Ibn-Tamas v. United States* introduced the battered woman syndrome as a self-defense strategy; it stated that with respect to the admissibility criterion regarding scientific methodology, "[s]atisfaction of the criterion begins—and ends—with a determination of whether there is a general acceptance of a particular methodology, not an acceptance, beyond that, of particular study results based on that

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<sup>55</sup> *State v. Martin* 666 S.W. 2d. 895 (Mo. Ct. App. 1984). See *State v. Leaphart*, 673 S.W. 2d. 870 (Tenn. Crim. App. 1983) for a case similar to *Martin*.

<sup>56</sup> Faigman used *Buhrle v. State* (627 P.2d. 1374 (Wyo. 1984) to support the requirement that expert testimony supports the science at issue in the self-defense claim and not to advocate for the defendant.

methodology.”<sup>57</sup> In *Ibn-Tamas v. United States* the courts took responsibility for judging the scientific research methodology informing the battered woman syndrome discourse. The court required the methodology to conform to the research standards of the legal. The 1985 finding in *State v. Hawthorne* offered a more rigorous standard of admission of battered woman syndrome as novel scientific evidence. This case found that methodology *and* the results of the scientific inquiry emerging from said methodology must be validated by the court according to a demonstrable depth of the field of scientific knowledge of the battered woman syndrome.<sup>58</sup>

Faigman and Wright’s work on the collision between battered woman syndrome-based defense strategies and the *Daubert* standard continues to be instructive on the issue of the current status of the complex agency of battered women.<sup>59</sup> Faigman and Wright argued in 1997 that we should anticipate the waning of battered woman syndrome in cases where it is employed as a self-defense strategy for battered women who kill.<sup>60</sup> This is because the syndrome was endorsed by the politics that sought to advance the social conditions of battered women and the matter of their agency, rather than the scientific validation of its model or method of analysis. The battered women’s movement brought domestic violence into the purview of American courts, drawing attention to how common domestic abuse is to American culture, organizing resources and theory to eradicate the problem. Faigman and Wright acknowledge these facts. At issue in their analysis however is the potential threat posed to the *Daubert* precedent of establishing the

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<sup>57</sup> *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. 1979) at 638.

<sup>58</sup> *State v. Hawthorne*, 470 So. 2d. 770 (Fla. Dist. Ct. App. 1985)

<sup>59</sup> David L. Faigman and Amy J Wright, “The Battered Woman Syndrome in the Age of Science,” *Arizona Law Review* 39 Ariz. L. Rev. 67, Spring 1997

use of a particular interpretation of what counts as scientific to measure methods of evidence interpretation. By extension, at issue as well is the fate of justice in the balance struck between law and science. The change of admissibility of the methodological approach of battered woman syndrome hinged on a delinking of women's agency and science.

In *Daubert* the Supreme Court reached a landmark decision regarding the relationship between science and law. By superseding *Frye* the *Daubert* standard assigned trial judges to a "gatekeeper" role on decisions about scientific evidence and its proper expression through expert testimony. Judges establish the admissibility of scientific evidence, as communicated through expert testimony, according to: his or her interpretation of the relevance and reliability of the evidence to the case at hand; how well "scientific knowledge" derives from its "scientific methodology"; and, the validity of scientific method demonstrated via multiple streams of empirical testing and publication within the relevant scientific community. Judges must themselves be convinced of the scientific evidence before them. "[T]hey cannot, as was the practice under *Frye*, defer to the 'pertinent field'."<sup>61</sup> Being convinced of such evidence empowers judges to exclude it from the jury's view based on "bad science." By placing the responsibility of excluding invalid science from jury consideration on judges the *Daubert* court risked burdening judges with the responsibility of becoming expert scientists in addition to their role as legal experts. For this reason the court established guidelines for judges to use to quickly assess the validity of scientific methodology and expert testimony as forms of evidence. Faigman and Wright argued that the scientific

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<sup>61</sup> *Ibid.*, p. 19

methodology informing the battered woman syndrome did not match any of the standards established in the guidelines: the syndrome has not withstood sufficient empirical testing; the syndrome is not sufficiently falsifiable and therefore is not reflected in acceptable error rates; most research on the battered woman syndrome is published in the popular press and not peer-reviewed journals; finally, only a comparatively small community of clinicians constitute the “pertinent field” of scientific research animating the battered woman syndrome in court.

Domestic violence trials have unique discursive patterns and scripts that I discuss in greater detail in chapter 4. Ethnographic observations of several domestic violence trials do suggest Faigman and Wright’s predictions that BWS is on the wane are bearing out. Many moments emerge during the domestic violence trial in which attorneys speak in ways that are designed to qualify aspects of witness testimony to juries. Prosecuting attorneys in particular are often motivated to explain to juries why key witnesses to domestic violence-- usually the battered woman and her children recant their testimony while on the witness stand. The pattern of prosecutorial testimony also includes expert witness testimony to the psychological effects of domestic abuse. Ethnographic observations from the current study demonstrate that prosecuting attorneys do not utter the phrase ‘battered woman syndrome.’ My prosecutorial trial scripts explain why battered women recant their stories, and avoid using the BWS terminology. The pattern of expert witness testimony appears to have similarly evacuated BWS terminology from its testimonial script.

The discursive waning of BWS predicted by Faigman and Wright refer us back to the path taken by Lenore Walker in formulating women’s affective responses to abuse. I

suggest that the distinction between the experiment and the observation elaborated by Cartwright lies at the heart of feminist approaches to criminalize domestic abuse. Seligman's theory of learned helplessness emerged from the experiment of destruction in which dogs were repeatedly electrocuted. The loss of instinctual will that defines learned helplessness was produced not through observation of natural phenomena but rather disruption and suppression of the same. The laboratory dog emerged as the "source of life"<sup>62</sup> whose traumatic response was grafted on to the battered woman. Walker's application of learned helplessness theory to battered women is thus an important example of a feminist mobilization of the master discourse of science to speak on behalf of women. The result was an equation between science, the experiment and masculinity on one hand and clinical specialization, observation and femininity on the other.

Ultimately for these legal scholars the danger the scientific discourse of battered woman syndrome poses to the *Daubert* standard concerns the distinction between "science" and "specialty." Properly understood, battered woman syndrome is a clinical specialty and its experts are specialists, not scientists. The difficulties of empirically testing and falsifying the battered woman syndrome make lowering the evidentiary standard especially tempting considering the hardships faced by battered women as a group. Yet the *Daubert* standard, critics contend, refers to generally accepted and testable *science* and not clinical specialties. Faigman and Wright argue that the narrow field of research and lack of formal training in scientific research methods has de-stabilized battered woman syndrome on a micro level and illustrates a problem with the law's incorporation and use of scientific evidence at a macro level.

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<sup>62</sup> Cartwright, pg. 46

The place of battered woman syndrome is no less unstable within the discourse of mental health disorders—an area of medical science and clinical practice. The vexed incorporation of battered woman syndrome into the DSM demonstrates the contradictory negotiations of battered women's complex agency. Battered woman syndrome continues to inform jury understandings of women who kill their batterers as well as women who exhibit more passive behaviors. As a result, advocates of its inclusion in the DMS have had a difficult time achieving its designation as a mental health disorder. Battered Woman Syndrome has in fact gained partial inclusion, a sub-category of the rigidly defined Post-Traumatic Stress Disorder in the DSM-V:

Traumatic events that are experienced directly include, but are not limited to, military combat, violent personal assault (sexual assault, physical attack, robbery, mugging), being kidnapped, being taken hostage, terrorist attack, torture, incarceration as a prisoner of war or in a concentration camp, natural or manmade disasters, severe automobile accidents, or being diagnosed with a life-threatening illness.

Currently battered woman syndrome does and does not exist within the PTSD diagnosis. Violent personal assault including sexual assault and physical attack do archive domestic violence however the diagnostic criterion assumes none of the gendered behavioral specifications proposed by battered woman syndrome.

We cannot help but notice the stable scientific ground upon which the PTSD diagnosis stands. Where BWS is on the wane as a scientific research program and legal argument research on PTSD has flourished in the aftermath and ongoing retreat from both Iraq Wars and war on the Taliban in Afghanistan. Post Traumatic Stress Disorder has emerged as a much more viable research tool than BWS; interestingly the PTSD model benefits from experimental and observational research approaches. Battered

woman syndrome is merely incorporated within the firm and heavily funded experimental research program of PTSD that has centered upon the body of the American soldier coming home from war. In this sense the PTSD diagnosis is a masculine disorder category that ironically entered the public discourse in part through domestic abuse phenomena between traumatized soldiers and their wives. A clear displacement has occurred here from dog electrocution to the U.S. soldier in which battered women have become the absent subject of the PTSD diagnosis. This becomes painfully ironic in light of the prevalence of spousal abuse among vets.

I opened this chapter with a description of Seligman's conception of "learned helplessness," in order to link his methods of studying animal behavior to the cultural ritual enacted by experiments of destruction. Where Cartwright argues that, as a form of entertainment, experiments of destruction provided a means of physiological viewing, I suggest that by the turn of the same century Seligman's animal torture experiments were an attempt at *psychological* viewing where the mystery of *human* agency, the ability to transition out of passivity and withdrawal in the face of impending danger into action could be uncovered. Experiments of destruction signify the activity of science. They are constitutive of the essence of the "scientific" in Western thought. Though Seligman's experiments were not legible as popular cultural ritual, their findings would nevertheless intervene in popular scientific discourses of human psychology. Lenore Walker's application of "learned helplessness" as an explanation of the complex agency of battered women incorporated the essence of science—scientific looking-- into the epistemology of domestic violence. As I have shown, Walker's claim and subsequent research to support

her concept of battered woman syndrome created a political moment where the discourse of science and law intersected.

What is the current status of medico-legal research and expert testimony on battered woman syndrome in the courts? I have shown that arguments against battered woman syndrome come from advocates for battered women working from a theory of intersectionality of race, class, gender, and sexuality as well as from in addition to legal scholars, who are more explicitly concerned with law's incorporation and use of science. Battered woman syndrome has proven to be unsatisfactory for both women's advocates and those directly concerned to protect the evidentiary standard established by Daubert.<sup>63</sup> In the next section I argue that the rise of evidence-based prosecution emphasizes the production and circulation of images of battered women as crucial forms of visual and scientific evidence that compensate for the unstable science of battered woman syndrome. I consider the role of evidence-based prosecution policies and recent research on the role of photographic evidence in domestic abuse cases.

The policies and practices of evidence-based prosecution largely concern cases where battered women are the plaintiffs rather than defendants. Yet the most strident arguments against the science of battered woman syndrome have come from case law involving battered women as defendants. Drawing together the role of photography of battered women and the science of battered woman syndrome in the courts thus requires a brief digression into the incorporation of photography into American courts.

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<sup>63</sup> It has not been my intention to establish feminist advocates for battered women and advocates for the Daubert standard as mutually exclusive. It is certainly possible to engage the Daubert standard as a Aristotelian question of "good law" and inquire into the contours of medico-legal experiences of battered women.

### **Battered Woman Syndrome Analogous to Images of Battered Women?**

In the contemporary moment discourse on the science of battered woman syndrome and the complex agency of battered women bring expert testimony and visual evidence into conceptual alignment. However the relationship between legal (and scientific) rhetoric and visual evidence harkens back to a much earlier struggle in nineteenth century American courts over the inception of photography and its incorporation as a mode of producing evidence in the American legal tradition. Legal historian Jennifer Mnookin has detailed the nineteenth century incorporation of photographic evidence in American courts.<sup>64</sup> She recounts the inception of photography into American legal practice as a political settlement between two competing discourses about photography. One view understood photography as an exceptional kind of evidence, one secured by its mechanical reproduction of the world. Recalling the idea of “nature’s pencil” this view suggested that the process of photography resulted in a complete and truthful transcription of nature; the mechanism of photography and the materiality of the image became a primary location of objectivity under this view.<sup>65</sup>

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<sup>64</sup> Jennifer Mnookin, “The Image of Truth: Photographic Evidence and the Power of Analogy” *Yale Journal of Law and the Humanities*. (1998) vol. 10: 1-74. See also, Tal Golan, *Laws of Men and Laws of Nature: The History of Scientific Expert Testimony in England and America* (Cambridge: Harvard University Press, 2004)

<sup>65</sup> Golan’s reading of the two perspectives discussed by Mnookin says that each of the competing views of photography are divided into two components—one that emphasizes the role of the camera apparatus and another that emphasizes the images issuing from the apparatus. I take Golan’s distinction and deal with it in terms of intentionality of the photographer and the technical capacities of the apparatus.

The second view of photography understood the photographic image as a technology and artifact whose working are inseparable from human intervention and therefore an impossible function as pure representation. The two perspectives on photography's capacity to access truth resulted in a hierarchy of evidence. In court cases judges taking the view that photography replicated nature truthfully treated photographic images as primary evidentiary object while judges of the view that photography was a product of human mediation and therefore subject to manipulation treated images as inferior pieces of evidence. This hierarchy had to be settled through the courts.

Settlement on the issue came the 1881 case, *Cowley v. People*. In this matter the court neutralized the hierarchy of evidence created by the two competing views of photography. The Cowley opinion made photography analogous to traditional visual representative forms—maps, paintings, drawings, diagrams and models. By arguing that photographic images were not different from past uses of painting, maps, models and drawing in the courts the Cowley opinion created a legal precedent on photography as evidence by “inventing a pedigree for the new technology. Through the use of analogy, judges gave the photograph a history.”<sup>66</sup>

Mnookin draws out the “tangled and contradictory” way in which law and society understood photography in order to render its evidentiary status a more interesting category than previously thought. In the next sections I will make the case for analogizing images of battered women to battered woman syndrome. The incorporation of photography into American courts through the process of analogy with paintings, diagrams and maps indeed makes photographic evidence a more interesting category

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<sup>66</sup> Mnookin, p. 2

especially when our thinking about traditional representational forms includes the phenomenal rise and convergence of electronic media as well as concepts of theatricality and performativity that have spurred new debate and theory about the circulation of photography across a range of disciplinary institutions. Such discussions include the ways in which photographic evidence can organize an aesthetic of particular violent acts and sufferings; can subvert heretofore dominant genres of portraiture; can permit a psychoanalytic “working through” trauma that heals the past or at the very least opens a space of awareness that then leads to healing and renewal.

A variety of commentaries consider the status of expert evidence but as Mnookin has noted “...visual evidence has not received nearly so much focused attention, not from scholars, nor, for that matter, from courts [ . . . ] the precise purposes and limits to the use of visual materials in court have not, at least until very recently, received much careful scrutiny by legal scholars, nor has there been much careful appellate judicial analysis, nor any attention whatever from the august Supreme Court.”<sup>67</sup> I now discuss a key legal history that provides a trace of how expert testimony and visual evidence became analogous to each other in case of domestic violence.

### **Evidentiary Rules of Corroboration and their Contemporary Legacies**

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<sup>67</sup> Jennifer Mnookin, “Visual and Expert Evidence: Rhetorical Connections and Invisible Affinities” delivered at Tillers on Evidence and Inference Conference on Graphic and Visual Representations of Evidence and Inference in Legal Settings, Cardozo School of Law. January 28-29 2007.

Regarding the “power of analogy” between BWS and images of battered women, a project quite outside the purview of Mnookin’s general analysis, a great deal of recent legal histories have explored women’s bodies in law as a site of evidentiary contestation. The legal legacy of corroborating evidence requirements in particular sheds light on the real significance of the institutionalization of photography of battered women as a contested form of legal evidence. The rules structuring corroborating evidence have impacted all aspects of women’s legal claims, structuring the very possibility of argumentation and resistance in the Western legal tradition. A turn to this element of law and its historical impact on women allows us to situate the rise of a body of photographic evidence within the current status of corroboration requirements that have themselves endured a nationwide shift in ways that appear to empower the modes of feminist legal argument and rights claims. I argue that photography of battered women, a body that emerged as analogous to BWS, is part of a tradition of shaping the possibilities of feminist legal argument through corroboration rules as they pertain to crimes of gender animus.

The history of modern corroboration rules date back to eighteenth century England and are a cornerstone of the adversarial legal system. John Langbein’s extensive history of corroboration rules suggests that these requirements began to structure possibilities, procedures and outcomes of the practice of criminal law.<sup>68</sup> Eighteenth century criminal investigations typically applied rules of corroborating evidence in cases of theft and robbery where multiple accomplices were suspected. In such cases suspected

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<sup>68</sup> John H. Langbein, *Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources*, 50 U. Chicago Law Review 1, 96 (1983); see also John H. Langbein, *The Origins of the Adversary Criminal Trial*, 203-33 (2003).

accomplices would be questioned separately resulting in a competitive game where accomplices were pitted against each other. Competition between alleged accomplices concerned which accomplice could produce the most evidence of the alleged crime. He who produced the most evidence would be selected as a government informant, the “crown witness,” receiving the right to testify against his fellow accomplices in exchange for various forms of immunity. Suspected accomplices that lost the competition for crown witness were tried without their own legal counsel and typically received a death sentence. The introduction of corroboration requirements meant to reform the unreliable testimony produced under duress in the struggle among accomplices for the position of crown witness. In this sense the origin of corroborating evidence rules tracked the subject who in attempts to avoid punishment produced false and involuntary confessions. Unreliable testimony was not an issue only affecting seasoned criminal accomplices; forced and competitive confessions could also result in wrongful convictions and executions of the innocent as demonstrated by Richard A. Leo and Sandra Guerra Thompson’s respective discussions.<sup>69</sup>

Several critical legal histories analyze the current status of corroboration rules. They focus on the effect of such requirements as they intersect with the raced, classed and sexed body. Crucial for my argument about photography of battered women as a form of corroborating evidence comes from the way in which feminist legal scholars intervene at the level of the evidentiary object or artifact in order to make racialized

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<sup>69</sup> See Richard A. Leo et al., “Brining Reliability Back In: False Confessions and Legal Safeguards in the Twenty-First Century,” 2006 *Wisconsin Law Review* 479, 501-02 and Sandra Guerra Thompson, *Beyond a Reasonable Doubt? Reconsidering Uncorroborated Eyewitness Identification Testimony*, University of Houston Public Law and Legal Theory Series, (2008) 1536-39.

gender appear in law. Eighteenth century English Common law elaborated rules of corroboration to deal with the question of theft and criminal accomplices and their competition to become crown witness. Another domain of the Common law, that of rape law, also evolved corroboration requirements but to resolve a quite different competitive relation between the “accomplices” in such matters. Just as corroboration meant to protect against false accusations and convicting those innocent of *theft*, eighteenth century rape law developed similar doctrines to protect those falsely accused and convicted of *rape*—a mode of theft and robbery of the property of the body established by the Enlightenment. Elaborated in the eighteenth century rules of corroboration, then, are forms of evidence with corresponding relationships to subjectivity that are crucial for understanding the institutional relationship between material evidence, the bodies of the accused and victim.

Michelle J. Anderson’s study of university campus rape and sexual assault policies is a major intervention linking the history of evidence in the West and the construction of possibilities in making contemporary legal claims.<sup>70</sup> She traces contemporary U.S. rape and sexual assault policies and practices to three eighteenth-century doctrines of evidence in rape law, the requirements of: prompt complaint, corroboration and cautionary instructions. Prompt complaint explains the requirement that a woman who is raped must make her claim to law authorities swiftly, otherwise forfeit legal redress for the crime. Prompt complaint structures the possibility of making a rape claim by placing a time requirement on legal action. The time element privileges

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<sup>70</sup> Michelle J. Anderson, *The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault*,” in 84 B.U.L. Rev. 945 October, 2004.

when the charge is made and presumes no other concurrent time element—such as psychological distress leading to a delay one’s capacity to make a rape claim. In this sense, raped women are not a social type as of the eighteenth century. Women’s rape accusations are characterized by the possibility of falsehood however these accusers are not legible as subjects of the disciplines of psychology or sociology. Women may simply be lying about their accusations. Rules of corroboration required physical evidence of rape before a man could be convicted of the crime. Physical evidence included “bruises or ripped clothing indicating a struggle.”<sup>71</sup> Here, rape and sexual assault must be specified and the physical artifacts of the crime visually displayed. Material artifacts must infuse and construct the space of rape’s accusation. Rape must be made legible in a visual field through the person—bruised skin, and personal effects--blood-stained clothing for example. The common law cautionary instructions are a requirement that the jury deciding the accusation of rape treat the victim’s testimony with reserve due to the emotional character of the accusation. In the words of seventeenth century jurist Sir Matthew Hale rape is “an accusation easily to be made and hard to be proved, and harder to defend by the party accused, tho never so innocent.”<sup>72</sup> The caution taken by the jury is to regard the accuser’s claim with a special care that tracks the gravity of convicting an innocent man and not redressing the power differences between genders (which are racialized and classed). Faulty assumptions pervade each of these requirements and have active legacies that structure the university campus.

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<sup>71</sup> Ibid., 3

Over two centuries after its institutionalization in England and migration across the Atlantic, the doctrine of corroborating evidence began to erode during the early 1970s. Feminist critiques of law over the last two decades chronicle the reforms to rape law and the role of feminist thought informing the movement. These interventions also include theoretical work on the structure of political possibility of changing rape law through reforming corroboration rules as distinguished from repealing said rules.<sup>73</sup> Vitauts Gulbis detailed the current status of corroboration rules by state, demonstrating that most jurisdictions have abandoned such requirements from rape and sexual assault cases.<sup>74</sup> Currently three states impose corroboration rules in criminal sexual assault; fourteen states specify that corroborating evidence is not required from the complainant, and thirty of the remaining states are silent on the issue.<sup>75</sup> These shifts in law have thus occurred to varying degrees allowing a geographical reading of rape law and the nation.

Michelle J. Anderson's work tackles contemporary reforms in rape and sex assault law by focusing on corroboration rules practiced in a particular institutional context. It is no coincidence that Anderson writes about the "legacy" of corroboration doctrine in contemporary campus rape policy. Locating her analysis on the university campus, her observations are relevant to cases of domestic abuse and the inception of photography of battered women because of the way she reads campus assault policies as a practice.

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<sup>73</sup> See Donald J. Friedman, *The Rape Corroboration Law Requirement: Repeal Not Reform*, 81 Yale L.J. 1365-66 (1972) and Cassia C. Spohn, *The Rape Reform Movement: The Traditional Common Law and Rape Law Reforms*, 39 Jurimetrics J. 119, 119-30 (1999).

<sup>74</sup> Vitauts Gulbis, *Modern Status of Rule Regarding Necessity for Corroboration of Victim's Testimony in Prosecution for Sexual Offense* 31 A.L.R. 4<sup>th</sup> 120 §1 [a]-[b] (1984).

<sup>75</sup> Anderson, pg. 10

College campus rape and sexual assault policies are practices whose performativity cites both English common law corroboration requirements and nineteenth century Freudian psychoanalytic constructions of women's psyches as disordered that were incorporated into law. Anderson examines both formal and informal university policies and practices around sexual misconduct dispute requirements. Though the majority of states have altered the corroboration rules guiding legal procedures in rape and sexual assault law to the benefit of rape victims, "the cultural dirt from the criminal law has drifted to an adjacent room"—the university campus.<sup>76</sup> Anderson finds that disciplinary action for these crimes include fines, administrative reprimands, and negative notations on one's college record, probation, suspension and expulsion.<sup>77</sup> She cites the short history of procedural changes within Harvard University's Administrative Board—the entity responsible for handling peer disputes. From 1993 to 2002 the University's sexual misconduct policies shifted from advocating victim's rights to pursue disciplinary action against attackers regardless of their intentions to seek action at the local police authority to publicly stating that the Administrative Board was ill-equipped to handle "he said/she said" rape complaints.<sup>78</sup> These statements came on the heels of the university's disciplinary handling of seven rape cases in which six out of seven of the disputes resulted in no disciplinary action against the accused attackers. Anderson notes that in one of these disputes a raped woman brought fifteen witnesses to her assault by a male Harvard student. Alcohol played a role in the woman being unconscious during her

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<sup>76</sup> *Ibid.*, 3

<sup>77</sup> *Ibid.*, 15

<sup>78</sup> *Ibid.*, 16. Jessica Vascellaro, "Faculty To Revisit Assault Policy," *Harvard Crimson Online*, April 25, 2003, at <http://www.thecrimson.com/article.aspx?ref=347828>.

assault. The Administrative Board concluded there was not enough evidence to discipline her alleged attacker and no actions were brought against the accused student. Anderson suggests that in light of these seven rape accusations the Harvard University Administrative Board read female complainants as having “unrealistic expectations” of the abilities of the Board to resolve “he said/she said” disputes.<sup>79</sup>

The above mentioned cases occurred during the 2000-2001 academic year. Harvard altered its sexual misconduct policies in 2002. The new university procedures ordered that student complaints of rape and sexual assault be prompt, include corroborating evidence and as Anderson notes, the University warned “the Board against pursuing cases in which the victim had ‘little evidence’ but her own testimony.”<sup>80</sup> Several other rules were enacted by the University that circumscribed rape complainant’s abilities to pursue disciplinary action at the campus level: sexual misconduct complaints will include preliminary investigations in which the administrative Board would assess the potential of the complainant’s accusations to result in disciplinary action; complainants would submit details of the incident as well as known sources of evidence that might corroborate their narrative. At this point the Board may pass the case to a subcommittee that would investigate further, put on hold or decline pursuit of disciplinary action. Anderson notes that Harvard’s policy is more severe than that of its home state, the Commonwealth of Massachusetts.<sup>81</sup>

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<sup>79</sup> Ibid., 16

<sup>80</sup> Ibid., 16

<sup>81</sup> Campus reaction to Harvard’s 2002 policy on sexual misconduct complaints included a lawsuit filed with the Department of Justice’s Office of Civil Rights by an anonymous student. Anderson reports, “the complaint alleged that, because the 2002 Procedures required sexual assault victims to provide ‘sufficient independent corroboration’ before a

Yet Harvard University is not alone in referencing eighteenth century corroboration requirements around rape and sexual assault policies. In terms of informal policies examined by Anderson she finds that “the majority of colleges and universities [do] not provide rape victims protection from charges of alcohol or drug abuse when they reported their victimization,” noting that such informal practices may deter victims from pursuing legal and campus disciplinary action. In terms of alcohol and drug consumption and its role in campus sexual assault, “colleges and universities employ an array of informal but aggressive tactics to decrease rape reports” including actually discouraging complainants from pursuing remedial action.<sup>82</sup> These informal practices also dissuade victims from making complaints out of fear that their own drug and alcohol consumption will be punished.<sup>83</sup>

Rape complaint policy at the American university is one place we can genealogically trace the reinvigoration of corroborating evidence requirements. It is my contention that, similar to campus sexual misconduct policies, the emergence of photography of battered women is another node of the discourse of corroboration. As Foucault formulates in *The Archaeology of Knowledge*, discourse is not merely enunciated speech but actual practices such that:

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formal investigation into the complaint would be launched, the policy discriminated against that (mostly female) victims of sexual assault on campus” (pg. 17).

<sup>82</sup> Ibid., pg 21

<sup>83</sup> In addition to practices of discouraging victims to pursue action Anderson cites two cases, one at SUNY at Old Westbury and a second at Middlebury College in which male students accused of rape sued their respective colleges for disciplining them for sexual assault in ways that deviate from the procedures described by their universities. (Anderson pg. 23) See *Marshall v. State University of New York at Old Westbury*, 424 N.Y.S.2d 89, 90 (N.Y. Sup. Ct. 1980); and *Fellheimer v. Middlebury College* 869 F. Supp. 238, 240 (D. Vt. 1994).

discourse is not established by the synthetic activity of a consciousness identical with itself, dumb and anterior to all speech, but by the specificity of the discursive practice. . . discourse [is not] a phenomenon of expression [but rather] a field of regularity for various positions of subjectivity. Thus conceived, discourse is not the majestically unfolding manifestation of a thinking, knowing, speaking subject, but...a space of exteriority in which a network of distinct sites is deployed.”<sup>84</sup>

Unique to the power of photography of battered women is that it cites its discursive legacy of corroboration by compressing the disordered psychology of (battered) women with visual material evidence of injury through the portrait image. I have already shown that the psychology of battered women—Battered Woman Syndrome-- is itself a discourse whose essence was grafted from the discourse of animal behavior and its observations of the tortured animal. Photography’s nineteenth century incorporation as legal evidence through analogy is a Foucaultian example of the discontinuity of the novel invention of photography and its transformation into an assemblage of affective experiences between photographer and photographed that constitute the battered woman in the courtroom.

As I demonstrate in the following sections, photographing battered women is crucial to the state’s ability to build a case against batterers as well as oversee women’s participation in domestic abuse trials. Images of battered women are made to coincide with battered women’s identity and I discuss how the state tries to promote the alignment between complex identity and the evidentiary photo through law, policy and professional technique. As we shall see, the courts attempt to confine battered women’s complex identity to their visual image.

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<sup>84</sup> Michel Foucault, *The Archaeology of Knowledge*. A.M. Sheridan Smith, trans. (New York: Pantheon, 1972) pp 54-55

Our desire for immediacy, so often the focus of photo-criticism, makes surveilling battered women central to an area of law that accounts for a significant amount of court operations. Media such as photography and film give us immediate contact with reality. In their classic study of the function of new media, *Remediation: Understanding New Media* authors J. David Bolter and Richard A. Grusin observe that we have difficulty accepting the mediating function that media perform; the awareness of mediation interferes with the immediate access to meaning that representational media appear to grant. Bolter and Grusin pinpoint a double movement that structures new media artifacts and practices. Our capitalist culture produces new tools that mediate the tasks of everyday life but, so too, does our culture move to erase the process of mediation. The erasure of mediation in part allows for the entry of new media into everyday life. New media justify themselves by remediating the tools they replace. In this sense, the ability for a new media form to replace its predecessor depends on its ability to appear to give the user immediate access to meaning. Such is the double movement of new media and the logic shaping images of battered women. Images of battered women remediate the discourse of BWS. They offer the spectator—the juror—immediate access to the meaning of domestic violence through its wounded “look”. In this sense, BWS operates as photography and photography operates as BWS. Part of the pattern of domestic abuse trials I discuss in chapter 4 demonstrates the temporal valence to photographic evidence of abuse. The battered woman’s wounded image immediately speaks her trauma while the circulation of the image in law speaks both her passivity and aggression against her batterer. The jury member adjudicates domestic violence according to the immediacy with which evidence photography plays.

In what follows, I describe the surveillance of battered women through practices of photography. Though it has lost institutional purchase, Battered Woman Syndrome continues to haunt the American courtroom. The term is rarely enunciated in court by law professionals, yet it nevertheless continues to silently organize the flow of testimony in domestic abuse trials and social service agencies in a field of vision. The practice of photographing battered women mediates the gradual normalization of battered women syndrome. Normalizing BWS occurs in two dimensions: in the space of the courtroom and, as we shall see, in the temporality of battered women's complex identity.

### **Negotiating Complex Agency through Surveillance**

The following section considers the production and circulation of images of battered women in medico-legal settings and communities. The visual rhetoric of battered women's complex agency developed alongside discourse of battered women syndrome and its attendant legal policies reshaping police practices in responding to domestic abuse crimes. The criminalization of domestic violence is also the result of development of new opportunities in the police and medical forensic fields. Following Charles Goodwin's work on professional vision and Christine Shearer-Creman's examination of the visual epistemology of the police in domestic abuse cases I consider battered women's subjectivity in terms of what Jacqueline Rose has called a "field of vision."<sup>85</sup> I then

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<sup>85</sup> Charles Goodwin, "Professional Vision," *American Anthropologist* (1994) 96 (3): 606-633; Christine Shearer-Creman, "The Epistemology of the Science and Silence of Battered Women" in *Survivor Rhetoric: Negotiations and Narrativity in Abused*

situate professional communicative developments in cases of domestic violence within current discussions about the ontology of photography as evidence. This section thus concentrates on the role of professionalization, the technical affordances of the medium of photography and surveillance currently invigorating communicative practices about domestic violence.

Police and social service professionals institutionalized Lenore Walker's description of abused women's identity despite feminist and legal contestation of the battered woman syndrome, its role in both pathologizing women and challenging legal standards of evidentiary reliability. Current police practices in these cases are informed by aggressive arrest and prosecutorial policies resulting from many years of struggle to increase the political visibility of battered women in the U.S. The primary strategy of these measures has been to remove police discretion—a major component of police work practice—from the process of investigation. No-drop procedural action requires police to pursue charges, provided there is evidence of probable cause, with or without the victim's consent, while mandatory arrest demands that police responding to domestic disturbance calls arrest abusive partners. Effectively, these policies invigorate the institutional and juridical production of contemporary domestic abuse claims. Together, these policies represent what Sally Engle Merry has called a “new regime of domestic violence governmentality.”<sup>86</sup>

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*Women's Language* (Toronto: University of Toronto Press, 2004); Jacqueline Rose, *Sexuality in the Field of Vision* (London: Verso, 1986)

<sup>86</sup> See Sally Engle Merry, “Spatial Governmentality and the New Urban Social Order: Controlling Gender Violence through Law,” *American Anthropologist* (2001) 103 16-29; “Governmentality and Gender Violence in Hawai'i in Historical Perspective,” *Social and Legal Studies* (2002) 11, 81-111.

Yet, similar to the multiple and conflicting uses of battered woman syndrome to describe battered women's complex agency, mandatory arrest, no-drop prosecution and visual evidence photography constitute a juridical reality of domestic violence that is at once celebrated and reviled. Several studies analyze the new mandatory regime that organizes domestic violence adjudication by police and social service professionals. These studies affirm greater satisfaction and safety of battered women as a result of mandatory elements of legal practice in domestic abuse cases.<sup>87</sup> First conceived through the battered woman syndrome, the complex agency of battered women is thus deeply entwined with such recent innovative police, social service and judicial responses. Other research on professional legal responses to domestic violence is less sanguine.<sup>88</sup> These analyses contend that the mandatory regime of domestic violence case processing and adjudication in fact continues to disempower battered women; increases judicial bureaucracy, and threatens battered women with the possibility of testifying against their batterers in court. Arguments against mandatory arrest and prosecution policies also suggest they are only effective against abusive partners that have something to lose like a job and personal property.<sup>89</sup> Similar to the research on the effect of race and physical comportment on battered women's self-defense trials for murdering their partners, these studies suggest that mandatory arrest and prosecution policies only work for economically enfranchised batterers—typically white, heterosexual and employed men. Clearly the complex agency and desire that battered woman syndrome describes now

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<sup>87</sup> Schneider 2000; Wanless 1996; Hanna 1996; Dugan 2003

<sup>88</sup> Hartley, 2003; Davis et al., 2003; Ford, 2003; Mills, 2003, Maguigan, 2003; Coker, 2001

<sup>89</sup> Pate and Hamilton, 1992 in *American Sociological Review*; Sherman, 1992 *Policing Domestic Violence*

organizes current legal and clinical institutional gazes. The status of battered woman syndrome remains an ambiguous description yet a tremendously powerful one, producing a variety of feminist critiques, including Keith Guzik's discussion of the differing visions of the state's proper role in eradicating domestic violence.<sup>90</sup>

Regardless of the contested outcomes of the mandatory elements of domestic violence prosecution, what is certain is the way such policies generate demand for the production of evidence. Visual documentation of abuse increasingly organizes the flow of evidence-based prosecution by acting as the key artifact captured from a domestic dispute and later appearances at social services agencies by battered women. In this sense, mandatory arrest and no-drop prosecution policies are productive of images of battered women that are created voluntarily, often traumatically. Constituting a new area of institutional analysis in the work of law professionals, portraits of the face and close-up images of physical wounds are institutional attempts to fix and discipline the body similar to those nineteenth century uses of photography discussed by John Tagg, Alan Sekula and Sander Gilman. Battered woman syndrome and battered women's bodies are brought into conceptual alignment through photography.

In his examination of pre-Civil War and antebellum images of black slaves and citizens, Harvey Young proposed the concept of stillness as a key element in the performance of subjection structuring the history of black corporeality.<sup>91</sup> Adding to what

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<sup>90</sup> See Keith Guzik, *Arresting Abuse: Mandatory Legal Interventions, Power, and Intimate Abusers* (Dekalb: Northern Illinois University Press: 2009) Guzik argues that mandatory domestic abuse policing policies produce liberal feminist, social justice and critical feminist perspectives on the role of the state in the fight for gender equality. pp.10

<sup>91</sup> Harvey Young, *Embodying Black Experience: Stillness, Critical Memory, and the Black Body* (Ann Arbor: University of Michigan Press, 2010)

he sees as a preoccupation with ideas of movement and passage in academic work on the Black Diaspora, Young argues that stillness as a disciplinary performance must also invigorate understandings of the discursive enunciations of the black body. His photographic archive of surveilled black bodies are images recorded by daguerreotype cameras. The technology of the daguerreotype camera with its extended exposure time demanded from blacks—both slaves and the freed—a controlled disciplining of the body that performed submission and resistance to racial stereotyping and violence. Contemporary police practices of collecting visual evidence have produced similar complex performances of the body occurring across photographic technologies.<sup>92</sup>

In what follows, I use Young's mediation on stillness, the body and camera technology to critically read techniques of photographing battered women. Where Young reads black corporeality in terms of performed stillness involving racial domination, I argue for a more explicit focus on the technology of the camera and its ability to capture irregularities and disturbances of the epidermis. This makes possible a reading of practices of photographing battered women that acknowledges the intersectionality of race and gender so crucially elaborated over twenty years ago by Kimberlé Crenshaw and cybernetic temporal flows of the digital image.<sup>93</sup> Gendered technologies of surveillance

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<sup>92</sup> Kelly Gates has examined more technically advanced national imaginings of identity securitization using facial recognition technologies. See Kelly Gates. "Identifying the 9/11 'Faces of Terror': The Promise and Problem of Facial Recognition Technology." *Cultural Studies* vol. 20, 4-5 July/September 2006: 417-440. Gate's work situates biometric identification technologies within the "technological society" in which political discourses are increasingly frames by technical interventions of networking and interactivity. On the technological society, see also Andrew Barry *Political Machines: Governing a Technological Society*, (New York: Athlone Press, 2001)

<sup>93</sup> Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color," *Stanford Law Review*, vol. 143:1241-1299, (1991)

are an early legacy of Crenshaw's and others in critical legal studies demands for intersectional analyses of sexism and racism as they relate to violence against women. In today's domestic abuse adjudication a form of corroborating evidence that analogizes the battered woman's image to BWS is produced. I attend to the camera apparatus to interpret the normalization of BWS and stabilization of battered women's complex identity as a struggle; one that is located within the photography session. As I discuss a series of struggles encountered during the moment of photography I make clear the technical limitations of the camera apparatus and, more importantly, the law's ability to oversee the "survival" of images battered women and the state's domestic abuse claims through prosecution. In this way something like the transition from analog to digital photography achieves greater relevance as a gendered technique of surveillance. More importantly, the phenomenon of domestic abuse achieves part of its temporal experience among battered women from the state's photographic gaze. Where Young highlights stillness in photography as a racialized disciplinary tool I theorize the camera apparatus to delimit the enfolding of race, gender and the temporality of domestic abuse.

My readings of photography practices and battered women are an attempt to extend Harvey Young's emphasis on corporeal stillness in pseudo-scientific and sentimental photography. In addition to Young's work, I also draw upon Richard Dyer's analysis of the history of theater and film lighting techniques and their role in the *techno*-cultural construction of whiteness. I do so in order to read concerns about camera lighting in the practice of photographing battered women who are dark skinned—a significant problem for those legal overseers of domestic abuse prosecution. As Nicole R. Fleetwood argues in her study of black visibility in American popular culture, "Blackness troubles

vision in Western discourse.”<sup>94</sup> Photographing dark-skinned battered women for the adjudication of domestic violence encodes them as examples of the problematic black body in the field of vision. When presenting photographic evidence of abuse these subjects are caught between the societal time of the court and the biological time of their healing injuries.

In what follows, overseeing the collection of images of battered women is a multi-faceted problem requiring increased professionalization of police and social service providers. Professionalization also includes the invention and use of new camera technology and writing practices that I argue rhetorically situates the bodies of injured women of color in an adversarial relationship to light. In *Phenomenology of Perception* Merleau-Ponty drew our attention to the vitality of color in perception, describing the logic of lighting. Interpreting the phenomenologist alongside Richard Dyer, Helen Fielding observes that:

If perception is primary and hence precedes and intertwines with the cognitive, then our bodily ability to move into new lighting levels, new spatial levels, has corporeal effects that simultaneously affect and intertwine with the cognitive. For if we keep in mind Merleau-Ponty’s insight into the logic of lighting, as well as Dyer’s linking of hue, skin color, and signification, it follows that the light of Western metaphysics sets a particular level by which we see the world according to a seemingly neutral and universal en-light-enment.<sup>95</sup>

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<sup>94</sup> Nicole R. Fleetwood, *Troubling Vision: Performance, Visuality, and Blackness*, (Chicago: University of Chicago Press, 2010) pg. 6

<sup>95</sup> Helen Fielding, “White Logic and the Constancy of Color.” In *Feminist Interpretations of Merleau-Ponty*, Edited by Dorothea Olkowski and Gail Weiss (University Park: Pennsylvania State University Press: 2006).pp78

The universal orientation through which we see according to a “particular level” set by light is thus coded as white and extends to custom. As one such custom, the state’s surveillance of battered women, its attempt to stabilize complex identity by normalizing BWS is a process structured by the tradition of Western metaphysics. The battered woman who is dark-skinned emerges as a key problem of evidence photography such that professionalization of police photographers necessitates learning how to push the limits of the camera to render evidence of biological damage.

### **Making Evidence: Overseeing Battered Women’s Visual Proof**

As late as the early 1980’s, domestic abuse prosecution was not rigorously pursued by the courts. As feminist demands in this area grew, Polaroid images of battered women were routinely taken by police officers, victim advocates or medical doctors and were included in criminal court case files as evidence of domestic abuse. Though instantly available for circulation among various court agents, these images were deemed ineffective at capturing the color, texture and depth of women’s injuries, particularly dark-skinned victims.

Early police investigations utilized Polaroid technology to capture battered women’s injuries. A 2002 issue of *Hardware* describes the effect of digital photography on evidence collection in cases of domestic violence:

Police Departments around the U.S. have begun to use digital photography to document physical evidence of abuse in prosecuting domestic violence and abuse cases and making the accusations stick. Physical evidence of domestic violence is often not visible by the time a case comes to court, and Polaroid photographs shot with budget conscious police department cameras are often fuzzy and unconvincing, particularly for dark skinned victims, and film images aren’t available for the initial court hearing. Not

so with digital camera images. Blackened and swollen eyes, facial and body bruises and other physical marks, as well as evidence of attempted strangulation/finger and hand marks on a victim's neck, are all shockingly clear and visible with digital imaging.<sup>96</sup>

Here the institutional adoption of digital photography is affirmed for facilitating changes to the perception of battered women's corporeality, offering greater precision in measuring abuse. The "shockingly clear" injury whose look is facilitated by the digital camera, testifies to a shift at the level of perception that digital imaging makes possible. However, shifts in perception of battered women's wounds must be tempered by a critique of technophilia, the all too pervasive structure of feeling of contemporary science and technological progression. Take the following quote from a registered nurse who photographs battered women for evidence of abuse:

Obviously if a bruise is yellowish or lighter it's not going to be as visible as a bluer or purple bruise. So that's one of the issues we have to deal with but outside of that it's not any different. The pigmentation will be different for the camera obviously and so that does occasionally become an issue. Because you can't see the bruises easily. But you just have to go with-and again you know if they're sore in the same spot—it's the same with someone who's got lighter skin too is if there's a bruise there and they're also sore then I'll do, I'll do those separately. I'll get pictures of the bruise and then I'll have them point out the area that's sore. So if it's someone that's got darker skin then we'll rely more on it being a sore area than being a bruised area.<sup>97</sup>

The two passages suggest that the transition from analog to digital photography does and does not improve our ability to measure and judge battered women's injuries.

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<sup>96</sup> Aharon Etengoff, ed. "Digital Photography helps Bolster Domestic Violence and Abuse Cases." *TG Daily*. Thursday, September 5, 2002. <http://www.tgdaily.com/hardware-brief/13907-digital-photography-helps-bolster-domestic-violence-and-abuse-cases?device=desktop>. Access date: September, 2011

<sup>97</sup> Interview, Tom Collins, registered nurse and forensic photographer. Family Justice Center Offices, December 23, 2009

Recalling Bochnak's study of battered women of color and their perceived aggressive corporeality in court, it would appear that the promise of photography has limitations that are similar to the description of complex agency that Bochnak argued excluded dark-skinned subjects from the BWS diagnosis. Where BWS tracked the disordered psyche of battered white women, the camera apparatus is similarly embedded with racial signification.

Yet, capturing the clarity or "touch" of battered women's injuries has become a concern among the police in their work toward evidence-based prosecution. One might even say that the regime of mandatory arrest and prosecution of domestic violence cases—emerging out of responses to the complex identity of battered women—has driven improvements and innovations to collecting visual evidence. These innovations have occurred at the level of camera technology (hardware), photographic technique, professionalization and procedure. Forensic evidence photography guides recommend single lens reflex cameras over 35 mm point-and-shoot, arguing that the focusing distance with these cameras is not enough to fill the frame. High resolution images of skin surfaces are thought best for bite marks, scratches, scars and cuts but not for bruises unless blood accumulation is close to the skin surface. The best time to photograph is between two to five days after injuries are sustained. Further instructions include how best to manipulate the light source for optimum exposure. As the protocol for the Oregon State Police Coos Bay Forensic Laboratory recommends, "Visible light penetrates deeper into the skin than UV light and is sufficient to document most bruises. The addition of special wavelength sources and special filters can improve the visualization of the injuries by enhancing the blue color and improving the contrast against the normal skin

tones.”<sup>98</sup> The guide’s employment of the penetration metaphor is not inconsequential. What the forensic laboratory implies is that that for dark-skinned battered women the photographer needs to pass through the inner life of the subject. Photographing the injuries of dark-skinned women, then, requires that the camera transgress the boundary of the epidermis. Surveillance occurs through light that is brought into relation with the camera through the metaphor of penetration. Here, more than stillness is required to discipline the battered woman and the proof of her injuries.

Shutter speed is also a concern as it is possible to blur an image when holding a camera where the shutter speed is too slow. Interviews are conducted before photographic evidence is taken. Any instruments used during a domestic dispute should be brought to the interview in order to coordinate injury marks with the texture of the instrument. Scars and birthmarks are also noted during the photography session.

In addition to police who photograph battered women during domestic dispute calls, the legal system also relies on freelance photographers to capture injuries, particularly as police departments contend with decreased budgets for equipment and labor power. This has led to an increase in evidence photography of battered women as a source of extra income for photographers often specializing in weddings, portraits and commercial advertising. An October 2001 issue of *Professional Photographer* offered the following article, “Evidence Photography: Learning a Lucrative Sideline” in which the authors detail the potential of women photographers of battered women. The article includes a grid depicting developmental stages of a black eye. The black and white

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<sup>98</sup> James O. Pex, “Domestic Violence Photography.” <http://www.crime-scene-investigator.net/dv-photo.html> last access date August 2011.

images are accompanied by the caption, “With more evidentiary photos being sought in domestic violence cases, the field of evidence photography offers opportunity for female photographers. Many victims feel more comfortable having a female photograph their injuries.”<sup>99</sup> Unlike the women photographers’ images of battered women that emerged in the visual arts during the 1970s and 80s, visual evidence photography overwhelmingly issued from male police photographers. This is supplemented by the Evidence Photographers International Council Inc., a leading training organization for forensic and evidence photographers that reported a 45% increase in women requesting admission to the school after the O.J. Simpson murder trial which was notoriously marred by low quality visual evidence. Similar to the widespread social encouragement of women to take up photography during the nineteenth century, evidentiary images of battered women’s injuries has emerged as another profession for which women are produced as “naturally” suited. In this way, the moment in which battered women are visually captured is acknowledged as infused with the complex agency of battered women and an inevitable intimacy staged between photographer and sitter. It is also a moment in which women who frequently experience such abuse are often confronted with a form self-estrangement when photographers show them their own injuries. It appears the intimacy of this particular moment is one best constructed via same-sex interaction.<sup>100</sup>

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<sup>99</sup> Jeff Kent, “Evidence Photography: Learning a Lucrative Sideline,” *Professional Photographer* October, 2001

<sup>100</sup> Interview, Tom Collins, registered nurse and forensic photographer. Family Justice Center Offices, December 23, 2009. Battered women demonstrate shock when confronted with their own images of injury but also habitually refuse to regard their own images when offered the opportunity.

The scene in which battered women's corporeality is produced as evidence through the photographic gaze always confirms at least two vulnerabilities, two intimacies. While the moment in which battered women's bodies are photographed potentially rehearses their initial exposure to violence, the very possibility of producing these images is also marked by precarity experienced by the photographer. Recent qualitative research on the role of micro-visualization technologies in the collection of evidence of sexual assault-- a key aspect of relations of domestic abuse--suggests how the positivist approach to making knowledge of violence against women stages an uncomfortable intimacy between witnessing medical technicians and violated patients. White and Du Mont found that sexual assault nurse examiners (SANEs) characterized their hospital-based evidence collection as fragmenting and objectifying to those under their care.<sup>101</sup> Feelings of fragmentation and objectification that unfold in the context of medical forensics are organized by optical technologies that delve into the body's interior. The anoscope, medscope, and colposcope--adaptations of dental industry tools--thus shape the everyday institutional spaces of medical and legal practice and constitute the subject positions of medical service providers as much as injured patients. These cameras and the dissecting gaze upon damaged epidermis and tissue animate legal decision making in cases of domestic violence. In this sense, photography of battered women organizes medico-legal spaces as well as decision making.

The relationship between the organization of space and the organization of decision making also emerges in the following evaluation of the role of digital

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<sup>101</sup> Deborah White and Janice Du Mont, "Visualizing sexual assault: An exploration of the use of optical technologies in the medico-legal context," *Social Science & Medicine* 68 (2009) 1-8.

photography of battered women in securing criminal convictions of batterers. As I develop in greater detail in chapters 3 and 4 the adjudication of domestic violence and the marketing of support services are both structured around photography. Patterns emerge in both settings that control discourse and relations of proximity to images of battered women. Garcia, Suess-Kennedy and Lawrence conducted the first empirical study of the impact of visual evidence on criminal battery charges. Centering on legal decision-making in the court-room after regarding digital evidence photography of battered women's injuries, their study found that the presence of digital images *quadrupled* the rate of conviction on criminal charges of domestic abuse, even in cases where victims refused to testify in court. The Garcia et al. study was an attempt to establish the epistemological value of digital images of battered women in court. The researchers' inquiry concerned digital photography's capacity to optimize, to deepen its referent. This study accomplished two primary goals: it tested the institutional dividends of the court's incorporation of digital cameras and imaging software; and, highlighted the growing debate concerning the perceived over-dependence on visual evidence in the prosecution of domestic abuse charges and its effects on the autonomy of victims who may conceptualize alternate paths to justice in these matters.

Collecting visual evidence of domestic abuse is structured by a variety of legal protocols. Police forensic photographers, often with the help of social workers first meet with a battered woman and discuss the events of the domestic disturbance. Here the narrative a battered woman gives provides an initial map of the injuries and the context in which they were sustained. After the initial discussion, injury photographs are taken in another room. This room where battered women are photographed may be located within

a social service agency, law office or hospital and the dominant aesthetic organizing such rooms is the doctor's office. The standard set of images intended for admission as visual evidence include a close-up of the face and several images of any wounds observed while the client 's naked body is scanned.

Recalling Akiko Shimizu's reading of photography as a mode through which forms of identity "survive," Shimizu, herself appropriating Silverman's work on identification and the visual field, calls for analyses of where the "visual body [is able to] appear on the image/screen [such that] it can be conceived as not necessarily or completely coinciding with the self."<sup>102</sup> This chapter has tried to accomplish two related tasks. First, I traced the emergence in the United States law enforcement of a particular genre of portraiture—photography of battered women. Portraiture of battered women were born in part from American feminist demands for the politicization of violence against women and the state's response efforts to evacuate battery and rape from the private sphere. The respective responses of women's advocates and the state both appropriated the master narrative of science thereby forming the primary witness of domestic abuse adjudication—battered women's photographed injuries. Lenore Walker's application of Seligman's "learned helplessness theory" from the animal behavior laboratory, women's advocates increasing struggle to affirm the varied dimensions of women's subjection that BWS formula seemed to deny, and the state's subsequent turn to photographic technology to normalize BWS are examples of scientific language and practice that entered violence against women into legal rights discourses. This chapter

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<sup>102</sup> Akiko Shimizu pg. 38

analyzed the different ends to which science and technology organized the adjudication of domestic violence.

Surveilling battered women through photography is fraught with contingent historical developments and highlights some of our deepest struggles to incorporate the discourse of science into the discourse of rights. Lenore Walker read the animal behavior laboratory for its affective disclosures of torture against battered women's everyday lives. Police deployed scientific language in a similar manner but to more institutionally successful ends in courts of law. Finding discrepancies between BWS and the standard of general acceptance within its own scientific community, the state practice of creating photographic evidence resolved the complex identity of battered women. Law enforcement visually excluded the unruly elements of BWS by photographing battered women's physical injuries. Gone were the remnants of clinical narratives that theorized the role of substance abuse in battery, affirmed the existence of a cyclical pattern of violence and the seemingly contradictory passive and aggressive reactions of battered women to their abuse.

Where Walker psychoanalytically interpreted experiments of destruction, the police (along with women's advocates) empirically challenged psychological diagnosis and built a system of surveillance by cultivating photography of battered women as professional opportunity. These professional opportunities included not only the development of specialized photographers but also the development of specialized cameras and guides on how to best capture the battered woman's body.

This has not meant that BWS as a narrative description of battered women's identity has disappeared entirely, far from it. It has been my contention that photography

of battered women has BWS as its primary referent. Although images of battered women privilege physical wounds, consolidating all other spatio-temporal elements of battered women's complex identity into a "look" of domestic abuse, such a body of photography has actually normalized BWS. Genre is legible as practice in which aesthetic conventions are discovered and rehearsed. Following Marshal McLuhan's logic of the "medium as message," the meaning accomplished by genre—in literature, the theater, photography and sculpture, is always normativity. The portrait's frontal view of the face and its depiction of traumatized skin are attempts to discipline the unruly and traditionally feminine knowledge of clinical narrative.

I have argued that as a practice of surveillance, normalizing BWS meant a transfer of stewardship or oversight in the criminal prosecution of domestic violence. Power has transferred from the clinic and its complex contradictory narratives of battered women's identity to the police who now oversee the mechanical (re)production and circulation of battered women's images. It is the photograph of battered woman that must be overseen, that must survive in criminal courts of law. As John Gilliom has argued, like Foucault's notion of panoptical surveillance state looking practices are not "passively watching, but [are] actively depicting and creating" the subjects of surveillance.<sup>103</sup> By incorporating the practice of photographing battered women in social service agencies and at the scene of a domestic disturbance the police structure the communicative possibilities in the domestic

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<sup>103</sup> John Gilliom, *Overseers of the Poor: Surveillance, Resistance, and the Limits of Privacy* (Chicago: University of Chicago Press, 2001) pg 131. See also James Scott, *Seeing Like the State: How Certain Schemes to Improve the Human Condition have Failed* (New Haven: Yale University Press, 1998)

violence court, literally animate the eventual speech of the attorneys, police, defendant by structuring the visual field of those who serve on juries.

The struggle to get high quality images of battered women occurs at the level of fostering a new cadre of specialized professional photographers and the development of techniques that produce the ideal photograph of the dark skinned battered woman. Constructing the criminal domestic abuse case file has become a question of acquiring “good images” of battered women through techniques of surveillance. Attending to the political, social and psychological complexities through which relations of abuse emerge and are sustained are hereby cut off in the interest of case processing. In this way, physical manifestations of sustained injury have a limited time frame which the state photographic gaze may exploit. Part of the experience of domestic violence includes not only the adversity between intimate partners but an adverse relation to photographic conditions as well.

Early in this chapter I recalled Wendy Brown’s critique of Kimberlé Crenshaw’s use of intersectionality as an analytic for racialized gender. Brown’s emphasis on subject formation attends to the relationship between the discursive and technical modes that produce the subject and/as *desire*. A second task of this chapter is to begin an inquiry into the state’s desire to photograph battered women. There is a co-production between a discourse of desire through which perception is imagined and the actual phenomenon in which perception occurs in domestic abuse adjudication. Digital photography now mediates our access to criminal evidence and I have demonstrated that the state viewed the use of digital photography as improving and inhibiting the perceptions of battered women’s injuries. The power of digital photography and its capacity to improve our

perception is thus partially distributed through the *language of improved perception* which is historically contingent. Rules of corroboration and photographic evidence are iterations of the language of improved perception. The language of photo-critic Geoffrey Batchen is apt here: “If, as Foucault suggests, sex and the discourse of sexuality produce each other, why shouldn’t we also presume that *perception actually changes in concert with transformations in the discourse of vision?*”<sup>104</sup> As Brown suggests, it is by examining power, in this case in photography deployed as a discourse of improved vision, that evidentiary portraits of injury become legible as their own ‘modalities of subjection’ for battered women.<sup>105</sup> If discourses of identity like Battered Woman Syndrome are embodied by state photography, we need to locate other state practices and flesh out more ground-level practices of image production.

In chapter 3 I turn to other photographic practices that are informed by state technologies of surveillance. The public service ad campaign becomes a focal point in this chapter for the organization and public enunciation of state surveillance techniques. I discuss several state-initiated anti-domestic violence media campaigns, focusing on the aesthetic conventions that structure photography of battered women as a discourse of desire for improved vision. The chapter diagnoses the aesthetic practices of anti-domestic abuse media campaigns as a form of Camp that I argue is an important activism strategy because it combines state, advertising and ground-level approaches to communicating about domestic violence.

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<sup>104</sup> Geoffrey Batchen, *Burning with Desire: The Conception of Photography* (Cambridge: The MIT Press, 1997) pg. 201 Emphasis mine.

<sup>105</sup> Brown, 131

## Chapter 2 Exile and Survival in the Photography of Ana Mendieta, Donna Ferrato, and Nan Goldin

In a diary entry written Friday, May 7th 1982 about her time with Garth and Lisa, a wealthy married couple from New Jersey, photojournalist Donna Ferrato describes the night she witnessed and photographed the typically private scene of domestic violence: “My baby and I are sleeping in the Blue Room. Suddenly the sounds of shouting and things breaking come from the master bedroom. I take my camera and venture down the hall to find out what is wrong. Garth is in a rage, pulling everything from the closet shelves, shouting at Lisa as if she were a child. I start photographing, not knowing what’s going to happen. But I am scared” (Ferrato, 1991: 144).

Ferrato’s diary entry documents when she found the couple fighting over a cocaine pipe that Garth accused Lisa of hiding from him. Ferrato began taking pictures that night in the bathroom doorway and was still photographing when Garth struck Lisa in the face.

This chapter examines the politicization of domestic violence through women’s photography, in particular the photographs of Ana Mendieta, Donna Ferrato and Nan Goldin. The history of domestic abuse in the U.S.A. involved silencing battered women’s private experience and suppression of the issue from public discourse. I consider how these silences also extended to women’s camerawork particularly the production of images of battered women by Ana Mendieta, Donna Ferrato and Nan Goldin. American historian of photography Laura Wexler uses the term “photographic anekphrasis” to

describe “an active and selective refusal to read photography—its graphic labor, its social spaces—even while, at the same time, one is busy textualizing and contextualizing all other kinds of cultural documents.”<sup>106</sup> Arguing that photographic *anekphrasis* occurs within nineteenth century histories of photography I propose that Wexler also gestures toward a similar occurrence within contemporary feminist art history and criticism that has exiled scholarship on images of battered women from critical discussion. This has resulted in a missed opportunity to embark upon a critical project of understanding the mutual struggles over the female body in representation within feminist art history and criticism and legal theory and practice. This chapter critically reads the development of photography of battered women to demonstrate how both art and legal practices have placed the body in representation at the center of both disciplines in ways that both reinforce and productively efface the distinction between photographic evidence and art object.

The art installation of Ana Mendieta, photojournalism of Donna Ferrato and self-portraiture of Nan Goldin are examples of feminist photography documenting gender violence that produced a new family portraiture on the one hand and *photographic anekphrasis* on the other. Ferrato’s controversial images of domestic abuse were viewed as obscene and systematically exiled from publication. Mendieta’s performance art has recently been taken up by feminist scholars because of the ways her work has been excluded from exhibition just as the minimalist sculpture of her husband and accused murderer, Carl Andre, enjoyed a firm presence in the museum system. Goldin’s self-

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<sup>106</sup> Laura Wexler, *Tender Violence : Domestic Visions in an Age of U.S. Imperialism* (Chapel Hill: University of North Carolina Press, 2000) pg. 58

portrait, *Nan One Month After Being Battered*, is under-theorized as a commentary on battered women's temporality and complex identity reflected through female masquerade. I demonstrate how the practice of photographing battered women came into the world through photography of an exiled feminist avant-garde that includes photojournalists. I argue that Ferrato, Mendieta and Goldin are "proto" photographers of domestic abuse whose work politicized the official legal ways in which battered women's bodies are made to "survive" through the affirming capacities of the evidentiary photograph.

Survival is defined as: to remain alive after the death, cessation or occurrence of some thing; to survive means to endure or live through.<sup>107</sup> Survival is an important theme in this chapter and I incorporate Akiko Shimizu's notion of the word, elaborated in *Lying Bodies: Survival and Subversion in the Field of Vision*, into my analyses of the photographic and installation work of Ferrato, Mendieta and Goldin. For Shimizu the notion of survival has a temporal and autobiographical valence that is explicitly linked to self-identity and psychoanalytic understandings of subjectivity.<sup>108</sup> I claim that the work of Ferrato, Mendieta and Goldin each contributed to the emergence of a genre of photography of battered women by producing her in and as *time*. Images of battered women now silently organize courtroom adjudication of domestic violence and aestheticize support services marketing campaigns around the issue. It is my contention that the work of these women photographers *survives on--* albeit in standardized and digital forms--in state institutions, popular culture, and municipal spaces.

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<sup>107</sup> OED definition paraphrased

<sup>108</sup> Shimizu draws heavily on Lacanian psychoanalysis, in particular Kaja Silverman's interventions into the role of the visual field in the process of identification.

The photographs of domestic abuse and battered women taken by Ferrato, Mendieta and Goldin each take the form of self portrait. With links to nineteenth-century portrait images of sentimental domesticity their images similarly draw upon everyday life but work against sentimental photography that visualized the middle-class self. Wexler asserted that the Anglo-American woman photographer is unique in her individual and group historical positioning to visually author a theory of assimilation so crucial to the formation of American domestic culture. Wexler writes, “[b]ecause of what Sekula calls the ‘shadow archive’ is inseparable from the general archive, there are urgent questions to pose about the work of nineteenth-century white women portrait photographers. We need to know why and how each of these women made the *particular* portrait images she made and what kind of cultural consolidation her vision underwrote in the social formation to which they were addressed and into which they were accepted.”<sup>109</sup> The same is true of twentieth-century women’s photography in the Anglo-American tradition.

Within the shadow archive of American photography images of battered women become genealogically tied to the lynching photograph, the portrait of the slave wet nurse and the image of the noble Native American. In contemporary U.S. culture, however, images of battered women have a quite different circulation pattern than those images that typically register as shadow archive objects. Images of battered women are not produced as a display of white supremacist power as in the lynching photograph; they are not kept as a memento of hierarchical social relations gone by as in the nanny and Native

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<sup>109</sup> Ibid., 182

American images discussed by Wexler and others.<sup>110</sup> Today, images of battered women are a part of a post modern affective politics of the city; as such, they organize a variety of enclosed public spaces, creating official settings of moral decision-making and spaces for the contemplation of the same—what critical geographer Nigel Thrift has called “spatialities of feeling.”<sup>111</sup> The U.S. courtroom is one form of Thrift’s spatiality of feeling. Recent scholarship on courtrooms has focused on the role of cameras and photography in the aesthetics of legal adjudication. The courtroom is a crucial archive of American domestic photography. Images of battered women function within the shadow archive because they problematize the history of sentimental and idealizing photography of the domestic sphere, offering instead a troubling view of domestic relations. But they differ from nineteenth century images of domesticity in that primarily institutions, rather than private individuals jealously cling to their meanings and movements. In this sense photography of battered women functions within the shadow archive while also participating in “a new age intent on producing various kinds of captivation through the cultivation of *atmosphere* or *presence* or *touch*.”<sup>112</sup> My argument is that Ferrato, Mendieta and Goldin’s images mark pathways to the emergence of the body of

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<sup>110</sup> See Shawn Michelle Smith, *American Archives: Gender, Race and Class in Visual Culture* (Princeton: Princeton: University Press, 1999); Tina M. Campt, *Other Germans: Black Germans and the Politics of Race, Gender and Memory in the Third Reich* (Ann Arbor: University of Michigan Press, 2004); Harvey Young, *Embodying Black Experience: Stillness, Critical Memory and the Black Body* (Ann Arbor: University of Michigan Press, 2010); Nicole R. Fleetwood, *Troubling Vision: Performance, Visuality and Blackness* (Chicago: University of Chicago Press, 2011)

<sup>111</sup> Nigel Thrift, *Non-Representational Theory: Space, Politics, Affect* (New York: Routledge, 2008)

<sup>112</sup> *Ibid.*, pg. 23 (emphasis original).

photography of battered women that is constitutive of our current affective politics and reasoning around domestic violence.

Making this argument however requires pivoting away from nineteenth century scholarship discussing the invention of photography and its role in promoting distinctions between the bourgeois individual and the deviant and criminal person through visual culture. This scholarship, while foundational to the forthcoming arguments has been heretofore preoccupied with the invention of the criminal mug shot.<sup>113</sup> Instead we must home in on more recent enactments, production, and displays of the portrait photograph in order to take into account the procession of new media that now organizes art history and criticism. Thus I move away from the historiography on deviance and criminology. Instead the image of the battered woman and its development into a body of art photography is linked to feminist art movements and institutional shifts on courtroom aesthetics. Photography of battered women is conceived in terms of feminist art practices that explicitly involve the photographer or artist's body in and as performance. Art representation and performance involve autobiographical acts that regularly disrupt the boundaries between truth and fiction, art and scientific evidence. The work of Amelia Jones is thus crucial to my argument about the development of images of battered women as a body of photography that challenges the limits of legal evidence and art. Her

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<sup>113</sup> A growing number of studies address the increasing dependence of contemporary adjudication of law on visual techniques of display in addition to the tradition of words. See Jonathan Finn, *Capturing the Criminal Image: From Mug Shot to Surveillance Society* (Minneapolis: University of Minnesota Press, 2009); Neal Feigenson and Christina Spiesel, *Law on Display: The Digital Transformation of Legal Persuasion and Judgment (Ex Machina: Law, Technology and Society)*(New York: New York University Press, 2009); Richard Sherwin, *Visualizing Law in the Age of the Digital Baroque: Arabesques and Entanglements*(New York: Routledge, 2011)

influential *Body Art: Performing the Subject* mapped feminist art intellectual history within a post modern cultural politics. By detailing the trajectory of art history and criticism in the twentieth-century Jones pivots from nineteenth century histories of photography and develops a program for critically approaching contemporary art forms that have taken on shapes, forms and enactments quite beyond the painted, drawn or photographed image. Jones explains that a schism occurred during the 1980s in art history and criticism in which the discipline witnessed a break-up between feminists who retained forms of essentialism to read the female body and subjectivity and an anti-essentialist position that refused a stable, knowable feminine ontology. Anti-essentialist feminist criticism, prominently exemplified by the work of Mary Kelly and Griselda Pollock, challenged the representation of the female body in/as art. The continued presence of the female body was problematized from painting, drawing, sculpture and photography. Particularly when the female artist deployed her own body in art representation and performance the anti-essentialist view argued that it reified women's gender oppression by the gaze, a field of vision coded male at that particular moment.

Guided by Marxist antipathy toward uncritical experiences of pleasure of the text, anti-essentialist feminist critics accused the female body artist of undermining herself (as an individual) and women as a class, becoming, essentially, a fetish object commodified by the museum system. Mary Kelly, Griselda Pollock, Sally Flitterman, Judith Barry and others<sup>114</sup> articulated this prominent mode of 1980s art history and criticism that rejected

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<sup>114</sup> See Griselda Pollock, "Screening the Seventies: Sexuality and Representation in Feminist Practice—A Brechtian Perspective," *Vision and Difference: Femininity and the Histories of Art* (New York and London: Routledge, 1988) Judith Barry and Sandy Flitterman, "Textual Strategies: The Politics of Art-Marking" in *Screen* 21(2): 35-48

the representation of the female body in/as art in order for the spectator to apprehend the “illusionary and ideological functions of representation.”<sup>115</sup> This resulted in several critical dismissals of body artists like Judy Chicago, Hannah Wilke and Marina Abramović. Accusations of narcissism read their work as inchoate critiques of the structure of gender oppression. The anti-essentialist program that avoided representing the female body outside appropriation and refiguring its semiotics was visible in the work of Barbara Kruger. Amelia Jones’ mapping of the trajectory of the female body in art and performance revealed the body’s presence to be a major struggle within the discipline of art history and criticism.

Jones’ path-breaking analysis draws upon several scholars of art history and criticism. Her work is particularly indebted to surveys of the historical development of feminist art and history and the methodological approaches generated by these developments. Situating the origins of feminist art history with Linda Nochlin’s 1971 article that asked, “Why Are There No Great Women Artists?,”<sup>116</sup> Thalia Gouma-Peterson and Patricia Mathews famously outlined prominent and interrelated themes organizing art work designated explicitly feminist; they also discussed developments in feminist art history and criticism in terms of crucial organization building among feminist artists.<sup>117</sup> By publishing journals, catalogues, volumes and monographs of feminist artists, historians and critics inquired about the nature and status of producing and evaluating women’s art. Feminist claims to intellectual space in which to think and read artistic

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<sup>115</sup> Amelia Jones, pg. 24

<sup>116</sup> Linda Nochlin, “Why Have There Been No Great Women Artists?” *Art and Sexual Politics*, ed. Thomas B. Hess, Elizabeth C. Baker (New York, Macmillan 1973)

<sup>117</sup> Thalia Gouma-Peterson and Patricia Mathews, “The Feminist Critique of Art History,” in *The Art Bulletin*, vol. 69, no. 3 (September, 1987) 326-357

production was not limited to academic publishing however.<sup>118</sup> Feminist art criticism grew in large part through the creation of women's art organizations and activities that are traced by influential art critic Lucy Lippard and others.<sup>119</sup>

Gouma-Peterson and Mathews divided feminist criticism into a first generation of scholarship that emphasized the condition and experience and, most importantly, celebration of being female and a second generation that concerned itself with the production and evaluation of difference using critical methodologies of semiotics, psychoanalysis and post-structuralism. The first generation proposed a female essence while the second generation posited a post-modern artist's body whose enactment of the sign "woman" meant to expose and critique the construction of women's desire and its normalization by and as political ideology.<sup>120</sup>

Gouma-Peterson and Mathews offered a powerful and long lasting narrative of feminist art history and criticism from. Their account gives a narrative of a revolution in

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<sup>118</sup> Several feminist art organizations emerged during the 1970s and 80s. These include but are certainly not limited to the "Where We At" exhibit focusing on black women artists organized by Faith Ringgold and Michele Wallace in 1971; the A.I.R. Gallery opening in 1972; Feminist Art Program at California Institute of the Arts in 1971 and the Women's Interart Center opening in 1971 in New York City. These organizations are matched by art exhibitions focusing on women's art in Britain: "Women's Images of Men" in 1980 which originated from meetings at the Women's Arts Alliance; "About Time" at the Institute of Contemporary Art and, "Issue: Social Strategies by Women Artists" in 1980.

<sup>119</sup> Lucy Lippard, "Sexual Politics: Art Style," in *From the Center. Feminist Essays in Women's Art*, ed. Lucy Lippard (New York, Mass Market Paperback, 1976) 28-37. See also *The Pink Glass Swan: Selected Essays on Feminist Art* (New York: New Press, 1995)

<sup>120</sup> The idea of intergenerational disagreement in Gouma-Peterson and Mathews has been criticized. See Norma Broude and Mary C. Garrard, "An Exchange on the Feminist Critique of Art" in *Art Bulletin* vol.71 no. 1 (March, 1989) 124-127. See also, Amelia Jones and Daniela Salvioni and Diana Burgess Fuller (An Interview with Amelia Jones) in *Art/Women/California 1950-2000: Parallels and Intersections* eds. Diana Burgess Fuller and Daniela Salvioni (Berkeley: University of California Press, 2000) 163-173

art production and theory whose effects were visible in the proliferation of women's art collectives and organizations, social-political cultural critique. Yet, despite its coherence within the narrative of influential shifts in feminist art historical criticism and methodology, a troubling thematic emerges during 1970s and 80s, one seen played out in the many responses to Gouma-Peterson and Mathews' important long essay in *Art Bulletin*. Michelle Meagher, locates the problem in feminist historiography since the 1970s. She argues that the narratives of feminist debates within art history and their function in the women's movement are structured by an overarching and powerful metaphor (Meagher at times uses "matrophor"): the generation.<sup>121</sup> As Meagher observes, responses to Gouma-Peterson and Mathews' article incited vigorous debate from those who felt their art practices and theory were ignored by the authors. Pointing to the critical responses by Norma Broude and Mary Garrard and Griselda Pollock, Meagher demonstrates how Gouma-Peterson and Mathews' articulation of feminist art history and criticism in terms of "first" and "second" generations resulted in subsequent categorization of art view points and analyses according one's generational position. In this light, Gouma-Peterson and Mathews promoted a "generational logic that suggests unidirectional progress and irresolvable discord" and "they deflect attention away from the diversity of feminist art practices within and across both generations."<sup>122</sup> Meagher's critical approach is two-pronged: interested in how feminists tell stories about the movement's recent past, she examines what is occurring in the present moment in which feminist stories of the recent past are mobilized. Drawing upon analytical approaches by

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<sup>121</sup> Michelle Meagher, "Telling Stories about Feminist Art" in *Feminist Theory* vol. 12 no. 3.pg 297-316

<sup>122</sup> Meagher, pg. 306

gender theorists Clare Hemmings<sup>123</sup> and Jane Roland Martin<sup>124</sup>, Meagher examines the “installation of a generational model” of feminist art history and criticism structuring debate about women in artistic representation. For Meagher categorizing feminist art criticism in terms of essentialist and anti-essentialist factions “serves a significant disidentificatory function within the field of art.”<sup>125</sup>

Following Meagher’s insight that metaphor structures feminist art discourse, producing particular forms of disidentitification amongst feminists themselves, I suggest a second problem, another detrimental organizing metaphor of feminist art history and criticism: institutional milieu. The problem of institutional milieu concerns the function of spatial metaphors organizing the institutional locations explored through feminist art practice and criticism. To be sure, Meagher also attends to the spatial in her critique. She details the nationalisms embedded in Gouma-Peterson’s essay and subsequent feminist responses that, in addition to drawing a line in the sand between first and second generation feminist art history, at times celebrated the organizing work of U.S. women artists over their British counterparts. The spatial metaphor I address in this chapter concerns how and why feminist critiques of the female artist and the art objects she produced and attempted to show publicly remained within the structure of the museum, gallery, and professional arts establishment, and not for example the prison or shelter.

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<sup>123</sup> See Clare Hemmings, “Telling Feminist Stories” in *Feminist Theory* (2005) 6(2):115-139 and “What is a Feminist Responsible For?” *Feminist Theory* 2007 8(1) 69-76

<sup>124</sup> See Jane Roland Martin, “Methodological Essentialism, False Difference and Other Dangerous Traps” in *Signs* Spring 1994 vol. 19, no. 3

<sup>125</sup> Michelle Meagher, “Telling Stories about Feminist Art” in *Feminist Theory* vol. 12 no. 3 (2011) pg. 299

Feminist strategies of art theory and practice included organizing professional networks to exhibit and critique women's art while at the same time deconstructing the fine arts and Western art canon.<sup>126</sup> Although prominent feminist art historians locate women's art action and associations within the larger cultural work of the women's movement details of women's experience are generally confined to motherhood, labor and female masquerade. The political reality of violence against women is handled symbolically through artwork and performance that critiques the obsession with the female nude in Western art on one hand and the repudiation of the vagina, menstrual cycle on the other; female beauty conventions and the sale of such conventions as pornography is another preoccupation. Criminality and mental illness are less explicitly discussed. Domestic violence is also repressed in art history and criticism. This is part because the discourse of domestic abuse was still coming into being during the 1980s. In this context, I argue, the work of Ana Mendieta and Donna Ferrato (and later, Goldin) remained off the radar as part of this discourse because of the unique content and disciplinary frames organizing their photography. Formulated as a problem of spatial metaphor, we see in Mendieta a critical emphasis on her most professionalized work—the *Siluetas* series—and not the juvenilia she produced in art school—the *Tableaux of Violence*, discussed in this chapter. Ferrato for her part was a photojournalist whose work did not occupy the space of art history at this time. Finally, Goldin's self-portrait photography, emerging most strongly during the 1990s, was subsumed in the visual politics of the punk movement and a counterculture in which violence figured as style.

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<sup>126</sup> See Rozicka Parker and Griselda Pollock, *Framing Feminism: Art and the Women's Movement 1970-1985* (London and New York: Pandora Press, 1999) for an account of feminist organizing around art theory and practice.

Following the important interventions of Amelia Jones and Michelle Meagher into the paths taken in feminist art history and criticism my goal in this chapter is to consider how the photography of Ana Mendieta, Donna Ferrato and Nan Goldin gave presence to the figure of the battered woman in art and photojournalism. Here my examination of the emergence of images of battered women is not limited to the domain of art history. By claiming that images of battered women signify an exiled genre of photography my discussion is an act of recovery of a kind of portrait image that transgressed the boundaries between art and evidence of law. In this regard photography of battered women circulates not only within an art institutional frame but also intersects a larger institutional *milieu* that includes police evidentiary photos and medical imaging. Elsewhere Amelia Jones has commented on the “troubling myopia” organizing feminist art practices and debates, arguing that it was “largely the white woman’s body that was at issue in critiques in the 1970s.”<sup>127</sup> I concur with Jones and argue that the focus on this particular subjectivity circumscribed feminist art debates to the museum system and beauty industry to the neglect of theorizing women’s bodies within the prison industrial complex. By considering how the image of battered woman moves into and out of art and legal practices I inquire about the significance of an anti-essentialist feminist art criticism that moved to evacuate the female body from representation at the very moment violence against women came to the fore as a political issue adjudicated in U.S. courts by circulating evidence photos.

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<sup>127</sup> Amelia Jones, “1970/2007: The Return of Feminist Art” in *X-TRA: Contemporary Art Quarterly*(Summer 2008, vol. 10, no. 4) pg. 5

In addition to Amelia Jones' critique of 1980s feminist art history debates, I draw upon autobiography studies. The commonalities between autobiography and photography are germane to my discussion of the exiled images by Mendieta, Ferrato and Goldin. The photography of Mendieta, Ferrato and Goldin each involved iterations of self-portraiture; thus their images highlight the writerly aspect of autobiography and photography. Theater scholar Deirdre Heddon refers to autobiography as "the graphed auto."<sup>128</sup> Autobiography and photography both share the root, *graphie*, which usually concerns the written text. Philosopher Patrick Maynard has used "marking" to characterize the work of photography as a technology that reveals and conceals surfaces.<sup>129</sup> Autobiography has a similar technical function of revealing and concealing the self, one that also tracks the representational and indexical elements of the photograph. As literary scholar Timothy Dow Adams notes, "Transcription could apply as well to the way autobiography emphasizes the existence of its author, often including within the text examples of the autobiographical act."<sup>130</sup> The self portrait is an example of the autobiographical act. As I read the self portraits of Mendieta, Ferrato and Goldin the truth and fiction, art and evidence that is marked by their images is the figure of the battered woman.

Autobiography is a coproduction between the photographer and photographed. As "proto" photographers of battered women their images are autobiographical collaborations. The work of Ana Mendieta, Donna Ferrato and Nan Goldin each perform

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<sup>128</sup> Deirdre Heddon, *Autobiography and Performance* (New York: Palgrave MacMillan, 2008) pg. 11

<sup>129</sup> Patrick Maynard, *The Engine of Visualization: Thinking through Photographs* (Ithaca: Cornell University Press, 1997) pg. 20. See also Timothy Dow Adams, *Light Writing, Life Writing* (Chapel Hill: University of North Carolina, 2000) pg. 225

<sup>130</sup> Adams, pg. 21

autobiographical narratives across several visual media forms: photographs, solo performances, diaries and slide shows. Photographs and text constitute autobiographical acts in which photographer and battered woman collaborate. In each case the photographer and photographed are the same person. Mendieta, Ferrato and Goldin's self-portraits also emerge as social representations of battered women and the real law enforcement agents who acquire evidence from them. Deirdre Heddon specifies the relationship between autobiographical act and photography well: "[t]he lived experience that pertains to a certain identity position provides the foundation for the autobiographical act, but at the same time that foundation is strategically (and politically) unsettled *through* the autobiographical act."<sup>131</sup>

The photographs I consider thus raise a number of problems regarding the representation of battered women, who in many ways have functioned as global feminism's "truly disadvantaged" subjects. First, this chapter argues that Mendieta, Ferrato, and Goldin's photographs produced battered women in specific temporal moments, making the normal practice of violence against women chiefly legible through specific contexts and encounters with particular affective expressions that survive in contemporary legal practices. Their images produced the space and time in which battered women could be fixed. The challenges their photographic gazes present, then, implicate the common strategy of applying representational theories to the image.

Second, and related, the creation of each of the photographs I discuss generate questions about the nature of complicity, and what constitutes complicity in violence against women in a political moment organized by U.S. neoliberal discourses of self-help

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<sup>131</sup> Heddon, pg. 13

and the reinvigoration of the individual. In her advancement of the concept of parasitism as an important tactical approach among feminist artists, media theorist Anna Watkins Fisher asks whether the female artist who copies, steals and/or pirates artwork from other, usually male artists is a form of complicity in which anti-capitalist revolutionary politics are ostensibly abandoned.<sup>132</sup> Theft, aggression, and performances of appropriation have also, and for a longer period, characterized the photographer as a parasite following his or her subjects over time; poaching images from the “hosts” life witnessed behind-camera. It was Sontag who pinpointed the complicity of the photographic process, its maintenance of the status quo. Ferrato, Mendieta and Goldin, too, enact the parasitic role through their camera work and complicity in domestic violence emerges in different ways in their respective photography. Ferrato’s images were acquired through a figurative hosting by Garth and Lisa and the resulting images of their violent relationship were labeled obscene by Ferrato’s publishers. Ferrato subsequently published *Living with the Enemy*, a collection of diverse images of battered women that I argue functions as a palinode, an ode in reverse, to her parasitic documentary interaction with Garth and Lisa. Here I draw on the concept of the palinode as elaborated by “body narrativist,” Jay Prosser.<sup>133</sup> Photographs of Mendieta’s performance installation restage through photography both the “work” of violence against women and the forensic image that

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<sup>132</sup> Anna Watkins Fisher, “We Are Parasites: On the Politics of Imposition” Art Forum and e-flux Journal’s Art & Education. <http://www.artandeducation.net/paper/we-are-parasites-on-the-politics-of-imposition/> Access date: February 2012. See also Fisher’s ongoing doctoral work “Feminist Impositions: Performing parasites in Contemporary Art and Media” (working title) at Brown University.

<sup>133</sup> Jay Prosser, *Light in the Dark Room: Photography and Loss* (Minneapolis: Minnesota University Press, 2004). Prosser is Reader in the Humanities at the University of Leeds. His work on the body in representation intersect autobiography and photography studies, thus I refer to him here as a body narrativist.

becomes police work product. Mendieta brings the crime scene into the art realm by copying and restaging it as art. Goldin's image offers perhaps the most challenging palinode involving the reality of domestic violence. Through the self-portrait image she produces herself within battered woman's temporality—the stress between clock time and biological time that transforms battered woman's image into criminal evidence upon display. Goldin's explicit use of cosmetics creates a conflation between violence against women and female masquerade. *Nan One Month After Being Beaten* enacts *aletheia*,<sup>134</sup> the absence of forgetting while at the same time suggesting a path for battered women to move on through masquerade—the very processes associated with women's complicity and response to oppression. The self-portrait further complicates the relationship between complicity, parasitism and survival and asks that feminists return to the figure of the battered woman to think the current adjudication of gender violence. Rethinking the production of art images of battered women by Anglo-American women allows us to consider their critique of the museum and beauty systems according to their own positions within structural racism.

I suggest that Donna Ferrato captured an ideal image of domestic violence and the battered woman. Ferrato's image of Garth and Lisa presented a "perfect experience" of domestic abuse.<sup>135</sup> She fortuitously isolated a moment of performed violence that

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<sup>134</sup> On the role of *aletheia* in Nan Goldin's photography, see Nan Goldin and Eric Mézil, *Love Streams* (Paris: Galerie Yvon Lambert, 1997), however, see Martin Heidegger *Being and Time* translated by Joan Stambaugh (Albany: State University of New York: 1996, 1927) for a more systematic elaboration of the concept.

<sup>135</sup> In particular, I draw upon Silverman's brief analysis of Lacan's work in *Ecrits and Four Fundamental Concepts of Psycho-Analysis*. See Kaja Silverman, "Fassbinder and Lacan: A Reconsideration of Gaze. Look and Image" *Camera Obscura* vol. 1 19, January 1989 : 54-85

nonetheless must be understood as a form of lack because of the mirror and camera's mediating role in the visualization of domestic violence. Ferrato's images of Garth and Lisa produced a primal scene of domestic abuse in which Ferrato herself is captured in a mirror reflecting Garth hitting Lisa. It is an ideal image of domestic abuse as we see a bystander both witnessing and capturing the event of violence on camera. The moment rendered in this image speaks to the heart of our contemporary desire and institutional contestation over images of battered women; because it is the ideal image that never (or, rarely) circulates in court. I argue that Ferrato's photography was a crucial, though largely ignored, instantiation of our desire for images of battered women as proof. The early work of Ana Mendieta features as a significant photographed art installation that pre-figured Ferrato's images of battered women while the photography of Nan Goldin provides an example of new directions in self-portraiture of battered women post-Ferrato. I read Ana Mendieta's photographed performance installation, *Rape Tableaux*, and Nan Goldin's self-portrait, *Nan One Month After Being Beaten*, as commentaries on the nature of visual evidence of violence against women and the relationship between truth, the self and the social.

By linking Ferrato, Mendieta and Goldin's images thematically I suggest that these women helped establish the genre of photography of battered women that became institutionalized police practices of photographing battered women and were a sign of the criminalization of domestic violence. Photographing battered women is an official legal practice with time constraints for women whose wounds are always already in the process of healing and thus disappearing from view by the courts. Donna Ferrato's images of Garth and Lisa captured a unique moment in which domestic abuse was

performed on camera. The precision of Ferrato's camera shutter produced an image reminiscent of the "Execution of a Viet Cong Guerilla" published in *Life Magazine* in 1968. Ana Mendieta's photographed performance piece mimicked the *mise en scène* of police forensic investigations and thus produced the time of law's surveillance of women's bodies. Mendieta's work also posed questions about the perception of violence in everyday settings and the possibilities of action taken in response to witnessing violence performed. Nan Goldin's portraits produce yet another aspect of battered women's temporality. In Goldin's self-portrait she wears heavy cosmetics that are juxtaposed against her black eye. As I argue in chapter 3 Goldin's image of her-self after being beaten prefigures state marketing campaigns for battered women's support services. My analysis of how her self-portrait combines masquerade and violently inflicted wounds provides the basis for this later reading in chapter 3.

### **Ana Mendieta: Tableaux of Violence**

The work of Ana Mendieta is important for thinking about the emergence of images of battered women as a photographic genre. Her series "Tableaux of Violence"<sup>136</sup> raises questions about action in response to violence, the nature of perception and the status of visual legal evidence. Most importantly Mendieta's work in these installations

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<sup>136</sup> Both of these series were left untitled by Mendieta. I follow Julia P. Herzberg's grouping of these series and use of the terms "Blood Pieces" and "Violence Tableaux" in "Ana Mendieta's Iowa years 1970-1980" in *Ana Mendieta: Earth Body*.

queries the temporality of complex identity of battered women. Amelia Jones's groundbreaking analysis of critical approaches to body art during the 1980s argued that dominant discourses within art criticism viewed 1970s body art as a 'bad object'. Feminist critics in particular struggled over the female artist's placement of her own body within the art performance; viewing such action as a threat to woman's power and authority. This view, Jones demonstrates, led to a post modern art criticism that largely ignored body practices and privileged writing that highlighted the production of the art object. The result was a critical discourse that occluded the politics of identity and the intersubjective nature of interpretation/reception of the artist's performance.<sup>137</sup>

I am aware of the variety of ways in which an artist like Ana Mendieta, whose body art Jones closely examined, has been marginalized and misrepresented. Essentialism in art history and criticism were pervasive during the 1980s, including interpretations of Mendieta's work. The prescriptive quality of art criticism at that time led to analyses that vacillated between the politics of identity operating in Mendieta's art which stereotyped her work, isolating her within the exoticizing category of "Latina artist" and charges of the artist's own narcissistic placement of her body in performance.

The biographical details from Mendieta's life have been crucial to interpretations of her *Siluetas* series. It is her vexed position as bi-cultural woman artist living in exile in the United States during the 1960s and 70s that is spoken across the geographical landscapes in which her body appears and disappears. A native of Cuba, Mendieta and her sister, Raquelin, was sent as children to live in the U.S. through the Pedro Pan

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<sup>137</sup> Jones does highlight the work of Lucy Lippard and the engagement of the politics of identity throughout her criticism.

program as political exiles. Later Mendieta's artistic development drew heavily upon Mexican culture; the profound influence of the Mexican landscape and indigenous and Catholic iconographies acted almost as a surrogate for her native and yet so distant home. Her yearly trips to Mexico were productive of some of the *Siluetas* series which continue to be written about as her most important and enduring contribution to art.

The *Siluetas* series had been criticized in art history for the way that it lays claim to an essential feminine. The series is characterized by the repetition of natural erasure of Mendieta's body as goddess archetype figure. In its rehearsal of the goddess figure and its placement in the natural landscape Mendieta's most important work was accused of clinging to the idea of an essential feminine. While Mendieta's work is finally getting the reception that it deserves it seems that contemporary theoretical engagement remains preoccupied with the *Siluetas*.<sup>138</sup> Thus it is with caution that I theorize Mendieta's work in this chapter for its influence on the production and normalization of photography of battered women. Here I bracket the *Siluetas* series from my discussion in order to focus on her early work while a graduate student at the University of Iowa. "Tableaux of Violence" are installations Mendieta created and performed over the course of 1973, after the murder of nursing student Sara Ann Otten. Following Mendieta's own reflections about these works I consider the series as an installation whose actions are made material and accessible through photography.

Understanding Mendieta's contribution to the emergence of the photography of battered women genre requires a shift away from the celebrated *Siluetas* series toward

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<sup>138</sup> See Tuula Karjalainen, (1996); Jane Blocker, (1999); Olga M. Viso, (2004); Laura Roulet, (2004); Susan Best, (2007); Clara Escoda Agisti, (2007); Patrick Anderson, (2010). See also Lucy Lippard, (1973).

another set of installations, ones Mendieta produced during a year in which she brought arguably her most explicit and raw political critique through body art. Here I do not suggest that work on the *Siluetas* need come to a close; clearly there is much more to find in these haunting works particularly in a moment in which national borders achieve simultaneous forms of flexibility and restriction that produce new experiences of desire and subjectivity. Rather I want to take up some of Mendieta's work that is less discussed, "Tableaux of Violence" in particular in order to give this comparatively ignored work the attention that it deserves by bringing her performances in these installations to bear upon the current affective politics through which the experiences of battered women are visualized. I believe "Tableaux of Violence" are Mendieta's most powerful and ethically challenging works. Critical emphasis on the *Siluetas* has obscured them, pushing them into academic exile. The problem is not that that commentary on the *Siluetas* is undeserved rather some of Mendieta's other work goes unremarked and unexcavated for the tools it provides for comprehending the politicization and adjudication of domestic violence because the *Siluetas* are deemed to be her masterpiece. Mendieta's "Tableaux of Violence" is in art historical and critical exile. A return to her efforts in this series demonstrates the close proximity between the condition of exile and that of survival.

The "Tableaux of Violence" refers to a series of mostly untitled actions performed indoors, on city streets and green spaces. I borrow the name of the series from art historian and critic Julia Herzberg who has focused on Mendieta's early work.<sup>139</sup> Herzberg's thematic characterization allowed her to address the series of performances as

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<sup>139</sup> Julia Herzberg, "Ana Mendieta's Iowa Years 1970-1980" in *Ana Mendieta: Earth Body Sculpture and Performance 1972-1985* (Hatje Cantz Publishers, 2004) 137-180.

a collection similar to the function of the *Siluetas* title. Herzberg's move to classify four installations—Untitled (*Rape Scene*) Untitled (*Bloody Mattresses*), *Clinton Piece*, *Dead on Street*, Untitled (*Rape Performance*) as part of a “Tableaux of Violence” is a practical step to approaching these well known but largely unexamined installations but one that becomes relevant for what it suggests about the exiled status of this series. That these early documented performances should have no official organizing title or theme is a testament to the critical preoccupation that has made legible and accessible the *Siluetas* series. These works without titles also speak to the nature of the actions Mendieta took to realize the series. The “Tableaux of Violence” were not submitted for exhibition at a museum. In a few instances of this series Mendieta invited fellow students and faculty to view her body art as in *Rape Scene*.<sup>140</sup> In *Clinton Piece*, *Dead on Street* Mendieta lay in a pool of blood. She had asked a colleague to stand over her body photographing the scene as if for the police or a journalism piece.<sup>141</sup> Their location of display outside the art-legitimizing confines of the museum or gallery exploded the interpretive possibilities of the work. A fellow student commenting on another of Mendieta's body art pieces that he discovered nearby admitted to his inability to discern whether he had come upon a scene that was fictitious or real.<sup>142</sup>

The *Tableaux of Violence* represent Mendieta's most ethically challenging work. They are more intense than the *Siluetas* series in terms of the psychological and physical demands. Mendieta offers a glimpse of the psychological stakes of her endeavor in this

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<sup>141</sup> Julia Herzberg, pg. 156. See also, Herzberg, “Ana Mendieta, The Iowa Years: A Critical study, 1969 through 1977,” PhD, The City University of New York, 1998.

<sup>142</sup> *Ibid.*, 157

piece when she explains, “I would really get it, because I was working with blood and my body. The men were into conceptual art and doing things that were very clean.”<sup>143</sup> I would argue that the contours of Mendieta’s words are shaped by relations of affiliation among her fellow artists on one hand and the possibility of abjecting those relationships on the other by staging her dead bloodied body. What punishment did Mendieta think she might bear and from whom in the aftermath of *Untitled* (Rape Scene)? Her words speak to the fragility of the female body artist and the relationships of affinity that wrest her work from exile, creating an opening for many valences of survival. Mendieta risked something of herself in the *Tableaux of Violence* series that the *Siluetas* would only ghost in comparison.

It is significant that the performances I, following Herzberg, refer to as the “Tableaux of Violence” were produced while Mendieta was still developing her performative signature. In the “Tableaux of Violence” we have a body artist in the midst of developing her performative program who appears to pivot from that program (which would later become the *Siluetas* series) to stage crime scenes for a year in response to violence against women. Mendieta’s self-portrait, an artifact of performance in which the trauma of sexual violence appeared and disappeared, came out of her desire to explore the problem of violence against women: “When a young student at the University of Iowa was found murdered after having been brutally raped...I started doing performances as well as placing objects and installations in public spaces in order to bring attention to this

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<sup>143</sup> Guy Brett, “One Energy” in *Ana Mendieta: Earth Body Sculpture and Performance 1972-1985* (Hatje Cantz Publishers) 181-202; see also William Wilson. “Haunting Works From Cuban Exile Mendieta.” *Los Angeles Times*, February 18, 1998.

crime and sexual violence.”<sup>144</sup> The “Tableaux of Violence,” then, is constitutive of multiple forms of marking and identification of the female body that begin to establish the figure of the battered woman through body art performance.

The *Siluetas* series in contrast reflect a confident and refined Mendieta, the recipient of several important grants and fellowships from the Guggenheim, the *Prix de Rome*, the *Siluetas* are the consolidation of multiple forms and registers of exile and its exploration through the art materials and geographical locations identified by Mendieta in her frequent returns in and from exile to her native Cuba and Mexico. The critical preoccupation with the *Siluetas* is also evidenced when one considers the course of debate about Mendieta’s staging of the body in these works. Mendieta’s body art had been criticized for aligning the female form with nature and defended against such accusations by performance theory scholarship that, following Peggy Phelan, writes toward disappearance.<sup>145</sup> Orienting the *Siluetas* series toward disappearance has emphasized the characteristic erasure of the female body that recurs in the series as politically significant commentary on the colonial and imperial legacies that continue to structure post-modern life. It would seem that criticism of the *Siluetas* series has come full circle in terms of essentialist readings of her work that emphasized Mendieta’s female and Latin identity to interpretations that shifted attention to the political significance of the negotiations of Mendieta’s body in and on the landscape.

Patrick Anderson’s work on the *Siluetas* exemplifies Phelan’s charge to theorize the affective and political significance of performance through disappearance. In *So*

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<sup>144</sup> Arlene Raven, *Crossing Over: Feminism and the Art of Social Concern* (Ann Arbor: UMI Press, 1988)

<sup>145</sup> Peggy Phelan, *Unmarked: The Politics of Performance* (New York: Routledge, 1993)

*Much Wasted: Hunger. Performance and the Morbidity of Resistance* Anderson offers self-starvation and consumption as frames through which we can understand the intervention made by the body artist. Anderson's intervention is oriented toward a view of performance knowable through its disappearance. For Anderson self-starvation and consumption are allegorical "modes in which Mendieta [. . .] seize[s] upon the power of performance as resistant to the economy of consumption organized around the commodity." He concentrates on the intervention of performance, architecturally and philosophically, that exposed and resituated the parasitic relationship between artist, art work and the museum/gallery in the *Siluetas* series. Anderson conceives of consumption here as the temporal erasure of the female body as a result of the natural shifts and flows of earth, fire, water and wind, the elemental landscape in which the *Siluetas* find their occasion. In this sense the presence and disappearance of Mendieta's body are performances that rehabilitate the *live* because the moments of her erasure result in no exchange of commodity.<sup>146</sup> Anderson's use of alimentary metaphors-- consumption and self-starvation-- to analyze Mendieta's intervention in *Siluetas* is apt for considering the "Tableaux of Violence." I follow Anderson on this point and allegorize this series around consumption/eating: Similar to its role in *Siluetas* consumption makes explicit the duration of the performances in the Tableaux; the specularity of the performance include multiple registers of affect; and, although the character of her performances in the

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<sup>146</sup> As Anderson writes, "For Mendieta ephemerality marked both the time and space of the live and [...] the production of cultural, political, *geographical* presence," Anderson, pg. 97

Tableaux originate in the aesthetic its performative qualities allow them to travel between institutional contexts such as art and police work.<sup>147</sup>

### **“Tableaux of Violence”: Duration**

Amelia Jones captures the function of Mendieta’s photographs taken from body art that staged the phenomenon of domestic violence in her own apartment for a group of students from her M.F.A program. Jones argues the images of Mendieta’s performance are “a supplement of a supplement: a seemingly rigorous, visual, indexical marker of a body’s having ‘been there’ before the camera/audience.”<sup>148</sup> We struggle over the photographs of the “Tableaux of Violence,” posing questions about the ethics of visualizing the subject of violence and the role of simulation in capturing suffering that is not so distant. *Untitled* (Rape Scene) was a recreation of the murder of University of Iowa nursing student, Sara Ann Otten. The body art replication of the scene of the crime conformed to how it was reported in the press. Mendieta’s installation lasted approximately one hour. Invited to her apartment, Mendieta’s colleagues found her door ajar. In an exploration of the durational aspects of performance, the artist’s prone, half naked and bloodied body produced a most interesting response from her audience: the scene was photographed and Mendieta’s guests began to discuss the piece; such

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<sup>147</sup> See Anderson’s discussion of the body art of Adrian Piper, Ana Mendieta and Marina Abramović, “How to Stage Self-Consumption,” In *So Much Wasted: Hunger, Performance, and the Morbidity of Resistance* (Durham: Duke University Press, 2010)

<sup>148</sup> Jones, pg. 36.

discussion resonates with police and forensic teams arriving at a murder scene to evaluate material evidence.<sup>149</sup>

*Rape Scene* emphasized the intertext, exploring the relationship between official police knowledge, Mendieta's body art performance and the subsequent production of images by her colleague-spectators. The photographs which are the remnant and supplement of the performance cannot claim truth. However the repetition of the violent consumption of the female body contributes to the repertoire of such images Lacan defined as the screen. For Lacan the screen is the space of political contestation. As Jones and others argued dominant art history and criticism discourse in the 1980s focused on production, leaving explorations of subjectivity, the politics of identity undertheorized. Mendieta brings both issues—subjectivity and production—to bear in the “Tableaux of Violence” of which *Rape Scene* makes the most direct link between violence and the private sphere.

Mendieta's employment of duration in the “Tableaux of Violence” is inseparable from the work of simulation, in Mendieta's case the *simulation* of material evidence of violent crime. In *Rape Performance* she poses naked and lifeless in outdoor spaces with blood smeared on her body. Mendieta's work in this piece was unannounced (as were many of the Tableaux series) adding to the realization of the live through physical endurance. Herzberg notes that there is no evidence that these works were seen by

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<sup>149</sup> The approach to the “Tableaux of Violence” has often been to make an eerie and ironic comparisons to Mendieta's violent death; the artist fell from a high rise apartment under suspicious circumstances in 1985. Her husband, Carl Andre was tried for her murder and eventually acquitted for lack of evidence.

anyone.<sup>150</sup> In this way the photography of Mendieta's body art installations, the supplement of the supplement, masquerades as police evidence. As I develop in the preceding chapters simulation troubles the way in which evidence structures the adjudication of domestic violence.

The Tableaux, executed in 1973, intentionally conjures police forensics in order to experiment with the casual viewer's ability to read visual evidence of violence in public. Mendieta used red paint and animal blood in the "Tableaux of Violence" series to stage her body around city spaces as a homicide victim. Such documentation included photographs of bystander's reactions to the presence of blood in public settings. Curator and author James Bradburne has argued that the specularity of blood includes the visualization of its magical qualities and its rational scientific examination.<sup>151</sup> The "Tableaux of Violence" discloses a tension between the two poles, one in which blood is figured as purely instrumental, a liberating force of vitality and another view in which blood is a means of repression and control. In *Rape Scene* the artist is bent over a kitchen table. Her undergarments and trousers are positioned down at her ankles, provoking the viewer-spectator to insert their own narrative, becoming implicated in the lead up to the scene in which the artist's hind legs and buttocks that are smeared with blood. This body art piece figures blood as the remnant of life at a moment in which life has just been spent. The liveness of Mendieta's body silently held for duration registers affects that include the slippery quality of the fluid, the hardness of the table over which she is bent and other staging of her contorted body posed outdoors, tossed into the bushes like so

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<sup>150</sup> Herzberg in Viso (2004) pg. 256 n60.

<sup>151</sup> James Bradburne, *Blood: Art, Power, Politics, and Pathology* (Munich: Prestel, 2002).

much refuse, as she lay in the hard grasses alone waiting for anyone to take notice. The specularity of Mendieta's body, formerly understood by art critics as an expression of narcissism, opens out to other affective valences. Anderson's employment of the alimentary metaphor is important here. "Tableaux of Violence" stages scenes of gender animus as a meal just eaten. Combining the comforts of home and the specularity of splattered blood and disturbed furniture Mendieta's composition is a radical indictment of entrenched modes of consuming the female body.

Body art, Anderson argues, though explicitly designated as aesthetic productions exceeds that designation as performance.<sup>152</sup> Mendieta's "Tableaux of Violence" participates within the *studium* or image/screen that visualizes women's corporeality and consumption. Mendieta's staging of the abused woman who is consumed through violence appears as a recorded crime scene, a counter-part to the criminal mug shot whose iconic status emerged during the nineteenth century. Several scholars have traced modern developments of representing criminals through police photography.<sup>153</sup> "Tableaux of Violence" is an important counter-point to recent work on police photography and surveillance because it emphasizes the subjectivity of the victim of

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<sup>152</sup> Anderson, pg. 93

<sup>153</sup> See Tagg, (1989); Allan Sekula, "The Body in the Archive," in *October* vol. 39 (Winter 1986)pg. 3-64; Lorraine Daston and Peter Galison, *Objectivity* (Cambridge: MIT Press, 2007); Finn, (2009); Jennifer Mnookin, "The Image of Truth: Photographic Evidence and the Power or Analogy" in *Yale Journal of Law and the Humanities*(February1998);Sandra S. Phillips, Mark Haworth-Booth and Carol Squires, *Police Pictures: The Photograph as Evidence* (San Francisco: San Francisco Museum of Art, Chronicle Books, 1997); Sander Gilman, *Picturing Health and Illness: Images of Identity and Difference* (Baltimore: Johns Hopkins University Press, 1985); Foucault, (1979); Charles Goodwin (1994), "Professional Vision," *American Anthropologist* 96 (3): 606-633; Christine Shearer-Creman, "The Epistemology of the Science and Silence of Battered Women" in *Survivor Rhetoric: Negotiations and Narrativity in Abused Women's Language* (Toronto: University of Toronto Press, 2004)

violence.<sup>154</sup> Mendieta staged the abused woman using her own body. The rehearsal, in her home, of the violent struggles of an in-home attack and murder has multiple affective valences that become a study of women's subjectivity as it is produced through violence. The documentary photography of the *Tableaux* explores subjectivity *and the conditions of production* of the art object, critical approaches so at odds with each other in art critical discourses of the 1980s and 1990s.

The intersubjective nature of interpreting the *Tableaux*, its comprehension across body artist and spectator/audience contains the political. Art critic Bethan Troakes has emphasized how Mendieta's performance meant to situate private intimate partner violence within the masculine public sphere of the 1970s. In doing so, Mendieta's performance makes the personal political while simultaneously opening out into interpretations that situate the images as erotic, pornographic, and scientific. Her work is relevant for how we see in 1970s body art the visualization of violence against women and the ethical problem of staging such images in terms of "what battered women look like." Mendieta's installations mimic legal evidence because of the realistic staging of the crime scene. Here "Tableaux of Violence," a series exiled from art criticism and historical discourse in favor of the *Siluetas*, survives on by mimicking evidence of law. The "Tableaux of Violence" compels reflection on a whole series of debates about digital media whose photography has remediated the concept of simulation and its embodiment as the laboring body artist.

### **Donna Ferrato: Living with the Enemy**

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<sup>154</sup> Jonathan Finn. *Capturing the Criminal Image: From Mug Shot to Surveillance Society* (Minneapolis: University of Minnesota Press, 2009)

Donna Ferrato's photography of domestic violence is another series of images in exile and was photographed a decade after Mendieta's "Tableaux of Violence." The photographs of domestic abuse captured by Ferrato occurred while she was on a photojournalism assignment to research and record on camera an example of the libertine. What had began as research for a photo-essay for Japanese *Playboy* magazine instead devolved into Ferrato witnessing the cyclical contour of domestic abuse. Though commissioned by *Playboy* Ferrato's assignment to document libertine marital relations oddly fits within the genre of family portraiture whose sentimentalism was popularized in the nineteenth century. *Playboy's* Japanese edition was created in 1975 and specialized in erotic images of national celebrities. Ferrato's documentation of the counter-cultural lifestyles would have been an example of the everyday exotic of American couples. Yet, such a queered and transnational family photography would not be published by the magazine.

Ferrato's images of Garth and Lisa and her subsequent photographic work in *Living with the Enemy* draw a close relationship between exile and survival. Multiple registers and types of exile and survival are enacted in her photography of battered women. The previous discussion of photographic anekphrasis as a problematic through which whole genres of photographs are exiled obtains in Ferrato's work in part because her photographs emerged within the disciplinary boundaries of photojournalism. Feminist body art of the 1970s like that of Ana Mendieta dissolved the boundary between subject and object in favor of an intersubjective and desiring interpretive exchange between artist and spectator/audience. Critiques at this time accused prominent women body artists of

being reactionary, essentialist and narcissistic.<sup>155</sup> Ferrato's images of domestic abuse were treated to similar criticisms including obscenity. Following Amelia Jones, the female body in representation is dispersed and unstable. Dispersal includes disciplinary fields in which images of women circulate—fashion photography, pornography and photojournalism. I revisit Ferrato's journalism images to recover from critical exile the ways in which her photographs contribute to the emergence of evidence photography of battered women. In this way the body artist's explorations of subjectivity dovetail with those of the photojournalist.

Ferrato's images showed that she was present at several violent confrontations between Garth, Lisa and their children. In a photograph taken at a moment of violence different from the one that introduced this chapter, Garth, Lisa and their children are poolside. A picnic bench covered in gingham cloth supports an open basket, a wine glass, pack of cigarettes and a can of beer. Garth wears a towel around his waist and is grabbing Lisa's shoulders. Lisa, also topless, stands slightly off balance turning her head away from Garth. The back of her turned head becomes a halo as light shines from above. She holds a wine goblet, whose glass is also brightened by the sun. Behind the two parents are their children; one, whose face is obscured by Garth, sits on his Big Wheel, mid-peddle. His brother straddles a tricycle, arrested by the scene before his eyes. Seated on the bike, the boy's face and neck are contorted by what Ferrato recalled were hysterical cries in her

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<sup>155</sup> I refer to the following criticisms of feminist usages of the body in performance elaborated by Amelia Jones including: Mary Kelly, "Re-viewing Modernist Criticism" in *Art after Modernism: Rethinking Representation*, ed. Brian Wallis (New York: New Museum of Contemporary Art: Godine, 1984); Griselda Pollock, "Screening the Seventies: Sexuality and Representation in Feminist Practice—A Brechtian Perspective" in *Vision and Difference: Femininity, Feminism, and the Histories of Art* (London and New York: Routledge, 1988)

diary description of the violence she caught on camera. The boy's hands grip the handlebars of his tricycle as Garth does the same to Lisa's shoulders and torso.

The familiar trappings of sentimental domesticity—a sunny day, children at play by the pool, a picnic lunch, are here reordered by the body postures that gesture violence and abjection. The poolside photograph establishes domestic violence as a distinct temporality, one in which domestic abuse appears within a gaze indexing particular choreographies of touch, “rhetoric[s] of pose,”<sup>156</sup> and affects. Here familial looking is a generative intersubjective exchange of interpretation between the photograph and spectator/audience.<sup>157</sup>

Returning to Anderson's consideration of performance ‘in the broadest possible sense of [the] word’ that framed the body art performances of Ana Mendieta and Marina Abramović, Ferrato's installation within Garth and Lisa's home uses a similar model of performance's multiple meanings to understand the ‘social, cultural, and political impact’ of the photographs.<sup>158</sup> Ferrato's gaze became a political action of photographing violent actions that are constitutive of a repertoire of individual and collective knowledge and memory.<sup>159</sup>

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<sup>156</sup> See Craig Owens, “The Medusa Effect; or, The Spectacular Ruse,” in *Beyond Recognition: Representation, Power, and Culture*, ed. Scott Bryson et al. (Los Angeles and Berkeley: University of California Press, 1992); Elin Diamond, “Brechtian Theory/Feminist Theory: Toward a Gestic Feminist Criticism” in *Unmaking Mimesis* (New York: Routledge, 1997)

<sup>157</sup> See Marianne Hirsh, ed., *The Familial Gaze* (Hanover: University Press of New England, 1999)

<sup>158</sup> See Diana Taylor, *The Archive and the Repertoire: Performing Cultural Memory in the Americas* (Durham: Duke University Press, 2003).

<sup>159</sup> Nick Kaye, “Displaced Events: Photographic Memory and Performance Art” in *Locating Memory: Photographic Acts*, Annette Kuhn and Kirsten Emiko McAllister eds., (New York: Berghahn Books, 2006).

The duration of Ferrato's time with Garth and Lisa's family; the meanings of Ferrato's engagement with Garth and Lisa that existed beyond visual spectacle; and, Ferrato's role in the home as a photojournalist of the counter-cultural exceeded the aesthetic codes of that project. Her role as a researcher thus aligned the photographs with performance in the broadest sense. In Anderson's language, the images "exceed th[ei]r designation"<sup>160</sup> Professor of Performance studies Nick Kaye has also proposed a view of the relationship between performance and intersubjectivity: "[Its realization] as 'performance'[includes] strategies that defer between performance and its documentation, between image, text and action, so provoking the reader's awareness of the text as a ground for a *performed activity* that remains *embedded within* reading."<sup>161</sup> An act replete with similar political meanings and stakes as body art, Ferrato's photography of Garth and Lisa's family prefigured the shadow archive of domestic abuse evidence photography.

The meanings produced through Ferrato's photographs are intersubjectively achieved between photographer, photographed and the interpreter. Ferrato stands in the bathroom doorway, her own face partially obscured by the camera. Mirrors line the granite counters such that every image of Garth and Lisa includes their reflection and that of Ferrato. As the photographer's image is also captured in the photographs, Ferrato is visually implicated in the performance of violence. We see Ferrato in the hallway as she takes her first image of Garth demanding information from Lisa who stands defiantly against the counter. In the next image Garth is ransacking the bathroom drawer looking

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<sup>160</sup> See Anderson's (2010) discussion of these aspects of performance, pg. 92-93.

<sup>161</sup> Ibid., 176-7

for the pipe. Ferrato has moved to the doorframe at this point, switching the camera to her left eye while leaning on the frame for support. Lisa remains stationed against the counter across these three images. Lisa appears defiant, her chin raised and brow furrowed as she places her hands at her temples in distress and at in the final image, awkwardly (childishly?) knotting her hands together, not quite able to shield her face from Garth's blow. At this moment, Ferrato has switched back to her right eye. She has stepped fully inside the bathroom now and is kneeling down when she photographs Garth completing his slap.

Ferrato's body is posed in a way that is explicit about the look of the autobiographical and photographic act. The photograph-taking pose is the act's core element. Ferrato's physical adjustments of the camera thus mark the key political significance of the series of photographs—capturing domestic abuse on camera. As mentioned at the beginning of this chapter Ferrato's photography of Garth and Lisa raises ethical questions about the complicity of the photographer in representing violent situations. From the representation of state, military, police and individual and group atrocities the photographic act of documentation is debated as a valuable intervention.<sup>162</sup> Ferrato's implication in the abuse is an issue central to her photography's exile from academic discourse and popular culture. It is important therefore to trace, as *photographic ekphrasis*, the repudiation of these images on the one hand and the contemporary production and circulation of images of battered women on the other; in

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<sup>162</sup> Examples of the ethically challenging photographic practices are Sontag's early "Photography" essay; South African photojournalist and Bang-Bang Club member Kevin Carter's image of a vulture surveilling the starving Sudanese infant who is mid-crawl in the dirt; Rodney King, Public debate and policy established about paparazzi boundaries after the death of Princess Diana; News coverage of Hurricane Katrina.

other words, the transformation of images of battered women from bad object of popular culture to courtroom fetish.

Ferrato's images of Garth and Lisa were censored from publication by *Playboy* and other magazines on obscenity grounds. The photographer's implication in the moment of violence was prioritized over a more generalized meditation on the cultural, social, and political significance of capturing such an act on camera. As I read these images here the work of Elin Diamond is helpful to theorizing Ferrato's movement of switching the camera from eye to eye while going down on one knee. Captured by the mirror, Ferrato is both subject and object of the photographic gaze. To the publisher and other magazines Ferrato's presence in the images of Lisa being slapped by Garth proved its exploitative qualities. The photographer appears complicit in the performance of domestic abuse as she is captured angling for a better camera shot. *Playboy* suspected it would have a problem marketing Ferrato's images of Garth and Lisa within the erotic ideal it promoted through its trans-national media conglomeration. In this instance it was the publishers who experienced the Brechtian notion of distancing. It was the publishers who were the ones 'displaced and provoked' into new readings of the text.<sup>163</sup> Ferrato's images did not match the established rhetoric of the body through which men and women are visually represented as "sex". *Playboy* and other publishers shored up their commodified gazes by refusing to publicize Ferrato's photographs. Gesture and silence are thus important features of Ferrato's images of Garth and Lisa. Movements and affects represented in journalism images are here linked to feminist art theory debates that problematized the representation of women's bodies in performance.

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<sup>163</sup> Jones, A. pg.24

Here it is important to think exile and survival together in the work of Ferrato and Mendieta before her. Both produced abject photographic images and were self-suppressed by Mendieta and Ferrato respectively. Ferrato attempted to swat Garth's hand away and it would be months before she developed the image. Similarly, Mendieta did not announce all of her Tableaux pieces; many of the works are untitled and challenged both the spatial and aesthetic conventions of performance art as she posed nude and bloodied in public without announcing that she was doing so as an art production. The "Tableaux of Violence" remains in exile receiving little critical attention especially in comparison to scholarship on the *Siluetas* series.

Ferrato's images, for their part, have few interlocutors and respondents.<sup>164</sup> The few commentaries on her work address Ferrato's subsequent book, *Living with the Enemy*, released a decade after her unpublished magazine piece with Garth and Lisa. The photographs--which pushed the limits of research, performance and ethnography--survive in this book of documentary photographs of battered women's lives. Jay Prosser has used the *palinode* to describe photography as a reminder of the immanence of death and loss. The palinode is a textual form that inscribes a poetic apology, a mode of retraction that is an ode. Of photography in its representation in the palinode, Prosser describes that it is an "autobiographical mode for how we might reflect on the losses and oversights inevitable in the progression of our own work, as photography is a form for realizing the losses

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<sup>164</sup> See and Carol Squires, *Body at Risk: Photography of Disorder, Illness and Healing* (New York: International Center of Photography, Berkeley: University of California Press, 2005); Ken Light, *Witness in Our Time: Working Lives of Documentary Photographers* (Washington: Smithsonian Institution Press, 2000); Christian Caujolle and Mary Panzer, *Things as They Are: Photojournalism in Context Since 1955* (London: World Press Photo, 2005)

inevitable in our life.”<sup>165</sup> If Ferrato’s original domestic abuse photos of Garth and Lisa are an ode to libertine sexuality—and the sensational quality of their expression suggests that they are-- as I read it, *Living with the Enemy* is a palinode. The book of photography is an autobiographical response to the critical exile to which Ferrato’s first images of domestic violence were confined. Accused of complicity in domestic violence and censored from publication Ferrato was compelled to work exclusively on the documentation of battered women’s lives.

The images of Garth and Lisa are one of several profiles of families Ferrato documented experiencing in *Living with the Enemy*. Reframed within a larger cohort of battered women, the early images survive not as *Playboy*’s example of American love lives but as an autobiographical reflection of the photographer’s new found dedication to the issue of domestic violence. After *Playboy* fired her for photographing Garth and Lisa’s abuse Ferrato voluntarily shadowed the police as they responded to domestic incident calls. Of this time in her career Ferrato writes:

My feeling is it’s not what you’re going to get. More like what are you going to give? What are you going to learn? There’s so much to learn out there with a camera. It gives us power for educating ourselves and for educating others. We have to be patient; try to learn as much as we can until there comes a time where we have something to share with other people. And that doesn’t come for a long time.

I rode over six thousand hours with cops around the country to get the pictures. You have to be there.<sup>166</sup>

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<sup>165</sup> Jay Prosser, *Light in the Dark Room: Photography and Loss* (Minneapolis: University of Minnesota Press: 2005) pg. 12

<sup>166</sup> Ken Light, *Witness in Our Time: Working Lives of Documentary Photographers* (Washington: Smithsonian Institution Press, 2000) pg. 134

Here Ferrato speaks of her own wound constituted by the traumatic experience *shared* with Garth and Lisa that fateful year. Repeatedly exposed to the violence of Garth and Lisa's relationship Ferrato was wounded yet again when her publishers fired her for photographing the abuse. Censorship is a devastating yet productive punishment for the aspiring photographer; it exiles their work from view on the one hand and generates future critical effects on the other. The documentary photographs in *Living with the Enemy* constitute a recovery of Ferrato's pleasure and identification through photography. Similar to Kobena Mercer's own re-reading of his criticism of Robert Mapplethorpe's fetishistic images of black men,<sup>167</sup> Ferrato returns to the battered woman, re-visualizing her in the production of *studium*. Barthes privileged *punctum* over *studium*, asserting that it unraveled the wound surfaced between the image and individual viewer. Assembled among documentary photographs of battered women from around the country *Living with the Enemy* incorporates the primal scene captured of Garth and Lisa. In this way the *punctum*, the wounding image that cannot be reproduced because it exists solely for the private viewer is also that wound that society refuses to admit into the gaze. Until the late 1980s American culture refused to see images of battered women; systematically exiling them from public circulation when they appeared by chance, as did Ferrato's images. *Living with the Enemy* recovers both the initial violence between Garth and Lisa and Ferrato's own pleasure and identification with the camera apparatus.

What kind of narcissistic pleasure is established by Ferrato's documentary gaze upon battered women? Dominant feminist art theory and history of the 1980s rebuked the

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<sup>167</sup> Kobena Mercer, "Reading Racial Fetishism: The Photographs of Robert Mapplethorpe," in *Fetishism and Cultural Discourse*, ed. Emily Apter and William Pietz (Ithaca: Cornell University Press, 1993)

narcissistic representation of women's bodies in art performance. The rejection of Ferrato's photographic gaze recalls the dismissive readings of Hannah Wilke's self-portraits, discussed so brilliantly by Amelia Jones. The strategic narcissism of the feminist body artist shares a theoretical link to the feminist photojournalist: the autobiographical entanglements required to capture the image, woman as self and other. The palinode offered by *Living with the Enemy* uses the narcissism entailed by autobiography to recover several forms of loss leading to exile: loss of moral legitimacy in her decision to photograph Garth hitting Lisa; the cultural refusal to collectively witness/acknowledge domestic abuse; the repression of Ferrato's own experience of trauma living with Garth and Lisa; and, the normal yet diverse nature of battered women's experience. Ferrato's method of following the police allowed her to witness multiple aspects of domestic violence and its aftereffects. Her documentary book of photography represents battered women surviving their abuse. At the same time the photo-essay is a self-portrait of Ferrato that recalls Barthes' *ça a été* (this has been) of her experiences shared with battered women.

“The palinode is a doubling back, a return to the ode. Yet in recovering what the ode left out the palinode makes as its subject what should have been in the first. Indeed it goes back before the original. The palinode is take two but more authentic than take one. And as a return the palinode creates a new kind of text.”<sup>168</sup> In this reading Jay Prosser highlights the double movement of the palinode. An author returns to the original but not to retract, or reject the first text but rather to confirm a loss in the original that the second

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<sup>168</sup> Prosser, pg 163

text helps teach. *Living with the Enemy* is a representation of Ferrato's learning. As such it too becomes available for interpretation, for a litany of returns.

In 1993 an image that appears in *Living with the Enemy* was used by Eva Rivera Castro in a group show called "The Subject Rape" at the Whitney Museum of American Art. The image of a boy screaming at his father as he is being arrested for beating the child's mother was incorporated into a collage by Castro who did not credit Ferrato's copyrighted image. Castro's appropriation raises interesting questions not only about copyright in the area of feminist photography but also the ethics of representation of battered women—an issue Ferrato was clearly intimately aware. Discussing the "The Subject of Rape" collage Ferrato's editor pointed out that "[t]hese women [photographed for *Living with the Enemy*] agreed to release their photographs because they knew how the photographs were going to be used...they didn't know that the images were going to wind up on a piece of art in the Whitney Museum in a show about rape."<sup>169</sup> Interestingly, Ferrato's editor also observes that the women in *Living with the Enemy* are described as victims of domestic abuse, not rape. Castro's incorporation of the images into a show about rape asks us to ponder domestic violence in terms of erotics, a set of affective flows that open out to a variety of gestures and relations of force. Her parasitic engagement of Ferrato's images suggests the ways in which Ferrato's gaze codifies the "look" of domestic abuse and the battered women in particular.

### **Nan Goldin: Nan One Month After Being Beaten**

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<sup>169</sup> William Grimes, "A Question of Ownership of Images" in *New York Times*, Friday August 20, 1993

The art photography of Nan Goldin is a provocative analogue to the palinode concept organizing Ferrato's photojournalism images. Though published five years before *Living with the Enemy*, Goldin's work in *Ballad of Sexual Dependence* is concurrent with Ferrato's. Nan Goldin's photography intersects photojournalism, art photography, vernacular photography and performance; her work has regularly been read alongside her contemporary female photographer/body artists, Carolee Schneeman and Cindy Sherman, for example. The *Ballad of Sexual Dependency*, included in the 1985 Whitney Biennial, was first performed as a slide-show with accompanying music at downtown New York City nightclubs. *The Ballad of Sexual Dependency* (1986) is Goldin's self-described "diary I let people read."<sup>170</sup> In what follows I concentrate on a single image from Goldin's work in the *Ballad*, one that many have reproduced and remarked upon but nonetheless failed to adequately theoretically engage or contextualize in terms of larger art criticism and historical debates about the representation of women during the 1970s and 80s.

Nan Goldin's photographs bear a degree of critical exile, though not as deep as the work of Ana Mendieta and Donna Ferrato. Working in the diarist tradition Goldin's work is recognized for its autobiographical style of telling stories of urban subcultures. Her work is best known for elaborating the visual culture of the punk movement in Britain and the U.S.; 1980s queer culture in America and the effects of AIDS that now, as it did then, occur across sexuality and gender identifications; and, substance abuse and the path to recovery. Principally described in these ways Goldin's photography and her

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<sup>170</sup> Nan Goldin, *The Ballad of Sexual Dependency*. (New York: Aperture Foundation, 1986) p.6

place within it bring autobiography and photography into conceptual alignment. As I read *Nan One Month after Being Beaten* Goldin's self-portrait is a representation of herself as a battered woman prefigured the contemporary emergence of photography of battered women as the "immutable mobiles" through which the legal adjudication of domestic violence is achieved in the U.S.<sup>171</sup> Exile in Goldin's self-portrait image is primarily theoretical; writing about the image has not contextualized it in terms of the criminalization of domestic violence and elaboration of law and policies about violence against women. Nor has the image been taken up by feminist art critics and historians who vociferously debated the representation of women's bodies in art and performance during the 1980s.

*Nan One Month after Being Beaten* situates elements of photographic anekphrasis within discourses that moved to evacuate the female body from artistic representation on one hand and moved to name as obscene representations of battered women on the other. What it would mean to read Goldin's famous albeit less frequently discussed self-portrait against the criminalization of domestic violence concurrent to the publication of that image? Walter Benjamin asserted that photographic technology led to an evacuation of aura from the painted portrait and its occasion in the museum. This singular image by Nan Goldin foretells the future of domestic abuse prosecution; a future that establishes the psychology of battered women and relationships of abuse through the circulation of the photographic image. This future prefigured by Goldin's self-portrait also converged

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<sup>171</sup> The concept of the immutable mobile comes from Bruno Latour's work in Science and Technology Studies. See *Science in Action: How to Follow Scientists and Engineers through Society* (Cambridge, Mass.: Harvard University Press, 1987); "How to be Iconophilic in Art, Science, and Religion," in *Picturing Science, Producing Art*, ed. Caroline A. Jones and Peter Galison (New York: Routledge, 1998) 418-440

with concurrent discourses on avant-garde art resulting in a rehabilitation of aura—that of battered women—so crucial a phenomenon in Benjamin’s writing on photography.

I examine images of battered women as immutable mobiles in greater depth in this chapter and 4. I restrict myself here to a consideration of how *Nan One Month after Being Battered* demonstrates the convergence between autobiography and photography; exile and survival. Nan Goldin is perhaps the most prominent member of the Boston School—members included David Armstrong, Philip-Lorca diCorcia, and Mark Morrisoe, among others. During the 1980s these artists addressed the family album as a critical material site of the circulation of post-modern domesticity by recasting the family portrait with intimate and libidinal photographs of friends and associates. For her part Goldin continues to publish diaristic photo-essays appropriating the aesthetic of vernacular photography—domestic photographs created without the idea of art in mind. The critical reception of Goldin’s images center on the visualization of bohemian and punk domesticity practiced by the Boston School; thus, her autobiographical disclosures are largely understood as occurring *within* these subcultures. The portrait, the final image of the *Ballad of Sexual Dependency* installation and the larger context of 1980s cultural politics, in which violence against women began to be criminalized, remain subterranean issues. Goldin’s self-portrait, *Nan One Month after Being Beaten*, is submerged by discussions emphasizing the visual culture of punk and other lifestyles that are coded as different or counter-cultural. Whereas I moved to group Ana Mendieta’s “Tableaux of Violence” as a coherent series about violence against women, here I read a single self-portrait by Nan Goldin in order to shift her work in this self-portrait from critical exile.

*Nan One Month after Being Beaten* begins an inquiry into the identity of the battered woman. The self-portrait is a creative response to trauma that illustrates an analogy between autobiography and photography; exile and survival. Typically studies of identity, biography and autobiography work from the perspective that they are written texts. However the affinity between autobiography studies and studies of photography centers upon how both modes of expression vacillate between fact and fiction; representation and inscription. As Timothy Dow Adams argues, autobiography and photography are both “forms of life writing”. Goldin’s self- portrait, then, reveals as it conceals, capturing the indeterminacy of her figuration as battered woman.

The self-portrait photograph, Akiko Shimizu argues, is a mode through which identity may survive and/or be subversive. Goldin’s self-portrait as a victim of violence is an instance in which battered women’s subjectivity is given a space to survive through the portrait image. The self-portrait was taken in 1984, just two years after Ferrato’s chronicles of Garth and Lisa. Another version of the image appears in Goldin’s 1992 exhibition entitled *Désordres* at Galerie national du Jeu de Paume.

Goldin’s self-portrait is a close-up depicting two black eyes she received from her boyfriend. The white of one eye is filled with blood and the intensity of the red is matched by Goldin’s application of radiant lipstick. The viewer is asked to consider the truth of violence against women—the privacy of wounds received—against the public ruse of cosmetics. The lipstick coupled with the swollen and bruised skin of Goldin’s face conjures the work of gender masquerade theorized by Joan Riviere where the use of cosmetics is a form of Camp enabling women to publicly neutralize their capacity for

male castration.<sup>172</sup> Extending Riviere's logic, the bruises left on Goldin's face are a trace of her boyfriend, his act of violence through which he "neutralized" female aggression. In this reading, then, Goldin's application of her radiant red lipstick performs a Camp upon Camp. Both markings, the co-presence of bruise and rouge may thus be seen as battered woman's mask eternally vacillating between authenticity and artificiality, pride and shame.

*Nan One Month after Being Beaten* details the role of gender masquerade in women's biography and the discourses of beauty and cosmetics that shape strategies of feminist art practices. Goldin's portrait is an autobiographical attempt to reconcile her sense of self after a violent attack, the pain of which Elaine Scarry has so beautifully argued unmakes the world of the attacked.<sup>173</sup> The image returns us to critiques and counter-critiques of the male artist's body that achieves transcendent coherence through action painting and performance.<sup>174</sup> Amelia Jones is an important force arguing that the radical narcissistic practices of posing by female body artists demonstrated a rejection of the possibility of any subject achieving transcendence; instead she illustrates how feminist artists explore the contingency of the body/self. Similarly Goldin's self-portrait brings into conceptual alignment the sexualization of women and the destruction of their

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<sup>172</sup> Joan Riviere, "Womanliness as a Masquerade," in *Formations of Fantasy*, Victor Burgin, James Donald and Cora Kaplan (eds.) (London and New York: Methuen, 1986) pg. 35-44

<sup>173</sup> Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York, Oxford: Oxford University Press, 1985)

<sup>174</sup> See Amelia Jones chapters 2 and 4: "'Pollockian Performative' and the Revision of the Modernist Subject" and "The Body in Action: Vito Acconci and the 'Coherent' Male Artistic Subject" in *Body Art: Performing the Subject*. In particular Jones discusses the criticism of Harold Rosenberg and Hans Namuth's photography of Jackson Pollock to develop her point about the "Pollockian Performative."

corporeal integrity through violent force. The specularity of blood *in* Goldin's skin and eyes is matched by the cosmetics *on* her face. Thus, in addition to ideas about the body in performance and the rhetoric of the pose, interpretive frames discussed at length by Jones, Nan Goldin's self-portrait incites a reading of the skin's surface, the irregularities of its compromised tissues, and judgments about battered women's identity. The image proposes a close reading or perusal of the flesh as bare life<sup>175</sup> that mimics the now common practice of juries using photographic evidence to adjudicate domestic assault court cases (chapter four is a study of jury member interaction with evidentiary images). Here Goldin's self-portrait survives in the form of visual evidence of domestic violence, the shadow archive of all women's representation in the visual arts.

The work of these women played a crucial role in the politicization of domestic violence and the visualization of battered women. On the subject of queer history Heather Love has argued for the incorporation of the negative affects associated with queer experience—shame, self-hatred—in order to recuperate real losses incurred through the assimilationist politics currently mainstreaming queer culture.<sup>176</sup> Following Love's encouragement I have chosen to linger upon rather than disavow past abject experiences of politicized identity. 'Feeling backward' the respective photographs of Mendieta, Ferrato and Goldin's in relation to contemporary police images of battered women that assert the criminality domestic violence and the rights of women to be protected from abuse, returns such images to the radical foundations of feminist art and performance.

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<sup>175</sup> I mean here to recall Giorgio Agamben's work on bare life.

<sup>176</sup> Heather Love, *Feeling Backward: Loss and the Politics of Queer History* (Cambridge, MA: Harvard University Press, 2007)

Ana Mendieta, Donna Ferrato and Nan Goldin each contributed to the development of a genre of photography of battered women. This genre, currently so important to the legal adjudication of domestic abuse in the courts began as autobiographical and political images of women-- a body artist, a photojournalist and an art photographer. The images and their strategies of production are ancestors to contemporary photographic practices that are autobiographical for the author and those captured in the image. As battered women utilize the self-portrait convention to document their abuse they mimic the staging practices executed by Mendieta, Ferrato and Goldin. To be sure law enforcement and medical professionals are included in the photography of battered women which is autobiographical in nature.

### Chapter 3 Advertising the Law: Anti-Domestic Abuse Support Service Advertising Campaigns

“Pictures are the things that have been marked with the stigmata of personhood; they exhibit both physical and virtual bodies.”<sup>177</sup> In his essay “What do Pictures Want?” cultural theorist W.T.J Mitchell discusses the personhood of pictures, asking that we shift our questions away from “what images *do* to what images *want*, from power to desire, from the dominant power to be opposed to the model of the subaltern to be interrogated or . . . invited to speak”(74). The ‘subaltern model’ of the image attends to the dialectical relationship between people and pictures. If pictures can be said to want something it is that which it does not have; pictures must therefore be theorized through lack. Photographs desire to achieve mastery over their beholders; piquing the viewer’s desire and interest in what the photograph cannot show. In chapter 2, the portrait *Nan After Being Battered* manifests the viewer’s desire to see the power of femininity. Goldin’s self-portrait cannot offer nor refuse her powers of femininity. Her gender oppression is marked by her bruise; her feminine power marked by the sensuous quality of her cosmetics defiantly applied. Goldin wants to put on display a trauma whose very appearance she also wants to resist. The image testifies yes and no to her pain and pleasure, her beauty and disfigurement. *Nan After Being Battered* wants to be beheld and

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<sup>177</sup> W.T.J. Mitchell, “What Do Pictures “Really” Want?,” *October* Vol. 77 (Summer, 1996) pp.72

necessarily judged. Her femininity is revealed as lack, something that can only be confirmed and attributed by the other.

In this chapter, I examine the domestic abuse photography of British art photographer Alastair Thain. Thain created a 1999 public service ad campaign for a domestic violence help hotline in New York City. His images advertised legal and social services by drawing upon theatrical repertoires of disguise, masquerade and masks. The ad campaign promoted law and policy around gender violence by simulating the physical effects of domestic abuse through cosmetics. This chapter examines how Thain's photography of battered women intervenes in discussions about the ethos of photography in the digital era. I read Thain's work as an important example of complications to the credibility of producing and circulating digital image files as legal evidence. Following Mitchell's proposal that we ask images what they want, I inquire about how the domestic abuse hotline campaign was conceptualized across professional networks involving advertising agencies, the photographer and local and national government.

Thain's images of battered women came into the world smoothly, without contestation, disavowal or rebuke from media outlets and viewers. Their production and reception occurred absent the controversies experienced by avant-garde feminist photographers Mendieta, Ferrato and Goldin discussed in Chapter 2. I argue that Thain's simulated images of battered women want to be judged as evidence of domestic violence. They want to train the viewer to recognize battered women as subjects of human rights; they want to secure a universal evidentiary status through the medium of digital photography. The images want nothing less than to secure digital photography as legal

evidence. Thain's simulated images of battered women reflect the law's challenge to secure evidence of gender violence through police professional vision.

My aim in this chapter is to demonstrate how the flattening of cosmetics and skin across the digital imaging platform in Thain's photographs suggests a new form of epidermalization in the networked era. Frantz Fanon formulated the concept of racial looking in the 1960s to bring the experience of skin surface into the discussion of the ontology of blackness in the aftermath of post-colonial violence. Fanon emphasized the role of vision in the construction and negotiation of blackness. Scholars such as bell hooks, Mary Ann Doane and Rey Chow have linked femininity and its relationship to the gaze, expanding Fanon's ideas about vision and negritude to include women's bodies and public spaces and the communities in which they circulate.<sup>178</sup> This chapter establishes linkages between photography, femininity, and blackness in order to examine the production of a particular image of law, what Sally Engle Merry terms the "regime of domestic violence governmentality."

Alastair Thain's public service imagery and art photography practices as a whole emerged in the aftermath of the avant-garde feminist photography of Ana Mendieta, Donna Ferrato and Nan Goldin and legal debates about the scientific validity of the battered woman syndrome. I argue that the ad campaign visualizes the assemblage of police investigation practices concerning domestic violence brought about by the 1994 passage of the Violence Against Women Act. Thain's photographs of battered women

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<sup>178</sup> See bell hooks, *Black Looks: Race and Representation* (Boston, South End Press, 1992); Mary Ann Doane, *Femmes Fatales: Feminism, Film Theory, Psychoanalysis* (New York: Routledge, 1991); Rey Chow, "The Politics of Admittance: Female Sexual Agency, Miscegenation and the Formation of Community in Frantz Fanon" in *UTS Review* 1:1 (1995) 5-29

mimic the image files now circulating as data in the adjudication of domestic abuse. The regimes of domestic violence governmentality that Merry names are centered on the creation of icon files. Digitally recording and storing battered women's physical trauma are practices constitutive of law's professional vision. Images of battered women shape events in the courtroom, specifically the performance of citizenship made by jury members who regard photographic evidence. I propose that Thain's simulated images of battered women signaled the codification of domestic violence policy; the routinization of state curatorial practices around biological evidence of abuse.

In *War Culture and the Contest of Images* Dora Apel observes that the proliferation of images of the tortured body has created a new social contract in which a "citizenry of photography" produce and exchange photographs documenting war atrocities. Her view is optimistic, a politics of hope. She believes the social contract enacted by the citizens of photography is an obligation to contest hegemonic narratives of the war. By talking about the images of war they have seen, citizens of photography call into being counter-hegemonic narratives of war that expose the arbitrary nature of U.S. military power and decision. The concurrent absence of images of violence against women in Iraq and the proliferation of images of domestic violence in the U.S. helps delimit the boundary the government uses to establish both the standard of good governance, keeping the antagonism between nations rather than global gender oppression. Though Apel draws numerous examples of photography exchange, she does not provide a theory of affect that would explain the intersubjective expression of such a contract. This is a problem easily resolved by turning to Jane Blocker's exploration of art that uses live performance to realize the process of witnessing for the spectator.

Apel's "citizens of photography" obligate themselves to reflect upon their own witnessing. This resonates with Jane Blocker's description of the role of shame as an index of subjectivity, "the lighting up . . . of the self within the social."<sup>179</sup> Her turn to theories of affect is all the more important for thinking about the emergence of images of battered women as a genre of state photography and the writing of trial texts by participant observers. Blocker pays particular attention to the affect of shame manifested in the political theory of Giorgio Agamben, Eve Sedgwick and Silvan Tomkins' psychology of motivation. Shame is crucial to these scholars' ideas about the constitution of the modern subject through trauma. Blocker keenly observes that each of them employ the phenomenon of human blushing as a metaphor for the social production of shame and with it, subjectivity. It is worth quoting Blocker at length: "To the degree that the blush is a physical, even biological, signifier, we can think of shame as a condition of representation, and yet what is being represented seems decidedly cultural, written across the face in the bright ink of selfhood. The flush by which the face is overtaken is an unexpected light, which signals the place where the "I" and the "not-I," the mind and the body, selfhood and biology, victim and witness flagrantly cross."<sup>180</sup> The blush "lights up" the skin and by extension the body and the discourses of race, gender, sexuality and class that culturally frame it. The blush draws us into speech about skin and the body. The blush is a useful metaphor for thinking about how skin injuries are recorded by digital photography and regarded by citizenry of legal fact-finders.

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<sup>179</sup> Jane Blocker, *Seeing Witness: Visuality and the Ethics of Testimony* (Minneapolis: University of Minnesota Press, 2009)pp. 111

<sup>180</sup> *Ibid.*, 112

The brand train is a space in which shame is produced across multiple circuits, through interactions between humans and digital media. Documentation of abuse brings subjects into contemplation of gender violence but also to highlight the distinction between skin texture, grain and color. Blocker recalls a passage from Charles Darwin's *Expression of the Emotions in Man and Animals*, written in 1872. The text includes a study of blushing phenomena where Darwin records the perspectives of several dozen interlocutors on the reddening of the skin. Witnesses to blushing articulate a particular difficulty in perceiving the blushing reaction in dark skinned subjects. Sometimes Darwin's sources admit to witnessing the blush in black subjects, but only as an intensification of blackness coded as savage. Other sources cannot detect the blush and regard the apparent absence of blushing in the black subject as a signal the individual cannot be trusted; the absence of the blush is proof of the black's exclusion from humanity. Blocker's discussion of blushing as a bio-social expression of shame points a way toward reading support services media campaigns and the construction of citizens of legal photography.

To this end, I examine the cultural work performed by Thain's campaign imagery by further situating his work within recent scholarship on radical feminist and black aesthetic traditions. Thain's photography makes its claims by through an iteration of cosmetic masquerade used by activists and advocates for battered women. This form of masquerade practice is an emergent aesthetic convention among state and social services advertising around domestic violence. The ad campaign's deployment of domestic abuse masquerade occurred across the bodies of the photographer, photographed subjects and moral spectators and includes the repetitive psychic transformations that result in the

discovery of facts about gender violence. Feminist interventions into Fanon's work on the racial look motivates the analytical thrust of my arguments in this chapter about the state negotiation of the 'look' of gender violence and later implications for epidermal reading procedures as performance of justice and, by extension, citizenship.

### **Troubled Works of Art: Radical Aesthetics of Black and Indigenous Performing Bodies**

Recent scholarship on negritude and indigeneity examine works of art that are designed as experiences involving liveness and a deliberately constructed built environment, familiar theater and performance concepts, to describe a critical "situational aesthetics." In *Subject to Display: Reframing Race in Contemporary Installation Art* (2008), for example, art historian Jennifer González theorizes the subject of art installation. She traces the process of subjection in art, examining how subjection became the crux of installation art's message. In particular, she emphasizes the role of epidermalization as one element of subjection in art installation and performance, writing, "The process of epidermalization is one in which the object is positioned in history, in a collection, in the marketplace, or in a museum display as racially defined."<sup>181</sup> For González, the human body-- in its appearance in art contexts-- has 'no escape from its "epidermalized" status.'<sup>182</sup>

As she reads artwork by James Luna, Pepón Osorio and Renée Green among others epidermalization is a process involving the appropriation of everyday material

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<sup>181</sup> Jennifer González, *Subject to Display: Reframing Race in Contemporary Installation Art* (Cambridge: MIT Press, 2008)pp. 7

<sup>182</sup> (Ibid., 6)

culture and iconic pop culture artifacts into commentary on the discourse of race. The artists she discusses use design innovations and the built environment to perform deterritorialization and reterritorialization exercises in the mode of Deleuze and Guattari. The art installation and bodies and artifacts circulating therein are a cultural form in which to experiment with the discourse of race. Such an approach Gonzalez notes is post-racial, following positions staked out by Paul Gilroy and Beth Coleman. Epidermalization is an experimental process that calls new racial significations into being by making artifacts and dressing bodies. Epidermalization establishes the experience of subjection as its analogue, only in this instance entering a post-racial mode of thought where race is viewed as a technology, or set of rhetorical techniques that disarticulate or blur these techniques from the practice and pathologies associated with *de jure* racism.

González's analysis is situated among a number of recent books in which visibility and blackness are the structuring discourses of art modernism. In *Babylon Girls: Black Women Performers and the Shaping of the Modern* (2008) Jayna Brown traced the multiple levels of signification of black women performers on the nineteenth century variety and burlesque stages. From the picaninny choruses to dancing Topsy and "Chocolate Dandies" and black *flâneur*, Brown examines how early twentieth century black women were incorporated onto the trans-national theater stage. The persistent enchantment of the theater stage continues to laugh at institutions overwrought by Weberian rationality. Brown disarticulates black women from performances of racial mimicry, demonstrating the strategic ways "black performance women engaged a "double operation," exploiting the spurious racialisms of their time as well as enabling a space for

satirical comments on the absurdity of such depictions.’<sup>183</sup> For Brown, early and mid twentieth century black female performers innovated performance styles that informed what it meant to be a modern woman. Similarly, Nicole R. Fleetwood’s *Troubling Vision: Performance, Visuality, and Blackness* (Chicago, 2011) examines the repertoire of black performance paying particular attention to the phenomenon of liveness and its role in staging and imaging blackness in the American theater and photography traditions. In particular, Fleetwood’s study of the domestic photography of Charles “Teenie” Harris challenges the dominant mode of representing black life in a spectacular or iconic way. Off the theater stage and into the camera lens, Tina Campt’s *Image Matters: Archive, Photography and the African Diaspora in Europe* (Duke, 2012) also considers vernacular photography, specifically that belonging to the black diasporas in Western Europe pre and post-World War II. Campt’s intervention is to attend to the haptic and sonic elements of everyday photographic practices among black Europeans. She suggests the ways blackness has fueled aesthetic production across networked and sensory environments. Touching, speaking and listening to stories about family photographs are aesthetic practices that have constituted the black Euro-western subject. Gonzalez, Fleetwood and Campt each present archives concerned with the ways black and indigenous groups have used art performance and photography to achieve recognition from dominant white culture while also representing themselves to themselves.

Furthering work on repertoires of black artistic performance, Huey Copeland’s *Bound to Appear: Art, Slavery and the Site of Blackness in Multi-Cultural America*

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<sup>183</sup> Jayna Brown, *Babylon Girls: Black Women Performers and the Shaping of the Modern* (Durham: Duke University Press, 2008) pp.6

(Chicago, 2012) explores a different sort of black performance—black installation artists in the 1980s and 1990s—who, in the aftermath of civil rights gains, sourced their contributions to modern American art by re-imagining the institution of slavery. Copeland demonstrates that the institution of slavery informs contemporary black aesthetic practices of auto-expressive media” including the psychic and affective transformations undergone by the subject in the artistic contemplation of negritude. He demonstrates how new objects are fashioned, crafted, and displayed in ways that transition the artist and spectator into contemplation about slavery in the aftermath of its official legal termination. Copeland’s analysis of the art performance work of Glenn Ligon captures how the artist performs a duality structuring negritude: “[the subject’s] exchangeability as object of slavery and subject of contemporary art.”<sup>184</sup>

González, Brown, Fleetwood, Campt, and Copeland reflect on indigeneity and negritude as an historical idea in their respective texts.<sup>185</sup> Negritude and indigeneity are critically produced as visual aesthetic conventions emerging in art performance, installation and image making. For these scholars the performing black body drives history by delimiting the look and sound of the modern subject. Across the texts of these authors, black and indigenous artists are seen asserting themselves as complex social identities through visual modes of self-expression. Of course, the black and the native are always already sutured to the terms of slave law, the colony, national-socialist state and the prison. The figure of the black is particularly integral to the invention of modern

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<sup>184</sup> Huey Copeland, “Glenn Ligon and Other Runaway Objects,” in *Representations* vol. 113 no. 1 (Winter 2011)pp.102

<sup>185</sup> I discuss indigeneity and negritude as I see them pursued in contemporary radical art practices in the conclusion of the dissertation.

institutional technologies that normalize bodies at the same time they set the very terms of freedom. Like Fanon who described his subjectivization under the racial gaze as “over-determined from within and without,” black artistic production and performance always discloses its relation to law and the state. Black and indigenous visibility presupposes resistance.

Fred Moten beautifully captures the double movement between oppression and radical intellectual lines of flight that nurture the resilience of black performativity writing, “. . .the emergence from political, economic, and sexual objection of the radical materiality and syntax that animates black performances indicates a freedom drive that is expressed always and everywhere throughout their graphic (re)production.<sup>186</sup> Moten is after “how the idea of a black avant-garde exists” (32). He argues that black performance is uniquely inspired by the state of un-freedom from the terror of slavery and its colonial, penal and necropolitical aftermath; the appearance of black performance in the world constitutes the very appearance of freedom embodied. The oscillation, co-evolution, between un-freedom and freedom occurs through improvisation, Moten attests.

For Moten, improvisation shows us the way toward an authentic enactment of freedom; a blackening of the avant-garde. Black performance is inseparable from a political condition; a condition from which the avant-garde emerges. The political potential of the avant-garde derives from black improvisation, from black

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<sup>186</sup> Fred Moten, *In the Break: the Aesthetics of the Black Radical Tradition* (Minneapolis: University of Minnesota Press, 2003)pp. 7

experimentation. “[T]he avant-garde is a black thing [. . .] and [. . .] blackness is an avant-garde thing,” Moten avers.<sup>187</sup>

How do we understand avant-garde art objects and performances when they are incorporated into state power? What happens to radical aesthetic practices when they are assumed by the police and other law professionals? Can their initial shattering effects persist when institutionalized? Can their avant-garde effects still reveal the “freedom drive” Moten says animates black performance traditions? Thain’s simulated images of battered women remediate the avant-garde feminist photography by Mendieta, Ferrato and Goldin. The mutable digital format of the images emphasizes the vitality of color and the screen by inscribing gender violence on the skin. Fleetwood has pointed out Stuart Hall’s definition of epidermalization as the literal “inscription of race on the skin.”<sup>188</sup> Thain’s simulated images of battered women establish both a conceptual alignment and antagonism between the mark of race and gender violence. Visualizing the “look” of gender violence resonates with Hall’s description of the “Fanonian moment” where negritude emerges through regard by the white other. Thain’s double inscription of race and gender animus is accomplished through cosmetics and hyperreal digital photography. Synthesizing the avant-garde possibilities of Thain’s photography however demands that we move outside of the art system and vernacular photography described in the abovementioned scholarship on black performing arts. A disciplinary shift toward scholarship on the significance of digital technologies in contemporary law practice sets

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<sup>187</sup> Moten, pp. 32

<sup>188</sup> Stuart Hall, “The Afterlife of Frantz Fanon: Why Fanon, Why Now? Why *Black Skin, White Masks*” in *the Fact of Blackness: Frantz Fanon and Visual Representation*, ed. Alan Read (Seattle: Bay Press, 1996)pp. 16

the terrain where Thain's photography constructs the affective economy of domestic violence adjudication by calling into being a citizenry of photography.

As I read the scholarship on legal modernism and digital technology against that on art modernism and black performance I notice a lack of interdisciplinary engagement between these two literatures. These two sets of modernist scholarship do not converge as they ought. The legal modernist texts concern themselves with the writing technologies—lists, paper files, communication software—involved in contemporary mediatized legal decision-making. Contrasting archival work on black performance and its relationship to art modernism is recent scholarship in visual culture of law. Books such as Richard K. Sherwin's *When Law Goes Pop: The Vanishing Line Between Law and Popular Culture* (2000); Cornelia Vismann's *Files: Law and Media Technology* (2008); Philip Auslander's *Liveness: Performance in a Mediatized Culture* (2008); Neal Feingson and Christina Spiesel's *Law on Display: The Digital Transformation of Legal Persuasion and Judgment* (2009); and Benjamin Kafka's very recent *The Demon of Writing: Powers and Failure of Paperwork* (2012) are concerned with the history of law and statecraft from the perspective of its communication technology. They continue law philosopher David Luban's germinal work in *Legal Modernism* (1994) that argued that contemporary art and law are organized by a singular modernism. The set of art modernist texts, for their part, position the black body and its production in art and visual performance as a modernizing technique.

Theoretical engagement between scholarship on black performativity and that on mediatized law practice suggests an intervention involving the concurrent blackening of legal subjects in the context of new media practices. Simulated images of battered women

offer a unique example of how law and policy are sutured to battered women, and the role of digital photography in that process. Thain's public service campaign imagery becomes a site for the contestation between the mark of race and biological damage sustained during gendered violence. The dark skinned battered woman emerges as a "troubling presence" in popular culture and official legal settings.<sup>189</sup> These images are examples of the blackening of legal subjects of domestic abuse and, as well will see in Chapter 4, the blackening of the concept of testimony.

Finally, suture, a psychoanalytic term describing the process of signification and subject formation, is an important concept for grappling with Thain's photography series. Suture frames how the figure of the battered woman is formed in relation to gender violence laws. The concept alludes to the narrative space in which the composition of photographs of battered women achieves unity and coherence to the spectator.<sup>190</sup> The process of subject formation that suture describes incorporates battered women into the visual culture of law. The support services imagery created by Thain thus contributes to contemporary mediatized state legal practice by fashioning or writing the body of the victim of domestic abuse.

### **Advertising Law: Alastair Thain's Domestic Abuse Photography and the Aesthetics of Legal Camp**

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<sup>189</sup> Here I am using the phrasing of Nicole Fleetwood

<sup>190</sup> Kaja Silverman, *The Subject of Semiotics* (New York: Oxford University Press, 1983)

The remainder of this chapter describes and analyzes the photography practices of Alastair Thain. Thain's work provides yet another view of images of battered women. Unique to Thain's visualization of battered women is the way his work straddles the police mug shot and art photography genres. His 1999 anti-domestic violence media campaign advertised a state-funded hotline for battered women in New York City subway cars straddle that line through the affordances of his camera apparatus and cosmetics. Thain's work in the brand train series that simulated domestic abuse is representative of a larger set of collaborations between the photographer and the state. Thain's photographic work focuses on the relationship between legal subjects and crises of state such as industrial disaster, war, and domestic violence. His work has a museum and gallery presence as well as in-the-field documentary.

Thain's 1999 support services advertising campaign brought domestic violence into view through a depiction of "bare life." Rendering battered women as objects of distress came after four years of testimony on the Violence Against Women Act, passed in 1994 with overwhelming bi-partisan support. Establishing the National Domestic Violence Hotline was a major outcome of the bill's \$1.6 billion authorization after grants for law enforcement as well as anti-child abuse enforcement and new shelters for battered women. Federal funding created new hotlines and increased resources and staffing capabilities to already existing ones. Mobilizing people to call the hotline was a task of audience construction. City officials across the United States established hotlines and the media campaigns needed to advertise the services. Between the political claims made during the Congressional hearings regarding victims of gender violence and the services offered by pre-existing hotlines, female victims of male violence emerged as the

demographic the hotlines intended to capture. Though federal dollars helped establish new hotlines and improve others, advertising their existence was underwritten by the pro-bono efforts of major advertising firms and charities. These donations came from local agencies as well as internationally recognized firms.

In New York City, where Thain's domestic violence support services ad campaign ran, the growth and improvement of hotlines coincided with Mayor Rudolph Giuliani's first year of office. One of Mayor Giuliani's first official projects was to create a subway ad campaign for a hotline (1-800-621-HOPE) run by the non-profit agency, Victim Services. Giuliani turned to one of his advisors, David Garth, a bi-partisan political strategist instrumental in the successful mayoral campaigns of both Ed Koch and David Dinkins, for a connection to an advertising firm. Garth knew an executive at Young & Rubicam, the fourth largest advertising firm in the world. This was the context in which Thain visualized domestic abuse.

During the research phase of the campaign, advertising agents studied police photographs of actual victims of domestic violence-- photographs that could be used as evidence photography in a domestic violence assault hearing. Their original idea involved a picture of a baseball bat with copy reading, "When his team loses, unfortunately, so does she". The creative team ultimately rejected this design as too misleading in favor of images similar to the ones they studied. The creative process led them back to the original source, images of women's broken bodies that first brought advertising agents within conceptual proximity of "domestic violence." For themselves and their managers, the purest image of domestic abuse became the victim's face whose injuries made her into a monster. Returning to the first images of actual victims they encountered allowed the

team to counter the play and subtlety that seemed to contaminate the baseball design. The pursuit of pure representation, a one-to-one correspondence between image and referent, was seconded by the Mayor as Giuliani informed the account's Senior Vice president, "...[the] ads have to show women who are afraid to report it [domestic abuse] how serious it is' (New York Times, 1999). The Senior Vice President understood this to mean that the firm had to produce and incite in viewers what he termed, "the gasp factor" (New York Times, 1999).

The Young & Rubicam team decided that the best way to tap into the "gasp factor" would be to simply photograph victims of domestic abuse. They planned to stake out emergency rooms and clinics in order to access newly injured victims for a photo opportunity. However, in an interview, the creative team admitted that the logistics of such a strategy turned out to be prohibitive, both in terms of setting up camera equipment in an emergency room that was sure to be crowded, as well as the potential of exploiting the battered women.

Tying together the previously mentioned art historical scholarship, moral spectatorship and the discourse of hyper-reality in digital photography, I propose *legal camp* as an emergent aesthetic convention used by the state that locates its rhetorical strength in cultivating ever greater perception of the grain of the image through communities of moral spectators. *Legal camp* is a form of state communication that inadvertently politicizes the state's dependence on photographic evidence of violence against women. This chapter has mobilized evidence from radical black and indigenous art performance and photography, pointing out how artists, performers, and scholars critique state power that masquerades as common sense. These works call into being a

citizenry of photography similar to brand train created by Alastair Thain. Following Jane Blocker's description of the blush as a biological expression of sociality, this chapter also links human affect to the discourse of hyperrealism which pervades discussion of digital film, video and image. Concepts like the "hyperreal," "focus," "high-definition" are relate to the visual texture or, timbre, of digital photography; they are terms that index aesthetic conventions emergent in our era of digital media and communication.

The domestic violence support service campaign hailed moral spectators on public transportation, creating for subjects moments rich in *signifiante*. In her essay, "Inversion, *Signifiante*, and the Loss of Self in Sound," Roshanak Kheshti offers an approach to thinking about the commodification of the female voice in the world music industry: "Sound production technologies are used to pronounce and suppress presences and absences of all sorts of bodies and grains with the objective of manipulating the listener's relation with these bodies and with signifiante." In the context of what Jonathan Sterne calls "acoustic modernity," Kheshti examines how sound production technologies orchestrate the aesthetic experience and practice of popular music genres and ultimately, the listening subject. Inquiring after nothing less than the industrialization of perception, Kheshti continually draws upon ethnographic encounter, sound performance, psychoanalysis, and critical philosophy to analyze particular listening events where sound materializes bodies but not in a material sense. The interdisciplinary alliances motivating Kheshti's approach are attuned to the heuristic function of the human ear: as digital sound technologies route the experience of aural pleasure to the ear they inscribe the experience with synthetic aural elements.

While the eye is no longer the primary organ through which consumption occurs--and perhaps never was--the cultivation of perception of genres of digital image remains a fecund example of *signifiante* worth exploring through the concept of epidermalization. As a form of *legal camp*, simulated images of domestic abuse conditioned a moment in which moral spectators could lose themselves in battered women's damaged flesh. The critical elements of this state and mainstream cinema practice are race and gender and the encounter between light and digital imaging. Dark-skinned women in particular survive as ghosts, their damaged faces and bodies recast with the digital image's white blush known commonly as overexposure. The brand train images are an attempt to describe as Kheshti would, the 'standardization of affective engagements' between moral spectators and the complex timbre of digital images.

My own experience of the brand train and the form of *legal camp* it performed is an example rich in *signifiante*. If the practice of looking entails *signifiante*, the pleasure of looking in the brand train was organized around images of battered women. Given the stark, up-close bruising of the subjects, I wondered how these particular images made it into the public arena. My questions centered on the origins of the dramatic content and authenticity of the images: What were the dramaturgical conditions in which the subjects photographed? Was the *mise en scène* legible as a medical or legal event or some other kind? I lost myself in these images of violence. The loss of self I experienced was bound up with questions about realness and my own desire for one-to-one correspondence between image and referent. These desires concern myths or purification rituals that are uncomfortably entwined with the discovery of justice.

The brand train photographs are part of a larger archive of images and looking practices regarding battered women which document psycho-pathology, art and entertainment and, criminal evidence of abuse. In both composition and production, the brand-train images engaged the professional practices of epidermalization in two significant cultural activities: criminal prosecution of domestic violence and art-fashion photography. When I saw these images I turned away in shame; shocked to be seen seeing. These feelings soon gave way to a more attentive and directed kind of looking where I began to wonder how the images were made, if they were “real.” I later learned that the images were faked, that models had been made up by a horror film make-up artist and an “artist-photographer” specializing in hyper-real imaging. Unique to the brand train’s signifying practice was how the two tendencies of photography confronted one another in a single image.

As I wondered about the authenticity of the subway campaign images I was drawn both into and out of the discovery of justice in matters of gender animus. I was drawn into the discovery of justice through witnessing images documenting violence. This process is similar to Ariella Azoulay and Dora Apel’s respective descriptions of how images of war construct a “citizenry of photography” that obligate themselves to communicate about the precarity of life lived without access to human rights. This act lends life its seriousness, through the establishment of social bonds and the antagonism of others. Yet I was drawn out of the experience of justice just as easily. The digital form of the image and their appearance on public transportation attached the discovery of justice a banal act of epidermal reading.

Our fear about how banality seeps its way into and endangers the political realm continues to be influenced by the political theory of Hannah Arendt. In several texts, but principally *The Origins of Totalitarianism* and *Eichmann in Jerusalem: Report on the Banality of Evil*, Arendt argued that blind commitment to rationality can lead individuals to commit evil acts against the human community they inhabit. In contrast to Arendt's ideas about the relationship between banality and evil, my casual witness of images of battered women on the subway initiated me into a community of moral spectators, the same community of citizens of photography of the rightless. As Dora Apel concludes in *War Culture and the Contest of Images*, documentary images of war are a growing commodity. War photography is controlled and censored by the state while images of sexual violence during war circulate as an elite form of home-made military pornography. The commodification of police photography, then, establishes the value of images of battered women in the banal perception of biological damage.

Media advertising state support services for domestic violence draw viewers into a community of moral spectators through a banal act of reading skin damage. The commodification of images of battered women and the need to revalue the banality of epidermal reading were highlighted for me again when I saw Thain's campaign imagery again in a medical journal several years later. In an article entitled, "Domestic Violence and the Trauma Surgeon" published in 2000, two images of battered women are featured. The first is a black and white close-up image of a black woman with just over half of her face showing. She stares blankly into the camera as a mascara-stained tear comes to rest at the corner of her lip. At her temple a scar or bruise has formed and connects to her swollen eyelid. The second image, also black and white features only the torso of a fair

skinned woman wearing an embroidered tank top that reveals a bare arm lined with cigarette burns and bruises. Her face is cut from the camera frame, only a wisp of dark hair indicates that a head was attached to the shoulders whose arms cross the chest and end with a tense grip at the upper arm. A caption reads: “[An] example of recent New York City advertising campaign publicizing availability of support service for domestic violence victims. These photos are of models, not actual domestic abuse victims.” Alastair Thain’s campaign imagery is reproduced in the *American Journal of Surgery* by courtesy of Young and Rubicam Advertising, Incorporated.

Thain’s hyperreal photographs work to aestheticize the biopolitical. Describing our political condition, Giorgio Agamben argues that “bare life” has become the dominant object of discursive and material entry of national governance strategies into (and about) the human body. Thain uses the specularities of skin color, capillary, and gland function to comment upon a variety of forms of subjection, the constellation of state and industrial power acting on the body. By improvising digital camera equipment in order to visualize the skin Thain’s hyperreal aesthetic gestures toward a precise representation of bare or, “raw” life emerging from the snapshot. Thain specializes in the hyperreal image and his photography explores the technical boundaries of the camera while representing extraordinary human events.

Several examples of Thain’s work reveal the hyperreal effects of his images that idealize the look and make more intimate our connection to the subject of the image. Thain’s images shift the visual language of photography by using the mode of aerial and space photography for close-up photographs. In 2008 Thain photographed survivors of the industrial catastrophe in Bhopal, India in which tons of poisonous gas was released at

pesticide plant in 1984. Thain remarks upon the photo shoot, part of the *Bhopal XXV* series, testifying to the inseparability of the intimacy of his resulting images and the technical feats of the apparatus:

The people weren't used to being photographed, so the results don't look like portraits in the West.[sic] They were not accustomed to seeing themselves, which meant that, although they were conscious of the camera, they presented themselves in an old fashioned way. There is some performance, but it's not excessive, despite the fact that we've got this reasonably large bit of metal between us. Even though they look like 120 shot at f/8, they are in fact 9x9 shot at f/32 or f/45, and the depth of field is still quite shallow. They were shot in pretty intense sunlight with fill-in flash, so there's quite a lot of light pounding onto them.<sup>191</sup>

It is worth recalling the ways in which the tradition of photography of suffering is a tradition of dark-skinned bodies that need to be “pounded” with light in order to achieve visibility in the discourse of human rights. The ethical demands of those bodies poisoned in the Bhopal disaster become the technical demands of the camera apparatus. Thain treats the medium of photography and the body as indistinguishable, eradicating the difference in their surfaces by capitalizing on the presence of intense natural light and the artificial light of the mechanical flash, producing hyperreal images.

In *Marines* Thain sought to capture the British army cadet. Studying the essence of discipline in contrast to the unregimented everyday of Southern India's poor Thain focused on capturing the mask created by sweat and muscle contraction resulting from a grueling military physical training exercise on the faces of the soldiers. Of the series of images measuring three meters Thain remarks: “You had to be quick: they are so fit, their

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<sup>191</sup> Ibid., pg. 2

heart rate returns to normal after 15 to 30 seconds. I wanted to capture these nice young guys at the moment of extreme physical stress.”<sup>192</sup> Here we get another sense of the indivisibility of temporality (speed) and the hyperreal visualization of the subject. By emphasizing the grain of the image, Thain’s photography visualizes Foucaultian observations of discipline and bare life and their role in the production of the subject.

Thain’s style of hyperreal photography speaks to debates about new media, specifically complications resulting from the editorial flexibility of digital images for the ethics of representation, particularly enunciating battered women as subjects of human rights. Thain’s photography embodies a network of institutional and industrial and scientific visualization practices. His work must be understood in within new media aesthetic conventions such as high definition and 3-D imaging and animation. In *The Language of New Media* (2002) media scholar Lev Manovich situated these technological affordances in the context of digital filmmaking. For Manovich, the arrival of digital technology is an optimistic moment in which the production of perfect photographic credibility is possible.<sup>193</sup> Digital film production is more closely related to painting than analogue photography. According to Manovich the mutability of digital image and film recording signaled a new and optimistic opening for modern thought, critique. Tempering the optimism of Manovich’s claims however, filmmaker Babette Mangolte proposes that digital technology actually imposes a sense of loss felt at the

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<sup>192</sup> Melissa Denes, “Blow-up” *The Guardian* (London: Guardian News and Media Limited, January 7, 2006)  
<http://m.guardian.co.uk/artanddesign/2006/jan/07/photography?cat=artanddesign&type=art>

<sup>193</sup> Lev Manovich, “What is Digital Cinema: The Art of the Index.” In *The Language of New Media* (Cambridge: MIT Press, 2002)

sensorial level. She writes:

In the world of digital, time is encoded in a bit-map, and there can be no entropy. In the compression algorithm of a digital image, only what changes in the shot is renewed. That which is the same in the analogue image, in contrast to the constantly changing emulsion grain from one frame to the next in the digital image...Time is not transformation anymore, the essence of film in which there is a change twenty-four times a second... Time is fixed as in a map in digital and is totally repeatable with no degradation due to copying loss, while silver-based film is structured by time as entropy, therefore unrepeatable.”<sup>194</sup>

Mangolte is referring to nothing less than the duration—liveness--of film and the film recording process. Her description of the loss of granular temporal intimacy in digital suggests film celluloid as a unit of life. If digital infinitely extends the “life” of film why does Mangolte associate digital film with loss? Mangolte argues the ‘total repeatability’ of the digital image results in a sensorial loss in the grain of the image, a concept Roland Barthes’ developed about the *voice* as it relates to the experience of musical pleasure in his book, *Image, Music, Text*(1977). Barthes’ interest in the grain concerned “the precise space (genre) of the encounter between a language and a voice.”<sup>195</sup> After Barthes, Mangolte’s intervention recasts notions such as grain, texture, and timbre from the auditory realm into the visual realm. Mangolte emphasizes how the camera apparatus and film interpret the visual field similar to how the individual voice always offers a variation on the sound of language. The unrepeatability of analogue

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<sup>194</sup> Babette Mangolte, “Analogue Versus Digital, the Perennial Question of Shifting Technology and Its Implications for an Experimental Filmmaker’s Odyssey,” in *Camera Obscura, Camera Lucida: Essays in Honor of Annette Michelson*, Richard Allen and Malcolm Turvey (eds.) (Amsterdam: Amsterdam University Press, 2003)

<sup>195</sup> Roland Barthes, *Image, Music, Text*, Stephen Heath trans. (New York: Hill & Wang, 1977)pp. 181

photography, whose entropic decay produces the lack of fidelity of the negative to subsequent copies, becomes a space where “life” is recorded *as* film. Mangolte affirms a pessimistic loss of temporal sensation in the digital film while Manovich imbues the infinite and perfectible digital image with optimistic futurity. Taken together, both perspectives on the affordances of digital highlight a sense of ambiguity and ambivalence pervading the image.

The sensorial experience of duration in the digital film is also observable in the digital image as “bare life”. Thain’s simulated images of domestic violence provide an example of digital image making whose rendering of duration is marked by Manovich and Mangolte respectively. They are a site for the production of and conceptual compression between bare life, blackness, and gender animus. These concepts oscillate ‘in the break’ between the promise and losses of digital photography, to use Moten’s expression. Thain’s images locate communication about blackness and gender violence principally through hyperreal photographs emphasizing the duration of blood specularity in photographed wounds.

In Chapter 1, I used Jennifer Mnookin’s work on the legal incorporation of photography through its analogy to other modes of representation to inform my argument about how images of battered women analogize the tenuousness science informing Battered Woman Syndrome. Thain’s support services campaign create still other forms of analogization I develop here in relation to the concept of suture. Suture involves stitching together and conjures the image of an open wound whose borders are brought together to seal off a vulnerable opening. Thain’s campaign images stitch together a few deep political wounds.

First, the faked images stitch together legislative efforts to develop communication channels that administer legal and social services to battered women and, battered women's complex agency which typically discourages the pursuit of state interventions. The series of images created by Thain advertised law and policies on domestic abuse secured by the 1996 Violence Against Women Act. The vulnerable opening or wound between battered women and historical state inaction around gender violence is sealed up by the very *appearance* of photographic evidence. Where the struggles of Mendieta, Ferrato and Goldin's avant-garde photography of gender violence remain in critical exile, Thain's simulation of images of battered women redressed historical refusal to circulate images battered women by the viewing public and media outlets alike.

Second, the images demonstrate another movement in law's incorporation of new media discussed by Mnookin. Thain's images suture digital photography—characterized by its mutability—to police photography, whose institutional movements and meanings are thought to be fixed. The hyperreal images, attuned to “bare life” and our desire for immediacy, explicitly link the flexibility of the medium to the ethos of state legal practices. The faked campaign images maintain the credibility of police professional vision in the era of digital by deploying digital photography for authoritative state communication.

Images of battered women produce a circuit of shame, blushing, but they also spark the process of epidermalization, a moment of perceptual flow which seems banal because it occurs between biology and the social realm. Thain's mediatized images of

battered women signified the coming of the domestic violence trial and the commodification of a subgenre of police documentary and crime scene photography.

In Chapter 4 I turn to the circulation of images of battered women in domestic violence trials. Using evidence from a two-year ethnographic study of misdemeanor domestic violence trials I report on the aftermath of the commodification of images of battered women. Police photography of battered women maintains an ambivalent status among law professionals and moral spectators. Moreover, as this dissertation has argued throughout, battered women often find themselves in an antagonistic relation to these abject portrait images. Chapter 4 continues to mine the concept of epidermalization, arguing for the way this process is decisive in domestic abuse trials.

## Chapter 4 Epidermal Reading in the Domestic Violence Courtroom

Alastair Thain's hyperreal photography practices used in his social marketing campaign politicizes the state production of images of battered women. They draw our attention to the official legal spaces in which photographic evidence of domestic abuse circulates publicly. The domestic violence courtroom is the primary site of public debate for images of battered women. In this arena the digital form and the polemical content of state evidence photography of domestic abuse are contained, ordered and rationally discussed. Although cosmetically simulated, Thain's images of battered women have not been debated or contested on these grounds; their staged conditions of production have so far only deepened the understanding of domestic abuse sufferers. Images of battered women in their various arts, legal, and scientific representations have not been debated in relation to the mutability of their form or the cultural specificity of their emergence in Euro-western settings, or for the ways they choreograph reality and possibility in domestic abuse trials. As Thain's simulated images advertised the law they recruited citizens to witness the coerced testimony of battered women and their co-present evidence photography. They mobilize battered women to engage social services that include the production of photographic evidence. The visual and mediatized nature of law communication in the West is its primary feature.

Dora Apel has argued for the ways documentary photography recruits subjects into performances of citizenship where the subject may "further the interests of the state"

or, “critique and oppose sovereign power by claiming the frame for the rightless.”<sup>196</sup> She recalls the model of U.S documentary photography elaborated by John Tagg, Alan Sekula and Martha Rosler that rejected overly sentimental analyses of documentary photography in favor of how photography sutures American statecraft to democratic ideals at moments of acute capitalist failure. Against this hegemonic view of documentary domestic photography Apel analyses forms of documentary photography and art installation that offer counter-hegemonic narratives to U.S. economic and social policies. Apel’s project chiefly concerns the contestation of war imagery in the creation and recreation of a persistent and global war culture. Drawing on the work of curator Ariella Azoulay, Apel shows that diverse political communities circulate “photograph-complaints.” The perlocutionary function of these forms of image exchange is the human rights claim. As “Photography thus forms a [cosmopolitan] citizenry without borders, language, place, national or ethnic identity,” Apel writes.<sup>197</sup>

In this chapter I am motivated to write about the underside, from within the shadows, of Apel’s discussion of global war culture and its mediatization. In *War Culture and the Contest of Images* (2012), Apel frames the production and circulation of war imagery within larger discourses of masculinity, authority and military power. Apel’s analysis of the visual culture of war makes an important contribution to the transfer of trauma that subtends the re-domestication of the returning soldier, coded heterosexual and male. As Apel insightfully notes of the dynamic aftereffects of military training, “The most common targets of that aggression are the soldier’s wives, yet another

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<sup>196</sup> Dora Apel, *War Culture and the Contest of Images* (Rutgers University Press, 2012)pp. 8

<sup>197</sup> *Ibid.*, 9

invisible group whose voices rarely reach the public sphere.”<sup>198</sup> My focus in this final chapter concerns the mediatization of battered women’s voices in domestic violence trials and is thus informed by Apel’s understanding of the significant role of ‘secondary trauma’ in the circuit of communication about war.

My analysis of the U.S. domestic violence trial describes how the live testimony of women court-ordered to trial places women in uniquely antagonistic moments of co-presence with their medico-legal records. The antagonism between photographic evidence and court-ordered women announces a significant problem in the ontological description of testimony. The live courtroom interaction between women and their injury photographs constructs the event of trauma testimony as a “zone of indistinction,” previously elaborated by Giorgio Agamben. Apel reiterates Agamben’s description of the “zone of indistinction” recalling the sovereign power functions “always both inside and outside the law, producing bare (or sacred, in the rarer sense of set apart, and taking on the qualities of accursed, baleful, or abandoned) life, that is biological life, in which a life may be seen as ‘devoid of value.’”<sup>199</sup> The testimony of battered women in relation to their photographed injury records is legible as a “zone of distinction” because of the ways that the medico-legal record is viewed as bare life whose value is negotiated through acts of citizenship such as jury service.

Chapter 1 discussed the complex agency of battered women who are court-ordered to testify to abuse. Typically, battered women do not willingly participate in legal action against batterers; they are frequently unresponsive to the machinations of the court

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<sup>198</sup> *Ibid.*, 38

<sup>199</sup> *Ibid.*, 7

and social services. The history of police inaction on the issue of domestic violence and battered women's complex agency has turned on aggressive policing strategies and policies whereby the state removes the decision to adjudicate domestic abuse from women. Battered women who are court-ordered to testify to abuse enter a "zone of indistinction" where they are administratively coerced into court appearance and testimonial speech acts they do not have the right to refuse. In moments of court testimony, then, battered women's bodies become the site for the expression of counter-narratives about photographic evidence of abuse circulated by law professionals.

The witness testimony of court-ordered women has the potential to perform counter-narratives that subvert the hegemony of domestic violence governmentality. In chapters 2 and 3, the avant-garde feminist photography practices of Ana Mendieta, Donna Ferrato and their remediation in the social marketing campaign by Alastair Thain visualized counter narratives to hegemonic and conservative discourses of privacy and decency and intimate relationships. This chapter explores those counter-narratives along three axes: co-presence of the witness and her image; the suturing of the scientific claims of battered woman syndrome to medico-legal photography; the suturing of medico-legal documents to live expert testimony on post-traumatic stress disorder.

As a system of knowledge about violence and aggression informed by the social and behavioral sciences, domestic violence policy is aligned with the disciplinary and surveillance techniques of the military and the police. Dora Apel's work on the discursive framing of documentary images of war illustrates the aggressive measures the government takes to control the narrative of the Iraq war by censoring images of U.S.-perpetrated sexual violence on Iraqi women and children from international public view.

By contrast, in the U.S. the documentation of images of violence against women is encouraged by federal and state government. The adjudication of violence against women within the U.S. is primarily legible through photographic documentation. Public discussion of the issue is frequently accompanied by the kinds of cosmetic masquerade engaged by Alastair Thain on one hand and documentary photographs taken by the police. Offering a domestic comparison to the state's careful framing of war by controlling what images count as war images, this chapter reads the local circulation of images of battered women against the international erasure of documentary photography of violence against women at perpetual U.S. war zones.

Ethnographic notes and interviews from my two year participant ethnography of photographic evidence in domestic violence trials provide the "trial texts" on which the chapter analysis proceeds. Recalling David Faigman's assertion that we would soon witness the decline of battered woman syndrome discourse in law, I suggest that battered woman syndrome discourse is an entrenched and routinized performance involving aesthetic practices of image display that are further linked to performances of democratic citizenship. I examine the circulating images of battered women as a form of literacy building that is crucial to the culturally specific ways the U.S. constructs and adjudicates gender violence. This chapter examines trial texts written during the live discourse of women court-ordered to testify to sustained injuries. Trial texts also include interviews taken with attorneys at the Offices of the Public Defender; City Attorney's Office, Family Justice Center and the San Diego Superior Court of San Diego.

My efforts to record my own readings of live testimony and the way it becomes sutured to photographic evidence derive from Carol J. Greenhouse's germinal text,

*Democracy and Ethnography: Constructing Identities in Liberal States* (1998) and Dipesh Chakrabarty's *Provincializing Europe: Post-Colonial Thought and Historical Difference* (2000). In *Democracy and Ethnography: Constructing Identities in Liberal States*, editors Carole Greenhouse and Roshanak Kheshti reveal the relationship between democracy and ethnography to be "corollary forms of social knowledge and political agency."<sup>200</sup> Affirming the relevance of ethnography as a form of democratic participation, they argue that the ethnographer's location within a designated community of practice allows her to identify "spaces for dialogue and innovation where public forms of daily life, even within academic might foreclose on them."<sup>201</sup> My work in this chapter draws on Greenhouse's volume on anthropology and law examines the ethnographic trial audience text to explore the role of photographic evidence in liberal democratic responses to gender animus. In this way, the domestic violence trial and the kinds of media circulated therein emerge as cultural practices.

Testimony is a cultural conception; testimony organizes legal rhetorical practice. The following texts produced during live domestic violence assault trials are intended as examples of *écriture féminine* similar to the feminist photography-- *photographie féminine*—of Mendieta, Ferrato and Goldin's improvised capture of document domestic violence in Chapter 2. By conceiving of my trial texts within the mode of *écriture* I intend to acknowledge their production within a Euro-western liberal feminist democratic cultural framework. In this way, the trial texts under analysis are open to Dipesh

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<sup>200</sup> Carole Greenhouse and Roshanak Kheshti, *Democracy and Ethnography: Constructing Identities in Liberal States* (Albany: State University of New York Press, 1998)pp. 3

<sup>201</sup> *Ibid.*, 5

Chakrabarty's idea of "provincializing" Western conceptions of time, history and difference.

Chakrabarty's work in *Provincializing Europe: Post-Colonial Thought and Historical Difference* is important to the ethos of my trial texts as consciously the product of Euro-western liberal thought informed by black radical and feminist aesthetic traditions. Provincializing the genre of photography of battered women and their mediation of gender violence adjudication demands an acknowledgment of the liberal ideology conditioning the trial texts (and the dissertation enterprise as a whole). As I read the trial text in this chapter I highlight them as evidence of the very particular cultural practices that subtend our response to gender violence as liberal democratic. In this way, the chapter identifies "spaces of dialogue and innovation" between global responses to gender violence acknowledging the different constraints structuring the representation of women's bodies and trauma.

For example, how might the trial texts I discuss shortly compare to the work of Shahana Rasool Bassadien and Tessa Hochfeld? Their article, "Across the Public/Private Boundary: Contextualising Domestic Violence in South Africa" examined the conceptual boundary between South African understandings of public and private through uses of living space and the kinds of behaviors one might witness in public spaces.<sup>202</sup> Their study of public and private spaces and everyday life practices found that wife beating exists in the public domain. It is not impossible to witness men beating their wives in public settings such as grocery stores, markets and city streets. Moreover, many South African

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<sup>202</sup> Shahana Rasool Bassadien and Tessa Hochfeld, "Across the Public/Private Boundary: Contextualising Domestic Violence in South Africa" in *Agenda*, no. 66 Gender-based Violence trilogy volume 1,1 Domestic Violence (2005)4-15

living spaces are built in tighter quarters than their American counterparts. Combating domestic violence in the U.S. relies on discursive divisions between public and private that are today managed by photographic evidence and Supreme Court decisions that require battered women to testify in court to their abuse. In countries like South Africa where knowledge about domestic violence incidents is common, neighbors, extended family, and plain strangers frequently witness domestic violence visually and/or sonically in both close living quarters and public spaces. Organizing the public against domestic abuse in the U.S. operates on the historical premise that violence in the home was a private matter between husband and wife. The history of secrecy about domestic violence structures our current mediatized culture of domestic violence legal adjudication. These same premises appear to be less active in South African society where wife beating does not occupy the same stigmatized position or taboo. Human rights agencies remain perplexed about how to advertise anti-domestic violence public service campaigns in South Africa. By contrast, U.S. images of battered women mediate the adjudication of domestic violence. They play a decisive role in jury construction and decision making at a later time.

We find another example of the variety of global responses to gender violence in the 2004 wife-beating case of Saudi Arabian television host Rania al Baz. A prominent figure in male-dominated Saudi Arabian television Rania al-Baz was almost beaten to death by her husband. Most of the injuries were located on al-Baz' face; she would undergo 12 facial reconstruction surgeries. Al-Baz was in a coma for 4 days immediately after being beaten. Her husband intended on burying his wife but when he discovered she was still alive he abandoned her at a hospital after telling officials she had been in a car

accident. Al-Baz' father took photos of her injuries and with her permission published the images with newspapers after being hospitalized after her severe beating from her husband. These images were some of the first to circulate in the Saudi Arabian press and incited international political debate about the culture of violence against women. The case of Rania al-Baz is therefore an instructive example of the practical effects and affects of transplanting NGO trauma media campaigns to the North Africa/Middle East region.

Recounting her trauma to British media, al-Baz explained that her father took photographs of her injuries while she was comatose. Al-Baz's father and colleagues convinced her to allow her father to publish the images in the Saudi press. The cultural role of family affinity and paternal authority is significant to the production of Rania al-Baz as a traumatized subject of human rights. Because al-Baz lay comatose when the photographs were taken, the images were not co-authored. Because al-Baz's father took the photographs, the images of al-Baz shift between private family portraiture and medico-legal documentation.

Legal scholar Leti Volpp has called our attention to the imperialist nature of human rights discourse by demonstrating the ways Euro-western nations use the adoption of liberal democratic modes of legal fact finding as a tool to judge "good governance" efforts by non-Western countries.<sup>203</sup> Al-Baz's case occurred in a context where global exportation of gender violence policing strategies that emphasize the use of photography has serious implications for women whose religious, political and cultural obligations,

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<sup>203</sup> Leti Volpp, "Disappearing Acts: On Gendered Violence, Pathological Cultures and Civil Society," in *PMLA Conference, The Humanities in Human Rights: Critique, Language, Politics*, October 2006, pp.1631-1636

including the veil, forbid the exposure of the body and skin entailed by domestic abuse photography. What was the role of social status and paternal authority that led to the sudden mediatization of domestic abuse in Saudi Arabia?<sup>204</sup> Rania al-Baz's vernacular "complaint-photography" may signal the transnational cultural reach of Euro-western hegemonic modes of policing gender violence.

The South Africa and Saudi Arabia cases provide examples of different cultural constraints that structure the possibilities of domestic violence adjudication through public and legal rhetoric. The trial texts whose analysis I undertake here are local and personal constructions of the live testimony of battered women and their evidence photography. Art historian Jane Blocker has explored how the concept of testimony is shaping contemporary art installation. In *Seeing Witness: Visuality and the Ethics of Testimony* (2009), Blocker reads the figure of the witness to be the embodiment of the post-modern condition *par excellence*. The witness is a subject who can make a testimony. The subject is constructed through performances of seeing and being seen by the other. These experiences allow the subject to account for the self. Blocker looks to art practices that remediate the concept of witnessing. She argues that one of the most significant modes of current art installation is the emergence of works that highlight our ability to *see* witness. Seeing witness constitutes a post-modern perspective in the art world, one that moves away from models of witnessing that are oriented toward the sovereign gaze of the oppressor or privileged neighbor. The art installations Blocker

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<sup>204</sup> There is a level of autonomy assumed in the image and a liberal vision of justice. Al-Baz's evidence photography was used in her husband's criminal abuse trial and likely influenced her unprecedented divorce and ability to retain custody of her children. These results must be tempered by al-Baz's elite class position and her access to Saudi media outlets.

examines are suggestive of *écriture féminine* that marked feminist concerns to witness women's experiences through language. The trial texts discussed in this chapter are *écriture féminine* allowing me to see witness to the role of photographic evidence in domestic violence adjudication.

### **Testimony, Photographic Evidence and Co-presence in the Domestic Violence Courtroom**

Chapter 3 considered instances of legal camp as an example of the process of epidermalization. Epidermalization enables a form contemplation of the image of violence, calling into being a “citizenry of photography” in the way Dora Apel has discusses in terms of war imagery. Apel certainly explores epidermalization through the U.S amputee soldier and the battered Palestinian landscape. Epidermalization also captures the “Fanonian moment” of growing scholarship on black radical aesthetics and visual culture by González, Fleetwood and Moten. The following interview texts analyzed suggest how the process of epidermalization has emerged in the domestic violence courtroom.

Interviews were conducted at the San Diego County Superior Court, San Diego City Attorney's Office—Domestic Violence Unit; Office of the Public Defender, and the San Diego Family Justice Center from Autumn 2009 until Autumn 2012. All interviewees who identified as practicing attorneys had at least two year's experience handling domestic violence cases in addition to other legal matters. Practicing attorneys

were asked the same questions in addition to those follow-up questions that emerged spontaneously during the interview.

The interview texts considered in this section concern attorney descriptions of their practice of domestic abuse prosecution. I hone in on two interviewer responses to the question: “How would you characterize the early days of domestic violence prosecution?” In what follows, the process of epidermalization is affirmed by two law professionals, one Public Defender and one City Attorney. For both attorneys the “early days” of domestic violence prosecution initiates talk about the introduction of new technologies of legal fact finding. New technologies are regarded with ambiguity because they fundamentally alter rhetorical strategies among lawyers.

### **Office of the Public Defender January 25, 2010**

*3:40 Interviewer (I): In just thinking about the DV [domestic violence] cases you handle, could you describe the early days of handling those cases?*

*Public Defender (PD): The primary thing I should tell you is that. When I was an undergraduate at University of Iowa ...I worked as a volunteer on one of the first rape crisis hotlines... I had studied and developed some essay for some speech competition writing on what was the hot issue in the law, which was corroboration. The old law used to require that in the case of rape, unlike other crimes, that the victim had corroboration. That certainly said a lot about societal attitudes. My knowledge of that comes from women's right's work.<sup>205</sup>*

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<sup>205</sup> Audio recording interview with Public Defender, Susan Clemens. Office of the Public Defender. January 25, 2010

Here, the Public Defender locates her work in domestic violence adjudication to previous college experiences in the women's movement. The description of the "early days" of domestic violence adjudication begins with her role as voluntary operator at a rape crisis hotline, well before she became a lawyer. By creating an image of her work at the rape crisis hotline, the attorney performs Jane Blocker's concept of *seeing* witness. The attorney transitions from a discussion of interactions with women that were mediated by telephony to discussion of several interactions between women and camera technology in the domain of gynecology and rape investigations. She makes an important conceptual link between telephonic and photographic technologies. Telephony and photography are linked across time as communication technologies animating the women's movement of the 1980s through 1990s. In this way, previous college hotline work is sutured to current law practice in a Domestic Violence Unit. The "early days" of domestic violence adjudication originate decades earlier in discrete intersubjective witnessing practices mediated by sound, and later, photographic technology that are outside the immediate domain of the domestic violence courtroom.

Lisa Cartwright has drawn our attention to the relationship between projection, repetition and condensation in the making of films and filmic apparatuses.<sup>206</sup> In her work on cinema and facilitated communication Cartwright encourages a model of visual culture scholarship that pivots away from "interpretive and analytic focus . . . on the film strip and projected screen image."<sup>207</sup> This interview text is suggestive of the model

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<sup>206</sup> I am thinking in particular of recent work on animation. See Cartwright, "The Hands of the Animator: Rotoscopic Projection, Condensation, Repetition and Automatism in the Fleischer Apparatus," in *Body & Society* 18(1) 47-78

<sup>207</sup> *Ibid.*, 47

Cartwright proposes because of the way the text stresses the role of technology in communication about domestic violence. The psychic transformations involved in the attorney's hotline work decades earlier existed within what Cartwright terms a "locus of collective performance." The repetitive interactions with callers developed the future attorney's expertise in battered women's complex agency, heard as trauma narratives.

We have another mode of describing early domestic violence prosecution elaborated in the following interview text with a prosecutor from the Office of the City Attorney. Here, a former prosecuting attorney for the Domestic Violence Unit is asked about the early days of his work practice on the unit. The attorney recalls a six month period when San Diego police officers used video cameras to document domestic incidence calls. The program was cut for budgetary reasons. In the following interaction the attorney is asked about the role of photographic evidence in the absence of video:

**December 28 2009 Office of the City Attorney, San Diego California**

*Interviewer: Ok. And in your opinion how important was that kind of evidence. In your cases?*

*JL: It would be extremely important especially if the um injuries were substantial, if you had just a push or a shove case and there was just a slight, small mark, um it actually could mean a lot because it would actually, when you have just a push of a shove case ah there is a claim that was no injury and if you actually have at least some kind of mark that ah is helpful to the case, um also if the injuries are substantial those were very helpful in getting them um a longer sentence um to ah show um the jury also make them more convinced on conviction in the first place. So if they had an impact both on initial conviction and on sentencing for substantial injuries but for minor injuries when there still was something it was still helpful for the overall conviction.*

*Interviewer: Ok and overall would you, would you tend to usually have those kinds of images in your case file?*

*JL: Yes, I mean any time... Any time there is an injury..ah I shouldn't say anytime, probably about 90% 95% of the time there's an injury there were photographs of the injury.*

*Interviewer: Ok. And....would you... do you, in those same cases would you usually have a victim who wanted to go forward*

*JL: [laugh]*

*Interviewer: With the charge, or?*

*JL: No, I would say probably about 70 to 75% of cases the victim did not want to go forward with the charges by the time the case would go to trial. Now a lot of time we didn't even hear necessarily from the victim and the case might plead um but in cases where they were actually going to trial, it would happen I would say 70-75% of the time the victim did not want the case going forward.*

*Interviewer: Ok, ok and so what kind of challenge did that present to you in terms of a legal strategy?*

*JL: Uh, Well back then there was, uh, it was before the Crawford decision came out which Supreme Court held that uh you couldn't introduce hearsay testimony um because it was a violation of the confrontation cause so uh or . . . before that decision came out we were able to prosecute the cases without the victim. Um, In fact we didn't issue the case then unless we uh thought that we could pros . . . had enough evidence to prosecute that case without the victim, meaning their statements would come in-in one of the hearsay exceptions or we had either a witness establishing it so those were our issuing guidelines. Uh, now since the Crawford decision that's changed um I haven't been in the unit since then but in talking to the deputies I know they have changed how they are going forward with the case.*

This description of the “early days” of domestic violence adjudication mentions film and video as important technologies of representation. Battered women’s characteristic unavailability and un-cooperation in these cases is also mentioned as a defining condition of the law’s community of practice. The law itself is then recalled as a

technology. Specifically, the early days of domestic violence adjudication are temporally organized in terms of “before” and “after” the Supreme Court decision in *Crawford v. Washington* 541 U.S. 36 (2004). In this way battered women’s complex agency is conceptually tied to photographic evidence and judicial decision as the prosecution of domestic violence is largely structured by witnesses who do not want to participate in legal action. Prior to the Crawford decision, prosecutors routinely proceeded without live witness testimony. The standard for the City Attorney’s Office, pre-Crawford, was to issue domestic violence cases that could go forward without battered women’s live testimony. The temporal distinction between “pre-Crawford” and “post-Crawford” domestic violence adjudication thus marks a shift in the rhetorical practices and strategies of law professionals.

Because the Crawford decision precludes the use of hearsay testimony in domestic violence cases witnesses are court-ordered to testify to their abuse. Thus a common feature of domestic violence trials is the moment when the witness authenticates police photographic evidence of violent injury. Law professionals involved in the adjudication of domestic violence point to three primary objects that govern their practice: recording devices (such as photography, telephony and video); live witness testimony and law. I am interested in this circuit of communication created by these objects as they animate a particular moment of the post-Crawford domestic violence trial. This particular moment of witness testimony exemplifies co-presence and the process of epidermalization at issue in this chapter.

### **Co-presence and Epidermalization in the Domestic Violence Trial Text**

As court-ordered witnesses authenticate photographs of their injuries they enact a form of co-presence—the sense of being togetherness-- similar to that described by media theorist and artist Beth Coleman. In *Hello Avatar: Rise of the Networked Generation* (2011) Coleman's ethnography studies the production and consumption of the online avatar. Given the generational investment in online presence, including its expression through the avatar figure, Coleman proposes that the avatar may be optimistically invested, leading perhaps to more profound experiences of online co-presence. One of the most significant tools of the twentieth century, the online avatar is a digital personae, a locus of identity creation and consumption involving the process of epidermalization. Coleman's affirmation of the significance of digital media in remediating the experience of co-presence is well taken, however her theoretical approach is less attuned to the legal processes underpinning the experience of co-presence. Her examination of the avatar eschews the question of the state. Unlike the avatar, the witness testimony of court-ordered women where they authenticate police photography is a form of co-presence that is forced by the state.

Coleman's approach to the digital avatar resonates with what I view as a politics of hope in Peggy Phelan's theoretical work on performance and liveness. Phelan draws our attention to the radical potential for freedom in live performance. For the spectator, performance achieves significance through disappearance, becoming memories that are less available to ideological state regulation. Coleman's perspective on co-presence depends on the same optimistic approach to the intellectual and political possibilities of live performance, of live being togetherness. Yet, as Philip Auslander keenly observes,

the discourse of American law also assumes that the legal trial “is an ontologically live event.”<sup>208</sup> Auslander clarifies a distinction between performances that are juridical and non-juridical. Legal performances include authoritative utterances that decide questions about bare life. Performance and memory in the examples used by Coleman and Phelan respectively do not include such a decision. Testimonial speech, conditioned though it is by liveness and disappearance, is ordered and regulated by the state. This has implications for the memory of performance and the experience of co-presence during legal trials.

The following interview and trial texts demonstrate the relationship between co-presence and memory in domestic violence trials. The trial text covers a moment of testimony when a court-ordered witness authenticates police evidence of her injuries sustained during a domestic violence incident. The interview text was produced by an assistant to the City Attorney making opening statements in a domestic violence assault trial. The assistant had been handling her own cases but was still under supervision by more senior prosecuting attorneys. Both texts are discussed for how differences in concept of co-presence that emerge in domestic violence cases for law professionals and court-ordered witnesses.

**November 8, 2011 San Diego County Superior Court, Department 9**

*2pm: back from lunch; Judge Campos instructing the jury  
 Prosecution opening statement: immediately recounts history of domestic violence between defendant and partner (Ms. \_\_\_\_). Prosecution shows 8 1/2 x 11 image of victim’s throat to the audience (strangely) then turns*

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<sup>208</sup> Philip Auslander, *Liveness: Performance in a Mediatized Culture* (London, New York: Routledge, 2008)pp. 129

*slightly to jury. Judge intervenes, saying to wait until it's officially in evidence.*

*Defense: opening statement. . .*

*Prosecution: admits documents which the defense has not seen. Defense objects, gets to examine documents before they are entered into evidence.*

*Prosecution meanwhile introduces Police Officer \_\_\_\_\_.*

*I realize that City Attorney \_\_\_\_ is showing the picture to me. This shows prosecutor's awareness that I am in the courtroom conducting research. I am the only person on the right side of the aisle. I have spoken to the prosecutor about the project and she knows I will be following her on this case. I think this is why she turns; the turn informs why I think the gesture so awkward. It is uncommon for an attorney to engage the public audience in this way at this moment in opening trial proceedings. Not only has the prosecutor prioritized my witnessing the image over the jury, she has done so through the photographic evidence of which she knows I desire knowledge. The prosecutor has made an error here. This image has been shown before being officially entered into the record of evidence. Or has she, what is the role of the public in this space?*

The absence of a viewing public in both drug and domestic violence court trials is overwhelming, the emptiness of the aisles a palpable silence. The few people that enter public trials are typically friends and family of the defendant or witness. The perpetually empty aisles of the courtroom audience are also subject to the principle of liveness no less than seats that fill the well and jury box. Co-presence helps us understand the public's role in the courtroom in terms of circuits of communication established through speech utterance and gesture. The empty aisles of the courtroom are rendered palpable, present and live by my lone presence as participant observer. Co-presence in this sense tracks my being-together with the rest of the courtroom at the same time it archives the persistent absence that is the norm for this space. In this way, co-presence encourages acknowledgement of absence and silence, such as when there is a break in telephone communication, or a slow-loading moving image on a computer screen. The procedural

error made by the prosecuting attorney is a possible example of the production of co-presence in the domestic violence courtroom. The attorney's attunement to the fact she was being surveiled by a researcher seated in the audience was experienced as a form of being-togetherness. My position in the audience, experienced as co-presence for the assistant City Attorney disrupted the normal order of publishing evidence to the jury.

In the following trial texts, we have other examples of the production of co-presence. In these examples, the production of co-presence includes the process of epidermalization of police images of battered women.

**November 8, 2011 San Diego County Superior Court, Department 9**

*2:15pm*

*Prosecutor meanwhile introduces Police Officer \_\_\_\_.*

*Incident happened September 17<sup>th</sup> 2011. Response was a radio call. Photos taken of the woman at the scene. Ms. \_\_\_\_ had red mark on her neck. Officer says she seemed apprehensive of photo being taken. Officer says he didn't modify the images. Then they are admitted into evidence. Then prosecutor shows images of the scene.*

*Defense objects.*

*Prosecutor and Police Officer \_\_\_\_ exchange about what victim said about her pain (minimal)*

*Images admitted. Jury passed each image. They don't spend more than about 6 sec. on the images.*

*Cross-examination: Defense attorney takes photos apart. Shows injury was not exactly on the neck but on the collar bone. He calls attention to the use of terms like abrasion and the distinction between laceration and contusion. Ms. \_\_\_\_ said she was pushed which is more likely to cause a bruise, not an abrasion.*

*The image is on regular printer paper, a color digital image copy.*

In this trial text, the Public Defender is trying to disrupt the prosecution's narrative of the evidence photography. By clarifying that that the wound was on the collar bone and not the neck, the defense suggests the prosecution witnesses, Ms. \_\_\_\_

and Police Officer \_\_\_\_ have conflicting testimony about the marks on Ms. \_\_\_\_'s body. More importantly, this moment in the trial text offers a glimpse into how the process of epidermalization becomes decisive in domestic violence cases. The defense attorney does more than establish a lack of continuity between witness testimonies about the same photographs. He also implicates the medium of digital photography in the intersubjective process through which the juries judge physical injuries. Our discussion of epidermalization, the hyperreal, and digital photography from Chapter three is relevant here. In Chapter three, the spectator's capacity to judge the image was marked by the ambivalent interplay between pigment and digital photography. This moment of trial testimony highlights the process of epidermalization implicit in judging evidence in domestic violence trials. The defense attorney calls attention to the contingencies of digital photography that condition the jury's performance of moral spectatorship. From the defense perspective, moral spectatorship of images of battered women involves the uneasy disarticulation of wounds from skin color and other textural differences in the skin, which are biological. Digital images contribute to this unease, investing the photographic evidence in such cases with degrees of ambiguity. The ambiguity of photography becomes a strategic rhetorical opening for the defense.

Epidermalization emerges as a process that has value for the legal fact finding. Law professionals frequently describe the quality of digital photographic evidence as ambiguous. In the following text, a Public Defender expresses her concern about the ambiguity of photography in domestic violence cases. She generates an interesting response to the problem of photographic evidence of injury in response to the question: How has evidence changed?

**January 25, 2010 Office of the Public Defender**

10:52 *The better the camera's ability to capture an injury, the better the camera is. The better it is. Plus it has to be available and accessible. It's wonderful that there are all of these high quality cameras that do wonderful but if they're only being used for fashion photo shoots and they are not accessible to the officers in community's large and small then you're not gonna get as good a quality photo, right. You know the mere fact that something is on the market or that one city has them...that doesn't do it.*

11:46 *I think the thing that has been interesting is the recognition that bruising occurs over time. Just the idea of photographing the bruising over time... I don't think to this day they routinely bring women back to do that. But of course this is just medical stuff, it's not about criminal or domestic violence specifically, but, bruising does not show up right away.*

And later,

21:06 *Those around women who have been victimized by domestic are going "oh my god, that bruise is really bad. We should take a photograph" but there ought to be a standard protocol for bringing them back in...it gives more confidence in the outcome of the case. We still have some residual feeling in our current justice system, just as I was a young lady writing against the need for corroboration as a requirement for rape cases or domestic violence cases, we still have something which does not look favorably upon women who take things into their own hands and try to support their claim. There is something about that that is unseemly to assert yourself and say I've had this happen to me and the bruising was really bad and I asked my mother to take a photograph or my best girlfriend or whatever. I think that may be part of the problem. There is still an unseemliness. But I mean, again I've been hearing about this for years, so many years that it's kind of like why don't they just have a way of routinely bringing victims back in on cases where they would expect to see bruising and to have them photographed. That would alleviate putting it on the victim and the victim could call and say "you know what, I've had some bruising" and may be brought to the Family Justice Center.*

Across the interview text, the Public Defender articulates her concern over photographic evidence of domestic abuse. The “follow-up image” emerges as a genre of photography meant to respond to the ambiguity of photography as a medium of knowledge-making. In this sense, the attorney’s response to the inadequacy of photography is more photography. The “follow-up image” is an image whose production has increased with police digital photography practices. The “follow-up image” emerges as a “locus of collective performance” between battered women, law and social services. Images of battered women are invested with bare life through the “follow-up image” that establishes the temporality of domestic violence and witnessing by making apparent minute differences in skin color and texture of injuries. The “follow-up image” is a form of medical knowledge whose history Lisa Cartwright argues is generated via cinematic apparatuses documenting the “source of life.”<sup>209</sup>

Epidermalization is an important factor in the production of co-presence in the domestic violence trial courtroom. The sense of being together among witnesses, jury and law professionals in these matters converge over the contemplation of digital photography of disturbances to the skin. Reading images of battered women resonates with a “locus of collective performance” that I propose we understand as epidermalization. The following interview texts offer another perspective on how law professionals bring the public into co-presence by establishing their own patterns of epidermalization as they present evidence. Over the course of the brief text Public

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<sup>209</sup> See Lisa Cartwright, *Screening the Body: Tracing Medicine’s Visual Culture*(Minneapolis: University of Minnesota Press, 1995)

Defenders and City Attorneys alike expose a crucial moment of witness testimony whose rhythm<sup>210</sup> is routinely broken by the rhetorical strategies of image display.

### January 25<sup>th</sup> 2010, Office of the Public Defender

*Interviewer: Well, how do you show the images, anyway?*

*Public defender: Let's say the detective is on the stand and we're discussing a photo and I've had it marked and gone through the rigmarole. I'll ask to have it published to the jury. Let's say I want to show that my client had the hair torn out. I want them to see that picture right now. I could have them blown up, I could do with the lights off with a PowerPoint. I could do it the old micro film—you know the old overhead projector way. I could do it any way I wanted ...but there's something to me about each person handling the page or the picture and having an individual view of it that's more personal. So, that to me may be more effective than putting it on the board.*

*Interviewer: so you're a copier...you distribute...*

*Public Defender: No—that would be one picture. And then you sit there for all twelve plus the alternates to look at. I think it um you have to be careful because it can be boring to death, they could lose the track of the expert's testimony...but it also imbues it with a solemnity and a significance that I think is important.*

*Interviewer: [breathe, inaudible]*

*Public defender: For the right photo I might do it that way.*

*Interviewer: I'm unfamiliar with the term "publishing"*

*Public defender: ...If I want you to see that picture...If it's important enough to stop the court for twenty minutes if necessary or ten or five...and so for the other jurors it's kinda like there's an anticipation of that evidence, right? Because I'm just sitting there bored and there's nothing going on I'm the thirteenth juror and you're the first I'm like please, I want to see that photo.*

*Interviewer: so I'm going to keep passing it...*

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<sup>210</sup> Here I am thinking of Terra Edwards's participant ethnography of deaf-blind communication. In a community of deaf individuals in the process of losing their sight Edwards finds that body, language and social phenomena of the disappearing visual field are integrated and mapped onto an ever more apparent tactile field. Rhythm, routine, and pattern are crucial aspects of this important transition for deaf-blind folks. See, "Sensing the rhythms of everyday life: Temporal integration and tactile translation in the Seattle Deaf-Blind community" in *Language in Society*, 41, pp 29-71 (2012).

*Public defender: Yeah. But there's also something else about it. If you wait 'til the end and just send the picture back to the jurors how do I know that each one of them looked at it? How do I know that just six really responsible people that insisted on going... You know, the same way you're saying to me: How much time do you spend with the image? Well, how much time do they spend on each image? So, by virtue of the publishing you may actually end up better.*

Several matters related to co-presence and to epidermalization are significant here. This model of publishing evidence to the jury tries to imbue the photograph of the body with the same seriousness as the live body present before the court some time after the violence in question. Touching and exchanging smaller reproductions of police photography brings jury members into a greater degree of co-presence with each other. In a public courtroom everyone sits around an agora; no one escapes from view in this panoptic setting. This mode of display thus sparks a circuit of communication among the jury members themselves that is beyond the general sense of coordination and co-presence in the courtroom. Publishing photographic evidence in such a piecemeal manner allows for individuals around the agora to have a private moment with the image. In this private moment the jury member effectively handles the body of the battered witness for the first time. Jurors are brought into co-presence with the battered witness. Alone for this period, jury members are individually brought into the process of epidermalization which involves repeatedly passing the eyes over the image in study. This form of epidermalization focuses the viewing juror, however briefly, on the distinction between skin and screen. Photograph made flesh.

The piecemeal view of publishing photographic evidence calls into being relationships of dependency and anticipation between jurors waiting to be passed the next

image from their colleague. The anticipation intensifies the solemnity of the image. Yet as the attorney also cautions, “you have to be careful, because it [the piecemeal strategy] can be boring to death, they [jurors] could lose the track of the expert’s testimony. The role of expert testimony will be discussed shortly. For now, this cautionary statement about the piecemeal approach calls attention to potential moments of lost information when photographic evidence—performing its own form of testimony collides with the speech of the attorney or the witness. Communication about photographic evidence is at its most vulnerable when interrupted by the speech of law professionals or the witness. In the following interview text we see another approach to this vulnerable moment of communication.

**February 3, 2012 San Diego County Superior Court, Outside Department 9  
10:15am**

*Assistant City Attorney: I love visual aids. . . I use charts. People are visual. I make my own charts. My charts are tailored to each case. I use a scanner HP 500 large size printer. I’m comfortable using this machine. I use some PowerPoint although I’m a paper person. I make chart size images of individual wounds. Sometimes the defense objects that the image is too big. Holding individual images breaks their attention. The jury gets anxious waiting to see other images. It breaks the flow of witness testimony and image view.*

In this interview text, an Assistant City Attorney offers another model of publishing images to juries in domestic violence trials. Contrasting the piecemeal process, this is a model that favors displaying images of battered women to the jury at the same time, similar to the cinema-projection experience. Almost thirty years ago Steven

Shapin and Simon Schaeffer published *Leviathan and the Air Pump: Hobbes, Boyle and the Experimental Life* (1985), in which they explored seventeenth-century debates about the method for producing scientific knowledge. The authors convincingly argued that practices of collective observation of scientific objects established a political settlement; a paradigm shift where knowledge is produced by routinely witnessing experiments in a public not by a singular absolute authority such as the king. Historian of science Jennifer Tucker extended Shapin and Schaeffer's study by tracing the rise of modern science to the practice of collectively witnessing experimental objects mediated by a novel technology--photography.<sup>211</sup> Following these analyses, the two approaches to publishing evidence described by the Assistant City Attorney and Public Defender contribute to knowledge of the psychic transformations, haptic and sonic relations involved in the contemplation of photographic evidence and the eventual production of legal facts.

Models for publishing visual evidence to juries are more than a matter of attorney personal style. The two approaches described above were repeatedly deployed in the domestic violence trials observed. These patterns of evidence display suggest the vulnerability of this particular moment in the domestic violence trial when photographic evidence is authenticated by the witness. The fragility of this moment of testimony concerns the uncertain alignment between the witness' spoken testimony and the silent visual testimony of their injury photograph(s). The rhythm established by publishing evidence strives to suture these testimonial objects together. The uncertain alignment between these forms of testimony, one embodied the other static, potentially disrupts the

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<sup>211</sup> Jennifer Tucker, "The Social Photographic Eye," in *Brought to Light: Photography and the Invisible, 1840-1900* Corey Heller, ed. (San Francisco MOMA & Yale University Press, 2008) 37-50

moral spectatorship of the jury and the observing public. By disruption, I mean nothing less than a loss in identification, where subjectivity is momentarily set adrift at the very act of communication reception. Post-structuralist thinkers like Julia Kristeva and Roland Barthes use the term *signifiance* to describe this moment of de-subjectification.

Epidermalization is a form of *signifiance* making available the suppressed meanings of the intertext between witness' spoken and visual testimony. In contrast to signification where meaning is created prior to the act of reading and tracks the normative association between the coherent object to which the sign, or language unit refers, *signifiance* pertains to the production of meaning through the act of reading or reception. Through *signifiance*, the suppressed meanings of visual and speech communication become available to the subject through a kind of language. I propose epidermalization is an example of the potential of *signifiance* to lead to a loss of self in the viewing subject.<sup>212</sup> Attorneys suture images to the spoken testimony of the battered witness by publishing photographic evidence. Yet, these are two ontologically distinct texts whose temporal alignment is characterized by agon. Instead of the viewing and listening subject projecting themselves into the narrative text the moral spectator struggles to read photographic evidence and comprehend spoken testimony. They may lose themselves in the color and grain of the image ("You know, the same way you're saying to me: How much time do you spend with the image? Well, how much time do *they* spend on each image?"). They may lose themselves in the disjuncture between the witness' live performance of memory and the witness' image projected on the screen ("Holding

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<sup>212</sup> On this point, see Roshanak Kheshti, "Inversion, *Signifiance*, and the Loss of Self in Sound," *Parallax* vol. 14 no. 2 68-77 (2008).

individual images breaks their attention. The jury gets anxious waiting to see other images. It breaks the flow of witness testimony and image view”). Though engineered to cohere, witness spoken testimony and photographic evidence are structured by antagonism. This antagonism and its expression in epidermalization are further informed by the significations of racialized gender, sexuality, and lighting techniques.

In the following trial and interview text we have an example of the over-publication of multiple photographs depicting domestic abuse. This case involved a newlywed military couple whose physical altercation began in the bedroom and extended throughout the other rooms of the home. The prosecuting attorney in this matter had two types of photographs to enter into evidence: images depicting ransacked rooms of the house and injury photographs taken at the hospital where Ms. \_\_\_\_ received medical treatment after allegedly being beaten by her husband. In the following text the prosecuting attorney gets Ms. \_\_\_\_ to authenticate images of her ransacked apartment. Ms. \_\_\_\_ is then asked to authenticate her injuries documented by the hospital.

**May 10, 2012 San Diego County Superior Court, Department 17**

*Prosecution hands Ms. \_\_\_\_ 8<sup>1/2</sup> x 11 image of the garage. Prosecutor prepares image on projector. Jury looks straight ahead at the image. The next image is of the master bedroom, next image front door view of the house, next image living-room (it's a mess, ransacked!). Next view from kitchen pathway. Prosecutor rotates a view of the images for jury. Lights turned off. Next image is of living-room (different angle); next floor and front door (lighter & her meds are on the floor). She's not sure of the picture which shows her pill bottle on the floor. She is not sure which floor the picture depicts. Next image of kitchen floor has knife on floor (knife he used to stab walls), next image of wall with hole. She says things began with her door slamming and ended with her in an ambulance.*

*Medical attention testimony:*

*Ms. \_\_\_\_\_ taken to ER. Received neck brace, IV hook up, internal bleeding tests. She reports being in hospital for 11 hours. Bruises all over, knee, arms, ribs, lower back. Describes pain as “extremely severe.” Two weeks before this incident she slipped down the stairs at her home, sliding down on her back.*

*[At this point I hear the voice of a supervising Public Defender. I recognize her from another domestic violence case I have observed. She is seated behind me and is watching a junior Public Defender. The observation of the trials of junior attorneys by senior attorneys is a professionalization practice common to the Office of the Public Defender and City Attorney’s Office. She angrily mentions to a colleague seated next to her how interminable the display of the ransacked house was.]*

*Prosecuting attorney meanwhile has approached a chart standing near the jury well. He draws a picture of a set of stairs to demonstrate how Ms. \_\_\_\_\_ sustained the previous injuries which are unrelated to the domestic violence in question.*

*Lights off again.*

*Prosecutor shows 8<sup>1/2</sup> x 11 of Ms. \_\_\_\_\_ arm on a chart, then displays on projector. Very close up of bruise with a ruler included in the image for scale. Bruise is a pale purple line (one inch). Next photo is a bird-eye view of Ms. \_\_\_\_\_ laying down wearing neck brace. Mouth is closed, brows look a bit strained. She is wearing a hospital gown.*

*Next arm photograph. Hard to see injury! She’s also very freckled. I cannot perceive any bruising. Prosecution clarifies the image is blown up. Next, forearm. I can perceive bruise faintly. Also includes ruler for scale. Next neck/décolleté view showing redness. Very faint, a little scratch, maybe. Next an, aerial view of her leg. Five bruises, ruler included. Close-up and taken from hospital bed. Ms. \_\_\_\_\_ at first can’t discern whether the image is in fact her arm and not her leg. Prosecution shows another image to help clarify.*

The following interview text records a conversation with the Public Defender in this matter. The defense in this trial was ultimately successful in overcoming all charges for domestic violence against Mr. \_\_\_\_\_. In an interview, I inquired about the display strategies employed by the prosecuting attorney. The Public Defender reports that the

jury didn't say anything about the ransacked rooms. The jury really focused on the bruising. The jury did not think either Mr. \_\_\_\_ or his wife was being truthful. After the trial the jury pointed out that the victim could not tell which ransacked room was represented; the prosecution had so many photographs.

*Photographs of Ms. \_\_\_\_ on her stretcher wearing the neck brace were ultimately excluded as being overly prejudicial. They can't diagnose. They show no bruising. Public Defender asked for close up photo to be excluded. Public Defender received statement from prosecution in April from victim saying Ms. \_\_\_\_ fell down stairs week prior to incident. Ms. \_\_\_\_ was released with no injury. Public Defender tried to pull medical record but they were not released. Ms. \_\_\_\_ was diagnosed with concussion, which husband did not cause. Ms. \_\_\_\_ fell down the stairs and also had bruises and photos \_\_\_\_ from this fall. Public Defender points out that she developed her new strategy for contesting the testimony of Ms. \_\_\_\_ just as the prosecutor displayed his numerous photographs. The prosecutor showed photographs of the ransacked rooms and the multiple bruises on the witness' body. The weakness of some of the bruising coupled with Ms. \_\_\_\_'s inability to discern which part of her body the images were depicting led the Public Defender to develop a different interpretation of the bruising. In her closing statement the Public Defender suggested that Ms. \_\_\_\_ was more concerned about receiving her anxiety medication than escaping the cycle of domestic abuse.*

This case demonstrated a third pattern of evidence publication. In this case the prosecutor published photographic evidence to the jury using PowerPoint and blown up 8<sup>1/2</sup> x 11 images, which he posted on a chart near the witness and jury boxes. The prosecutor combined aspects of the two dominant publishing forms: the piecemeal approach and the mass projection approach which recalls the cinematographic experience. These trial and interview texts also demonstrate the ways epidermalization occurs in the adjudication of domestic violence. Moral spectators and members of the

public audience (which in this case included other law professionals) were brought into contemplation of the skin's grain and texture digital rendered. The domestic violence trial is an occasion for epidermalization. As jury members reported back to attorneys about their deliberations they explained how they collectively studied the images and thought they could discern that some bruises were older than others. The perceived temporal difference between bruises called into question the witness spoken testimony, or what Phillip Auslander would call, the court ordered "performance of memory."

### **Legal modernities: reading photographic evidence as index of post-racial citizenship**

The trial and interview texts discussed thus far illustrate procedural rhythms common to the domestic violence assault trial. Publishing evidence of abuse is a key event in the domestic abuse trial. Witnesses authenticate police images of their injuries in this moment. Testimony in this moment is distributed across photography and live court-ordered vocal performances of memory. Two rhetorical strategies organize the photographic display practices of attorneys in domestic violence cases: First is what I have termed the "piece meal" approach, where jury members are passed individual photographs depicting witness injury. The second approach publishes police photographs via simultaneous projection to the entire jury as in a cinema projection. The two approaches are irreducible to each other, but are frequently combined in domestic violence trials.

Chapter one argued that images of battered women resolves disputes in the social sciences about the speech and behavior of abused women. I argued that circulating photographic evidence displaces the complex agency of battered women onto the legal fact finder who must judge the visual evidence of abuse. In Chapter one, I also characterized the ease with which photography appears to stabilize scientific debates about trauma and subjectivity as potentially depoliticizing. Chapter two returned to early avant-garde photography by Ana Mendieta, Donna Ferrato and Nan Goldin in search of the political conditions under which their suppressed images of battered women came into the world. The discussion of post-Violence Against Women Act funding social service media campaigns in Chapter three detailed how the radical photography practices of Mendieta, Ferrato and Goldin was remediated in the work Alastair Thain. Cosmetically simulated domestic abuse images—the work of a feminist avant-garde remediated-- called into being a citizenry of domestic abuse photography. The incitement to perceive injury, to disarticulate decaying tissue from skin color, birth mark, or other skin irregularity and irritation from wound marks a new space in which the political appears.

Chapter four has offered support toward the politicization of institutional photography of battered women. Police photography of battered women reroutes disputes about trauma and identification in the social sciences. I propose the debate about the complex agency and identifications of battered women in the clinic transmogrifies into concerns about image quality and the production of the “follow-up” photo among law professionals. For juries, questions about trauma and identification emerge through the performance of witness testimony. Such testimony attunes these moral spectators and law

professionals to the grain of the image and attaches the pursuit of justice to the experience of *significance* in the form of epidermalization. The loss of self occasioned through epidermalization can leave the spectator to discover justice is a banal performance of epidermal reading.

Images of battered women call into being a citizenry of photography similar to images of war discussed by Ariella Azoulay and Dora Apel. Their epidermal reading, however banal, is central to a civil contract to witness images of domestic violence. I am interested in the ways both optimistic and pessimistic readings of the domestic abuse images conjure and delimit post-racial futurity. The very banality of discerning skin color from injury is a form of racial looking animating the psychic transformations constitutive of moral spectatorship among juries and law professionals. In the following conclusion, I explore how such a discovery of the banal in matters of justice may not be constitutive of lasting social bonds, but may nurture coalitional, if ephemeral ones. The following conclusion I explore how the banality of reading digital photographs of skin may occur within larger cultural imaginings of a post-racial future.

## Conclusion: Visualizing Violence: Photography, Subjectivity, Co-Presence and the Legal Post-Modern

This dissertation has traced the emergence of police photography of domestic abuse for two primary goals. The first is to contribute to the tradition of critical legal studies by politicizing the aesthetic work practices of the state and police. By politicizing police work practices in cases of domestic violence my intention is to pivot away from hegemonic modes of discovering justice. As the chapters demonstrate, the deployment of state photography in the Anglo-American legal tradition potentially depoliticizes debates about trauma and identification in the behavioral and social sciences. At the same time, the circulation of images of battered women and the techniques that remediate the antagonism between skin and light as “good data” makes the adjudication of gender animus an explicitly biological project. The courtroom observations of this study suggest that the politics of domestic violence is a technical matter where digital images are decisive in the discovery of justice. Images of battered women record biological damage; they temporally fix a record of bare life. This study tries to establish patterns of reception among moral spectators—citizens of photography—in order to demonstrate the ways we learn to see together and the role of technologies and bodies in the development of the human eye and optical systems.

In Chapter One I argued that images of battered women emerged to overcome debates in the behavioral and social sciences about subjectivity and traumatic experience. Battered woman syndrome emerged in the animal behavioral research laboratory in

studies on “learned helplessness.” Building on Jennifer Mnookin’s history of the incorporation of photography as a novel technology in the Anglo-American legal tradition, I examined how images of battered women resolve debates about the scientific validity of battered woman syndrome as a self-defense argument for abused women. I suggested that digital photography’s capacity to settle the confusing behavior of battered women with visual and material evidence of biological damage depoliticizes the problem of violence against women.

In Chapter Two I discussed feminist avant-garde photography practices of Ana Mendieta, Donna Ferrato and Nan Goldin. Their work is situated in art and documentary journalism practices and my examination of their censored and critically exiled photographic work intervenes to politicize the police photography and mainstream commercial images. The rebuke and neglect of the specific photographs of Mendieta, Ferrato and Goldin I examine allowed police work product to enjoy the powers gifted through routine, standardization and normalization.

Chapter Three took up a possible aesthetic origin on the matter of standardization and routinization of the domestic violence courtroom by exploring support service media campaigns for abused women. Legislative initiatives like the Violence against Women Act create market of domestic violence caseload. State created public health communication advertising support hotlines. Telephonic advertising for abuse hotlines used images with simulated injuries. The art photography of Alastair Thain is an example of the commercial merging of cosmetics and digital imaging. Thain’s photography politicized state interest in the systematic production of photographic evidence of abuse at the same time it cultivated a citizenry of photography. I presented the concept of

epidermalization—a modification of concept of racial epidermal schema introduced by Frantz Fanon.

By tracing the scholarship in art history about the visuality of blackness this chapter proposes that dark skinned women serve a modernizing function for the digital camera just as the control of lighting serves an invitation of dark skinned women into humanity. Epidermalization is being taken up in art history and visual culture specifically as an aesthetic practice of a black radical avant-garde. By pivoting away from studies of theatrical and musical performance toward legal performance cultures I showed how epidermalization might be studied as an important aspect of the repertoire of legal performance. State advertising for support service calls into being a citizenry of photography as described by curators and art historians Ariella Azoulay and Dora Apel. The use of *legal camp* to construct a citizenry of readers of images of battered women set a baseline for reading biological evidence of domestic abuse. Chapter 3 opened the question of digital rhetorical strategies for communicating human rights.

Chapter Four details results from participant observations of domestic violence trials. The study suggests two primary patterns law professionals use to publish trial evidence: piece-meal and group projection. Processing images of battered women becomes opportunity for epidermalization. Epidermalization argued as a form of signifiante. Epidermalization is the process through which we learn to reflect on biological damage. Justice is thus a banal matter of epidermal reading. Though called into being through aesthetics of *legal camp*, deciding photographic evidence of domestic abuse in the domestic violence trial bring us closer to thinking about biology and tissue that signifies a post-racial future (a position I will clarify shortly). The task is to

discover the relationship between such a post-racial imaginary and neo-liberalism. What sorts of social bonds are created? Coalitional ones? I propose one way to think about recent debates in afro pessimism and black optimism and the notion of the “post-racial.” The horizon of the establishment of social bonds civil contract about domestic violence mediated by photography) is black optimism and afro-pessimism. Epidermalization is a way to visualize the post racial—something Fanon surely hadn’t imagined through his shattering anecdote about being pointed out in public as a black.

The following are two discrete lines of research I will pursue to answer the questions remaining in my study.

### **Legal modernities: reading photographic evidence as index of post-racial citizenship**

The adjudication of gender violence is a crucial site for the production of racialized concepts of skin color in the wake of a transition from paper-based filing systems to the appearance of icon-based juridical tools including moving images. In cases of domestic violence digital photographic evidence proves decisive in criminal conviction rates; color, affect and screen animate the psychic transformations of spectatorship. I would expand the scope of my earlier thesis to situate racial looking<sup>213</sup> at the subject of photographic evidence as a central activity of modern law and the discovery of justice.

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<sup>213</sup> Here I recall Frantz Fanon’s concept of the racial look developed in *Black Skin, White Masks*(New York: Grove Press, 1967)

Are there multiple legal modernities, or a singular modernism organizing contemporary legal scholarship and rhetoric?<sup>214</sup> What technological artifacts mediate the procession of legal modernism(s), and, by extension, the discovery of justice?<sup>215</sup> Since inception, photography has altered the image of law, changing how we make legal judgments and the role of seeing in the discovery of justice. The domestic violence courtroom emerged nationally primarily in the 1980s and operates according to a specialized choreography of legal rhetoric and image display. Tracing just how the image came to remediate the function of traditional legal paperwork from antiquity to the contemporary moment demands advanced training in legal rhetoric and philosophy.

A basic premise of my doctoral research is that images of physical injury resolve controversies surrounding the subject of violence and the veracity of trauma testimony.<sup>216</sup> In domestic violence cases battered women are court-ordered to testify to their physical condition documented by police photography; their co-present images often at odds with their trauma narrative. Constable's scholarship in U.S. legal rhetoric addresses relationships between voice, silence and law<sup>217</sup>—precise elements at issue in mediatized

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<sup>214</sup> See, David Luban, *Legal Modernism* (University of Michigan Press, 1994)

<sup>215</sup> See, Jennifer Mnookin, "The Image of Truth: Photographic Evidence and the Power of Analogy" *Yale Journal of Law and the Humanities*. (1998), vol. 10: 1-74

<sup>216</sup> On trauma and subjectivization, see Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985); Judith Lewis Herman, *Trauma and Recovery* (New York: Basic, 1992); Christine Shearer-Creman and Carol L. Winkelmann, *Survivor Rhetoric: Negotiations and Narrativity in Abused Women's Language* (Toronto and Buffalo: University of Toronto Press, 2004)

<sup>217</sup> See, Marianne Constable, *Just Silences: Limits and Possibilities of Modern Law* (Princeton University Press, 2005); *The Law of the Other: The Mixed Jury and Changing Conceptions of Citizenship, Law and Knowledge* (University of Chicago Press, 1994); "Genealogy and Jurisprudence: Nietzsche, Nihilism, and the Social Scientification of Law," *Law and Social Inquiry* 19:3 (1994)

testimony in my doctoral research. Our research dovetails on domestic violence policies and legal speech acts.<sup>218</sup> Constable has observed that my analyses of support services advertising to battered women using cosmetically faked injury photographs may assign too much power to the state. As her expertise in Western jurisprudence<sup>219</sup> is well-known she is an ideal interlocutor on the philosophical *openings* that appear through positive law's apparent foreclosures.

Thinking through the lacunae in my characterization of the state will also benefit from insight from Mel Chen's scholarship on 'animality' and prosthetic masks.<sup>220</sup> Her work may inform how my argument about skin color, screen, and Fanon's notion of epidermalization *matter* in state communication about health and security. What world do we inhabit when a major element of jury service includes reading skin for evidence of injury in the absence of pedagogy on visual rhetoric of law and science? If jury service indexes national citizenship what ethics obtain from moral spectatorship that reads bodies in a way that disarticulates pigmentation from bruise? Bringing together Fanon's *epidermalization* concept and Barthes' notion of *studium*, I consider readings of skin as performance of justice and, by extension, universal human rights. Yet I cannot ignore a sense of banality characterizing spectatorship of trauma photography. I plan to work out this tension between justice and/as a banal performance of epidermal reading that may

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<sup>218</sup> Professor Constable's current research: *Chicago Husband-Killing and the New Unwritten Law*; see also, *Our Word is Our Bond: How Legal Speech Acts* (both, in progress)

<sup>219</sup> I am thinking particularly of Constable's expertise on Nietzsche, Heidegger and Foucault.

<sup>220</sup> See, Mel Chen, "Masked States and the "Screen" Between Security and Disability," *WSQ: Women's Studies Quarterly* 40: 1 & 2 (Spring/Summer 2012); see also, *Animacies: Biopolitics, Racial Mattering and Queer Affect* (Duke University Press, 2012)

not be constitutive of lasting social bonds. This work will require a further review of relevant legislation leading to the coercive testimony of battered women in court may illustrate forms of legal modernity where the ontology of testimony remains provocatively undefined by the Supreme Court.

Bringing together Fanon's concept of *racial epidermal schema* and Barthes' notion of *studium*, I inquire about readings of skin as a performance of justice and, by extension, universal human rights. This reading thus occurs within a philosophical horizon of afro-pessimism and black optimism, where a serious tension exists between justice *as/and* a banal performance of epidermal reading that may not be constitutive of lasting social bonds, but may nurture coalitional, if ephemeral ones. The recent exchange of photograph files across several media platforms between pop singers Robyn "Rihanna" Fenty and Christopher Brown provide a case example of the commodification of legal photography. The public circulation of photographs between these artists formerly involved in domestic abuse anchors a discussion of communitarian liberal responses to gender violence, a form of legal order previously explored by David Luban.

### **"Staging Subjection: Epidermalization and Significance in Radical Art Practice"**

This dissertation focused on the relationship between art and law and science, specifically the curatorial practices deployed by each. I used the domestic violence trial as a techno-cultural setting to examine how photography remediates the adjudication of violence against women in the U.S. This study examined how the production and circulation of photographic evidence of domestic abuse is a performance citizenship,

including patterns and routines of spoken and visual testimony in domestic violence trials. I argue that the trauma testimony of battered women as a “locus of collective performance” among law professionals and juries. (I borrow the phrase “locus of collective performance” from Lisa Cartwright’s description of the rotoscope technology).

This study on visualization practices in domestic violence cases led me to some parallels occurring between the performance of moral spectatorship in the courtroom and contemporary radical art practices around the theme of the ‘post-racial’ or post-human. Currently I’m thinking about these parallels through the concept of epidermalization, or as the quote above offers, *skinning*.

It is fascinating to examine more closely the initially contradictory levels of meaning of such a tension-filled word as skinning. Most commonly, ‘skinning’ refers to the act of removing the skin from a dead animal. By extension, skinning can be understood metaphorically as scaling something down, or removing much of the essence of something. Ironically, what is understood in the physical context of the body as a ‘taking away’ is now in the language of digital culture an ‘adding on’, where skinning refers to the design of surfaces, for example, in video games. It may describe the process of creating 2-D textures to be applied to 3-D meshes, or creating a computer program. Software capable of having a ‘skin’ is referred to as being skinnable. We might ask how our culture has arrived at this astonishing degree of reflexivity—which seems to be reflected linguistically in the reversibility of levels of meaning – and if, in light of the transitivity of verbs, contradiction even exists here.

--Jens Hauser “Who’s Afraid of the In-Between?”

Domestic violence trials and advocacy/support media led me to questions about two different paths being taken up in recent art history scholarship and radical art practice. These paths mark the relationship between technology and the human and are therefore mediations on the question of being, ontology, matter, substance.

The first path concerns how recent scholarship in art history addresses themes of post-coloniality, the aftermath of slavery in contemporary aesthetic practices of black and indigenous visual artists. This scholarship is represented by theorists such as Jennifer Gonzalez's *Subject to Display: Reframing Race in Contemporary Installation Art* (2008); Jayna Brown's *Babylon Girls: Black Women Performers and the Shaping of the Modern* (2008); Nicole Fleetwood's *Troubling Vision: Performance, Visuality, and Blackness* (2011); Tina Campt's *Image Matters: Archive, Photography and the Black Vernacular*; (2012) *Bound to Appear: Art, Slavery and the Site of Blackness in Multicultural America* (2013) by Huey Copeland, *Witches Flight: The Cinematic, the Black Femme and the Image of Common Sense* (2013) by Kara Keeling and are all inspired by foundational text *The Image of the Black in Western Art* (1989), David Bindman and Henry Louis Gates eds. These texts work within what Nicole Fleetwood calls the "Fanonian moment that marks a racial primal scene in which the black subject comes into self-knowing through the traumatic recognition of another's eyes" (23). Each of these works are also imagining, mourning, commemorating slavery whose haunting afterlife was theorized by Saidiya Hartman, duBois, Spillers, Moten etc.

I have been thinking about how these folks write about the work of James Luna, Renee Green, Pepón Osorio, Kara Walker and their particular use of textiles and paper.<sup>221</sup> Epidermalization here fits the sort of skinned model of software 9or in our case

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<sup>221</sup> I am thinking of specific installations authored by indigenous and black artists such as Pepón Osorio's mixed media work, *En la barbería no se llora (No Crying Allowed in the Barbershop)*; Renee Green's *Mise-en-Scène: Commémorative Toile* (1992), pigment on cotton sateen; Kara Walker: *Excavated from the Black Heart of a Negress* (2002), cut-paper

hardware) Hauser describes as an “adding on” and its suggested double movement. These art works suture the black body to its colonial and bio-political equivalents: raw material, cotton, cargo. The history of modern textile is rendered as a biological project. These artists are rethinking how we contemplate information technology in everyday objects and texts.

A second path is found in the emergence of the *biofact* and its use in contemporary bio-art installations, or “carnal art,” which Orlan fiercely embodies. As philosopher Nicole C. Karafyllis, who introduced the concept to philosophy in 2001 explains, the *biofact* is “something that does not yet have a body but could have one” (term was used earlier in zoology, Bruno Klein 1993);’ a material artifact fused to a living being. The biofact is in other words a growth, an amalgamation of cells whose laboratory manufacture is increasingly deployed as body art practices and media installations (I think it interesting to consider Du Bois use of the term amalgamation). We recognize the deployment of the *biofact* as a central thematic in the artwork of Orlan, Stelarc, and Julia Reodica and Vivo Lab, SymbioticA’s Victimless Leather project.<sup>222</sup> These works are suggestive of skinning as both an adding on and “taking away.” How to theorize these collaborations in the era of neo-liberalism?

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<sup>222</sup> Here I am thinking of bio-art co-authored by Orlan. Her *Harlequin Coat* (2007) is a biotechnological coat made from skin from subjects of different colors, race, age gender “cross hybridization through skin cells”; Stelarc: *Extra Ear: Ear on Arm* (2006) SymbioticA: *Victimless Leather- A Prototype of a Stitch-less Jacket Grown in a Technoscientific “Body”* (2004); Julia Reodica, *hymNext Project* (2005-2007). These works involve surgical procedures in which synthetic and biological materials are transferred, shared and combined between artists, laboratories and spectators.

Returning to the concept of epidermalization, I am trying to formulate a position that epidermalization is a moment rich in *signifiante*. A difficult affective position to translate, *signifiante* is discussed by Julia Kristeva and Roland Barthes with a notable intervention in the study of voice sound technologies by Roshanak Kheshti. In contrast to signification where meaning is created prior to the act of reading and tracks the normative association between the coherent object to which the sign, or language unit refers, *signifiante* pertains to the production of meaning through the act of reading or reception. Through *signifiante*, the suppressed meanings of visual and speech communication become available to the subject through a kind of language. In my research on domestic abuse photography epidermalization is a form of *signifiante* that makes available the suppressed meanings of the intertext between witness' spoken and visual testimony. I propose epidermalization is an example of the potential of *signifiante* to lead to a loss of self in the viewing subject.<sup>223</sup>

For juries, questions about trauma and identification emerge through the performance of witness testimony. Testimony attunes these moral spectators and law professionals to the grain of the image and attaches the pursuit of justice to the experience of *signifiante* in the form of epidermalization. The loss of self occasioned through epidermalization can leave the spectator to discover justice is a banal performance of epidermal reading. This dissertation has traced the emergence of state photography of battered women to theories of trauma and identification and the politicization of police photography by a feminist avant-garde. In Eichmann in Jerusalem:

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<sup>223</sup> On this point, see Roshanak Kheshti "Inversion, *Signifiante*, and the Loss of Self in Sound," *Parallax* vol. 14 no. 2 68-77 (2008).

A Report on the Banality of Evil Arendt's view is a bit naïve, people do evil because they identify with evil ideology not just passively accept orders. I'm interested in how these identifications are produced live and how they change collective practices of visualization for the human and ways to live together.

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