



**Title:**

Visualizing Domestic Violence: A Digital Archive of Evidence Photography in Legal Observation and Popular Media

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**Publication Date:**

04-01-2010

**Series:**

[Thinking Gender Papers](#)

**Permalink:**

<https://escholarship.org/uc/item/7kq137z0>

**Keywords:**

Domestic Violence, evidence, law, court, archives, photography

**Abstract:**

As recent as the 1980's, vigilance within the criminal justice system toward domestic violence prosecution was remarkably low. Activists and policy-makers "got tough" on domestic abuse through mandatory arrest and no-drop policing strategies. These strategies are reinforced by digital photographic evidence of abuse, leading to a debate on the role of new media and policy on victim agency in the prosecution of domestic violence. This paper examines the photographic archive of battered women and communicative approaches to adjudicating domestic violence. Focusing on the incorporation of new media within American courts, I consider how digital technology contributes to the establishment of legal facts, inquiring how new media may dangerously conceive violence against women as a technical question rather than an ethical one. Paper engages work on the politics of spectatorship, asking what theories of affect might bring to debates emerging in human-technological interaction, including personal computing and copyright, agency and authorship .

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## Kelli Moore Bio

Kelli's work examines the communicative practices between legal actors, institutions and interpretive communities as they make presumably collective decisions about how to remedy crimes of gender animus. She is particularly interested in the production of digital images as evidence photography and the activities they engender to protect their status as 'evidence' while helping uncooperative victims achieve "voice" about their abuse. Her previous work includes research at the Center for Court Innovation—a court demonstration project specializing in alternatives to incarceration.

### **Vizualizing Battered Women: The Politics of Spectatorship in Legal Observation**

As recent as the 1980's, vigilance within the criminal justice system toward domestic violence prosecution was remarkably low. Activists and policy-makers "got tough" on domestic abuse through mandatory arrest and no-drop policing strategies. These strategies are reinforced by digital photographic evidence of abuse, leading to a debate on the role of new media and policy on victim agency in the prosecution of domestic violence. This paper examines the photographic archive of battered women and communicative approaches to adjudicating domestic violence. Focusing on the incorporation of new media within American courts, I consider how digital technology contributes to the establishment of legal facts, inquiring how new media may dangerously conceive violence against women as a technical question rather than an ethical one. Paper engages work on the politics of spectatorship, asking what theories of affect might bring to debates emerging in human-technological interaction, including personal computing and copyright, agency and authorship

Before I discuss these issues, let me first tell you how I became interested in this project and why the prosecution of domestic abuse is a unique context in which to study the politics of spectatorship. I became interested in this topic through an experience I had while riding the subway to work one morning—it was a political moment in which the subway car was

configured as a stage enabling an inter-subjective, public looking practice. The occasion was a 1999 anti-domestic violence campaign advertising a hotline for victims of domestic abuse in New York City subway cars. The images for this campaign featured close-up frontal shots of newly bruised, cut and scarred women's faces. In what is commonly referred to as a "brand train," the images occupied all available advertising space for the length of the subway car, repeating themselves throughout the attached train cars. If the practice of looking entails jouissance, the pleasure of looking in the brand train was organized by images of battered women.

Given the nature of the images-- the stark, up-close bruising and un-posed posture of the subjects, I wondered how these particular images made it into the public arena? Initially, my questions centered on the origins of the dramatic content and authenticity of the images: Where did these images come from? 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? The ad campaign became a point of departure into a larger archive of images of battered women that circulate as documentation of psycho-pathology, art and entertainment and, criminal evidence. In both composition and creative production, the brand-train images engaged the professional practices that comprise new media visualization techniques (and visualizations of domestic abuse) in criminal cases of domestic violence. I am interested in detailing the media and technology story about how the ontology of domestic violence is enacted across different contexts; official and non-official publics. This is my report on two technologies currently changing responses to domestic abuse.

*Why battered women?*

Why consider the visual culture and media practices involved in domestic abuse cases? The respondents in these matters do not easily, nor willingly identify themselves with the categories: “victim” or “batterer” that comprises the larger “domestic violence” ontology, victims and batterers often exhibit a great deal of resistance to these terms and social identifications. These refusals occur just as late twentieth (and 21<sup>st</sup>) century writers of the histories of mental illness and disorder have offered several theories describing how communication happens in these relationships and its resulting affective flows. Most of these theories describe male and female couples, but the literature is increasingly gender-neutral in its terminology. (In most of the ethnographic research I will be discussing, female victims and male batterers are posited.) Theorists argue that in relationship characterized by abuse, the crucial dilemma facing battered women in terms of bare life is the victim’s *normal* return to the batterer. In this way, they posit a cyclical communicative pattern as organizing the relationship. Battered woman syndrome, Stockholm syndrome, conjugal terrorism, traumatic bonding and brainwashing are common clinical theories explaining victim’s affective behavior in the abusive relationship (Roth & Coles: 650). Battered woman syndrome in particular has been recognized in the DSM-IV as a subcategory of PTSD (Roth & Coles: 650) Thus, battered women are medically affirmed as a discrete social milieu, at the same time they regularly refuse its membership. This contradiction creates interesting problems of representation, agency and voice, the resolution of which is sought through new digital technologies that organize the experience of domestic violence.

Here are two quotes from Casey Gwinn, President and CEO of the Family Justice Center in San Diego, CA. A former DV prosecutor, Mr. Gwinn highlights early epistemological practices in

these cases as founded in victim's speech and secret actions taken to escape. The movement at this time was organized by as little circulation of victim's information as possible. During the late 1990's and early 2000's, increased criminal prosecution of domestic abuse promoted imaging and looking practices that created new forms of evidence and facts of law. The production of visual evidence marks a distinct shift from particular notions of protection and secrecy about the victim to the compilation and self-management of information about victims and their batterers. Gwinn suggests that the production of information has turned foundational ideas about secrecy within the battered women's movement on its head. I am trying to pinpoint specific discursive moments where battered woman syndrome is enacted because I think they can reveal a lot about how new media has changed the battered women's movement. I consider the ontology of domestic violence by looking at battered woman syndrome as a subjectivity enacted through a variety of institutional venues and via new media practices. A domestic abuse incident is productive of a set of crucial moments of voice and agency for victims. I will discuss two practices that are reshaping the battered women's movement.

*Producing Visual Evidence/Valuing Visual Evidence: Authorship and Professional Standards*

Currently, images are crucial evidentiary objects in domestic abuse cases.<sup>1</sup> Prosecutors place a great deal of value upon images of battered victims, staging in court varies cuts, resizes, blow-ups and measurements of photographs of the victim's body to juries.<sup>2</sup> In court observation, the first deployment of these images typically occurs when prosecutors depict the visual fact that violence has been performed and that that these images will testify as a true representation of the

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<sup>1</sup> See "The Image of Truth: Photographic Evidence and the Power of Analogy. 10 *Yale Journal of Law and the Humanities* 1 (Winter 1998) on the entry of photography into the courts as a novel form of evidence..

<sup>2</sup> See "Contested Vision: The Discursive Constitution of Rodney King," in *The Construction of Professional Discourse*. 1997.

victim, who, in 63% of cases, is a non-cooperative witness. Thus the image is visually linked to battered woman's symptomatology--to victim's disinterest in prosecuting. Further, such images are traceable to another body of photography whose representation of illness and disease visually articulated the modern life-politics of Euro-Western state institutions of social hygiene. We recall Charcot's 19<sup>th</sup> century images of women suffering from nervous and mental disorders at Pitié-Salpêtrière Hospital (Gilman, 1995); the representation of tuberculosis and accompanying production of new forms of life comprising the female reproductive system (Cartwright, 1995). Recent twenty-first century representations of illness and disease include HIV/AIDS awareness ad campaigns that visually stage an epidemiological drama of HIV/AIDS contraction in the gay community (Gilman, 1995) for example.

In court, prosecutors rhetorically link the image of the battered woman's body to some of the avoidance, denial, and dissociative behavioral aspects characterizing battered woman's syndrome. What is the discursive relationship between the live victim and the image of her violated body? That is, in what other venues or looking practices, or methodologies might this relationship be found or articulated? What are the politics shaping how images of battered women valued by different elements of law enforcement, and why? How do these images give an account for a victim when that person is somehow known to refuse the category? What critical lens is useful to understanding interactions between forensic photographers/nurses and victims; victims and attorneys. What form of spectatorship do photographers and prosecutors enact here?

To use the phrasing of Lisa Cartwright, these images enact a form of “moral spectatorship,” where “one thinks and feels oneself into the inner life of another person” (Cartwright 2008: 9).<sup>3</sup> The moment of morally regarding images of battered women is in part digitally, electronically facilitated; this moment is thus an intersubjective and multi-modal interaction. The editorial flexibility of digital imaging allows law professionals to accomplish two tasks: first, to master the visibility of battered women as a social milieu by quickly and cheaply circulating photographs and second, to transform an uncooperative victim’s physical (and affective) *distance* from courtroom events into *proximity* for juries.

The production of evidentiary images of battered women entails a variety of protocols and standards for valuing visual evidence. For example, the victim’s own amateur photography of her injuries are not admissible in felony court, however they may be placed within police forensic images of the same victim in order to establish an injury-development timeline. Victims “amateur images” are not stored or filed with “professional images.” To be court admissible, professional images include a close-up shot of the victim’s face for general identification, a picture of the entire body with bruising and a close-up shot of each specific bruise with a forensic ruler in the foreground. In ethnographic fieldwork with prosecutors, attorneys reveal how victims’ own images as well as her participation can suggest vindictiveness to juries. In this sense, victims are vexed by not wanting to appear “too interested” in prosecuting their batterers. What message is sent to victims who find out their own images are not valued in the same way as police images? Moreover, how do forensic nurses and police photographs bring battered

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<sup>3</sup> In *Moral Spectatorship*, Lisa Cartwright mines late 20<sup>th</sup> century psychoanalysis’ theories of object relations in order to understand human agency and the achievement of “voice” through and communication that is facilitated by new media. She proposes an alternate model of spectatorship that embraces modes of identification grounded in empathy, intersubjectivity and multi-modality.

women into voice? What looking practices and interactions with digital photography move women into leaving their abusive situation?<sup>4</sup> Here, professional standards/protocols seem at odds with the pleasures of amateur digital self-portraiture. Nevertheless, might we think critically the dynamics of authoring and creating images of battered women for court in a way that includes inter-subjectivity and empathy?

*Battered Woman's Syndrome: There's an App for That?*

Another technology that envisions itself playing an important role in facilitating voice and agency among victims of domestic violence exists via a data-compiling application. We have been considering the normal return of victims to their abusers. Intelius is a self-described “information commerce” company that designs data compilers. They help companies perform background checks, identity protection, reverse phone look-up etc. Intelius provides both corporate and individual client information solutions. Intelius has approached the Family Justice Center—a San Diego- based organization providing services to victims of domestic violence to test a pilot domestic violence application among survivors of domestic abuse. Currently in beta testing, the Victim's Support Application is imagined as supporting victims of domestic abuse who regularly return to their abusers by facilitating greater management of court documents and image files related to services and procedures regarding abuse cases. The application would also allow victims to collect and store evidence of abuse in the form of abusive, emails, texts messages forbidden by court order. The application may even be equipped with information of

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<sup>4</sup> Ethnographic fieldwork with forensic nurses, social workers and police reveals how bringing victims to voice about their abuse is organized around service providers showing victims pictures of themselves. See also Donna Ferrato's, *Living with the Enemy* (1991). Members of law enforcement and service providers also frequently mention past difficulty with Polaroid images, arguing that digital images have greatly helped with victims of color.



the location of their abusers. This application is still in its early design phase, but is structurally based on a similar popular software application called DateCheck.

I want to end by considering this commercial website alongside Gwinn's vision of the future of battered women's movement." Consider how new media facilitates a kind of self-reflexivity within victims. The battered women's movement began as a conquest of physical space and sanctuary for women. Currently, new media practices require activists in the movement to monitor deployments of these technologies and the ethical stakes entailed. How will the battered women's movement incorporate debates about safety and technology into victim's services in ways that promote and analyze how empathy is produced across texts, modalities and subjects?