

KELLI
MOORE



slavery and the visual
culture of domestic violence

LEGAL
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SLAVERY AND THE
VISUAL CULTURE OF
DOMESTIC VIOLENCE

KELLI MOORE

DUKE

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ACKNOWLEDGMENTS — ix

INTRODUCTION

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.—ARTICLE IV, Section 4 United States Constitution

A special notation, “DV” (capital D, capital V), identifies domestic violence cases in US criminal courts. On paper and electronic files, “DV” codes a separate level of concern beyond dozens of possible sorts of criminal charges. As a court officer once informed me, “Next to drug cases, domestic violence is our bread and butter.” Domestic violence is a special kind of crime that demands federal forms of increased scrutiny, which result in the production of income and livelihood for criminal courts and personnel. The increased level of scrutiny signified by the “DV” notation includes increased monitoring of legal instruments such as protection orders, warrants, gun registration, media instruments such as recorded 911 calls, and social service instruments such as educational curricula for victims and abusers. While the “DV” mark is meant to increase the efficiency of case processing by prominently labeling criminal charges, case docket numbers, court appearance schedules, and so on, these cases precede with great difficulty.

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A common view from a variety of courtroom professionals and service advocates is that victims and their abusers are not easy to work with. This is because these intimate partners frequently have great emotional, cultural, and financial difficulty terminating their relationships and the households they make together. Domestic violence is a conundrum and a set of contradictions that challenge the legal system, because, for many reasons, victims of domestic abuse often refuse to cooperate and enable the law to function. As a result, a variety of legal instruments beyond those mentioned above have developed to mediate how victims and batterers access law to end the violence. Yet, legal instruments, including forensic evidence, are not cure-alls. Domestic violence is a volatile issue not simply in terms of the violent intimacies that demand legal intervention but also because of the way legal instruments historically exacerbate the adjudication of these matters. Numerous studies have examined how forensic documentation instruments and the courtroom testimonial scene retraumatize victims, violating them again through the very instruments that are supposed to help prosecute their assaults.¹ This is especially true in cases of rape and sexual assault and the instruments used to collect evidence of these crimes. The rehearsal of a violent attack before police, forensic nurses, social workers, judges, lawyers, courtroom audiences, and family can violate victims all over again. Moreover, it is not always clear how the rehearsal of one's narrative of abuse before law serves the interests of victims, whose pathways to healing are first directed by forensic instruments that are at best secondarily therapeutic. In fact, the question of victim interest remains unclear when the complications of the legal system intersect with race, class, gender, and sexuality.² Photography of domestic abuse is one of these forensic instruments and the subject of this book.

Legal Spectatorship tells the story of the DV photograph, examining its evidentiary function in the courtroom and its relationship to psychological discourse about the flow of feelings that motivate violence and anti-DV activist practices in the era of social media. I trace the origins of this body of photography to the peculiar form of witnessing that slaves embodied in their entanglement in white domestic arrangements and disputes. This book pays particular attention to the visual culture of photographic evidence of domestic abuse, giving it an origin story that positions testimony in contemporary DV prosecution within the archive of slavery. Evidence of DV is managed through techniques of the courtroom that are part of the slave's peculiar capacity to witness events but never testify to them in court in ways that would implicate the brutalities of the master class. Historically, slaves were witnesses to discord between white couples because they were usually the

matter over which couples were fighting. Black witnessing could not perform as legal testimony detailing upheaval in white domestic intimacies, to say nothing of the body politic as a whole. The enslaved could not offer court testimony unless both parties were slaves. The quiet and vestibular character with which slaves could witness, I argue, is an antecedent of contemporary forensic instruments in domestic disputes. The entire problematic wherein DV cases are the “bread and butter” of the court system while the majority of victims refuse to cooperate with the state and testify is linked to the ways in which enslaved people were entangled witnesses to white domestic arrangements and marital discord. This book is an attempt to tease out what happened to these complicated relationships between masters and slaves as they were mediated by new technologies of representation and, equally, to offer ideas toward a visual literacy of reading photographic evidence of DV.

Legal Spectatorship attempts to join writing on the image and visual culture more closely with constitutional law. The appearance and reappearance of the slave’s condition across multiple cultural domains is captured by legal theorist Sora Han, who argues that “the only way to think ourselves out of the dead end of both liberal and conservative legal development is to insist, as did DuBois, on the claim of the slave that is always there, even in the most unlikely places.”³ This intervention relocates questions about visual culture and slavery’s memory to the legal context and the “unlikely places” of courtroom architecture, forensic evidence, and oral testimony in domestic abuse cases. Specifically, *Legal Spectatorship* argues that we cannot understand the spectatorship of evidentiary photographs that document domestic abuse without referring to the archival void in which enslaved people testified about their experience of white households. The racialized lives of enslaved people provided evidence of the instability of white domestic arrangements, including at the levels of neighborhood, state, and national territory. The very nature of Black embodiment from which testimonial utterances issued from enslaved people disrupts the Constitution’s dominant understanding of the terms “domestic” and “violence.”

The epigraph that opens this chapter pinpoints an earlier domestic violence notation in Article IV, Section 4 of the US Constitution. Known as the “Domestic Violence Clause,” this moment of constitutional law outlines federal protections against invasion and other conflicts between states in the union. I draw attention to the visual appearance of the term as it is used in Article IV: “domestic Violence” (lowercase d, uppercase V). Before criminal court papers noted “dv,” “dV” was written on the paper of the Constitution. Though written in the Constitution “domestic Violence” does

not appear to refer to the violence between intimate partners. Rather, the clause is about the prevention of any state from imposing alternate forms of rule such as aristocracy, dictatorship, military rule, or monarchy. Latent in the clause is a question about whether or not states could deny rights based on race, gender, sexuality, and wealth. Following the interventions made in critical studies of race and law, I argue that the Constitution be read for its latencies such that the Framers are never understood as merely struggling over what type of government we can have, but psychically foreclosing the question of slavery and its role in the structure of white kinship systems in the United States specifically and the modern world more broadly. As Han, puts it: “Democratic political life governed by law is conditional to law’s language that in every instance of its written investment in its most prized values—interpretation, judgment, national history, reason, due process, individual autonomy, and so forth—uses words, phrases, images, and affects that are cathected signs of the unmemorializable events of slavery and black freedom struggle.”⁴ The instance of the philological convention of capitalizing proper nouns is used throughout *Legal Spectatorship* to reorient “domestic Violence” toward the expansive category of violent intimacy structuring white kinship that an uncritical reading of the clause obscures. I bring what appear to be two separate meanings of domestic violence into closer conceptual alignment. In this book the term refers to person-to-person intimacies between racialized individuals and groups that make households, live among each other in neighborhoods, and exchange between each other feelings, affects, fluids, and contracts. The visual appearance of the term written by the Framers signals a theory of media and visual culture in which Black freedom claims can emerge at the very moment when the Constitution guarantees what type of government we can have. The “dV” notation, I argue, is a mark of struggle between the Framers of the Constitution wherein the state and federal dichotomy must be read in opposition to the history of slavery and management of Black populations in the interest of white sovereignty.

RECONSTRUCTING DV IN TWO ACTS

At the end of the twentieth century, violence against women emerged as a prosecution area demanding its own court docket and administrative tools. Embedded within a larger project of law and order crime legislation, violence against women is managed through strategic programs shaping the organization of domestic space, communication protocols among citizens and the state, bureaucratic agencies, and men and women.⁵ Two acts of

government—one legislative, the other judicial—set the legal course for shifts in the criminal code, in particular the adjudication of violence against women and a revolution in courtroom communicative interaction. First, the 1994 authorization of the Violence Against Women Act (VAWA) intensified the investigation and management of domestic abuse. Introduced into congressional debate in 1990 by then-Senator Joseph Biden (D-DE), VAWA was part of the Violent Crime Control and Law Enforcement Act. Attached to this major law and order criminal justice reform bill, VAWA increased coordination between criminal justice agencies across state boundaries, funded research and prevention initiatives on the nature of DV as a criminal offense, and established communication protocols between medical and social services for victimized women and children. The act passed in 1994 with overwhelming bipartisan 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 for extant hotlines.⁶

Second, in 2004, *Crawford v. Washington* intervened in the portions of the Violent Crime Control and Law Enforcement legislation addressing violence against women.⁷ The Supreme Court decision in *Crawford* 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. Early domestic abuse cases presented an ideal circumstance in which such hearsay statements were 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, including time, cost, their relationship status, and their community status, among others. *Crawford* 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. As per the Supreme Court case, women (overwhelmingly) were legally ordered to testify in court against their (overwhelmingly) male batterers. When battered women refuse to participate in state proceedings against their accused batterers, they became exposed to criminal charges.⁸ Abused women thus became heavily subject to forms of state surveillance.

The *Crawford v. Washington* decision required domestic abuse claimants to present themselves in court to be confronted by their alleged abusers.

Crawford returns and inverts the right-to-confront doctrine, producing female abuse claimants in addition to the partner arrested under suspicion of assault. Before *Crawford*, prosecutors would pass and project photographic evidence without the courtroom presence of female claimants because they were frequently unavailable to testify. *Legal Spectatorship* examines this brief and radical window of prosecution when the photograph appeared in court without the live presence of female complainants. I add new meaning to the concepts of “overseeing” and “authenticated testimony” in the age of digital media projection.

Legal Spectatorship demonstrates how VAWA authorizes the rehearsal of colonial practices of surveillance, defined by David Lyon as the “focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction” by funding aggressive evidence-based prosecution measures.⁹ Evidence-based prosecution reforms written in VAWA and the *Crawford* decision fulfill colonial desires to order and control bodies in space while also establishing exceptional zones where sovereign power grows within what seems to be the absence of law, authority, and order in administrative processes. While the reforms routinized and professionalized police investigation techniques, including mandatory arrest and no-drop prosecution policies, they did so in ways that criminalize battered women and their families.

The Supreme Court’s decision in *Crawford*, occurring just over a decade after the 1994 VAWA authorization, increased the prosecution of DV and 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. In doing so, both *Crawford* and VAWA foster the conditions under which photographs of battered women are produced and circulated as crucial objects of police epistemology, or “professional vision,” without marking them as such in law. *Legal Spectatorship* describes the visual culture that results from the legislative and judicial mechanisms used to modernize the adjudication of DV in the United States and thereby expands the vocabulary that shapes traditional spectatorship discourse to include constitutional law and the arrangement of courtroom space.

With these two acts, American law must fall back on itself, which is to say, fall back on its founding narrative of enslavement, which Han and others argue, is never memorialized. The work of this book is to read the archive of slavery into the legal mechanisms of these respective legislative and judicial acts and the scientific inquiries and media forms they enact. The Violence Against Women Act and *Crawford* bring about forms of scientific inquiry,

forensic instruments such as documentary photographs, and experts who are tasked with producing and interpreting them in the courtroom milieu. The ratification of VAWA and the Supreme Court decision in *Crawford* are productive forms of media-making that interact with the performance of testimony. My emphasis in this project concerns the image of the battered woman that facilitates testimony and how this media form binds live courtroom presence to visual evidence of abuse in order to mediate legal fact-finding among courtroom audiences. Here *Legal Spectatorship* is inspired by the irony of Han's crucial discussion of colorblind fantasy through which American law operates and the inaugural moment VAWA and *Crawford* instantiate, when American law commits the courtroom audience to regard and evaluate colorful photographs of injury projected to them during testimony. To be clear, I am not being metaphorical. Fantasy is a real event generated through, of, and upon the real. Fantasy is no less situated in the real than photographs projected across the courtroom for public view are complex acts of physics.¹⁰ The enactment of courtroom fantasies of colorblindness entail the production and circulation of DV photography. These fantasies must be positioned within constitutional law, congressional legislation, and Supreme Court decisions—powerful discursive forms where this body of photography and its fantastical production would appear not to be.¹¹

NEW LEGAL PHOTOGRAPHIES

The Violence Against Women Act is the first legislation whose language codifies domestic abuse as a crime through federal action. Its language offers a program for the investigation and prosecution of DV in which photographic evidence becomes central. Two legal lacunae are instantiated by the law and give rise to two corresponding bodies of photography. The two photographies appear to challenge and undo each other, yet their ostensible undoing not only makes the visual culture of DV legible as a communication system, but also alters the qualia of testimonial oaths and corroboration previously mentioned. Let me describe the two lacunae and the emergence of the two bodies of photography.

LACUNA I: VAWA AND POLICE PROTOCOL

Since the introduction of VAWA during the 1990s, US DV trials have relied heavily on visual proof. Visual evidence is a crucial element of the claimant's spoken testimony and mediates the investigatory work of police and

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the rhetorical argumentation made by attorneys. Photographic evidence is a creative act of the police. Herein lies a legal lacuna of VAWA: though visual evidence organizes routines of communication in criminal assault cases, its acquisition, production, and circulation remain an unmarked and unofficial protocol of the police. Why *unofficial*?

It is within this lacuna in VAWA that police discover the best way to capture victims of abuse practice by internally recording their imaging techniques in police manuals that guide their own professional vision.¹² The lacuna extends to victims. Victims of domestic abuse are not legally obligated to be examined, photographed, or counseled by medical or law professionals. Though police regulate techniques of evidence collection, there are no laws regulating the production of photographic evidence of wounding. Protocols advise police how to photograph the body in pain, yet there is a dearth of information instructing the evaluation of these images inside or outside the courtroom. During the nineteenth century, when police invented photographic techniques for representing criminals, such images appeared both official and scientific. While contemporary police photography of DV victims appears official because it similarly traffics in the scientific with its detailed protocols for evidence collection using digital cameras and lighting practices, I argue protocols of police evidence collection are unofficial because they are discretionary practices; they do not follow any “law on the books.” Nonetheless, the absence of visual evidence of wounding would make for a highly irregular criminal case file. Without visual evidence, the speech of testifying witnesses, police, and attorneys would be unmoored, unable to orient testimonial declarations through protocols for relating to courtroom audiences. Visual evidence of abuse becomes a currency orienting the rhetoric of law professionals and speculative practices of courtroom spectators.¹³

LACUNA II: VAWA AND VICTIM’S SERVICES

The Violence Against Women Act funds the expansion of victims’ services hotlines. In doing so, the legislation lays the marketing infrastructure for communicating VAWA policy initiatives to battered women. Thus, a second lacuna resides in how the letter of law authorizes funding streams that result in critical media practices that never appear in law’s writing. For example, in telephone service marketing, visual representation of the product remains the gold standard of communication. Crisis hotlines frequently produce promotional materials that employ white female models wearing cosmetically

simulated wounds on their faces and bodies. Early DV imagery thus encodes a particular “look” of racial and gender masquerade. Here, advertising campaign imagery offers not a copy of the kinds of visual evidence that circulates in court trials but rather an imitation. The Violence Against Women Act neither anticipates nor regulates the kinds of communication media it inscribes into law. Instead, extralegal deployments of visual evidence of DV regulate how we see and evaluate this inherently theatrical imagery, thereby creating a circuit among law, material culture, and the courtroom stage.

My focus on the ways enslaved people were entangled in white kinship arrangements is in part a rejoinder against the ways that white women in the context of “the couple” are figured as the primary victims of DV.¹⁴ While efforts have been made to demonstrate that this kind of violence knows no boundaries of race, (sex)uality, gender, or wealth, white women are frequently used as models of victimhood in anti-DV communications.¹⁵ Further, as Black insurgent movements such as Black Lives Matter have addressed the relationship between police violence and white domestic terrorism that founded the nation, the movement has struggled from within to recognize (1) the frequency with which police violence targets Black women and (2) the fact that most Black women are killed by Black male partners.¹⁶ It would seem, following Shatema Threadcraft’s analysis of Black women’s bodies in politics, that political life in the United States is staged through the fantastical and systematic unrepresentability of violence against Black women.¹⁷ Representing DV remains attached to colorblind fantasy in political life, one that is made manifest in conceptions of domestic abuse victims that use white standards of femininity and vulnerability. This occurs even as cultural studies has begun to extend concepts of representation beyond the visual. Here, law, media, and communications continue to work through what Han calls “colorblind fantasy,” a “psychic foreclosure imposed on the legal text” and, as I hope to demonstrate, art and science communication as well.¹⁸ The attachment to figuring domestic abuse victims through white femininity structures all aspects of domestic abuse prosecution: the scene of police evidence collection, the scene of courtroom testimony, the public sphere where abuse support services are communicated, and social science research on the dynamics of abuse. Here, what is foreclosed through colorblind fantasy is the history of slavery, the attention to which would infuse the above-mentioned spaces and scenes with quite different logics of redress and reparation. My project in this book is to explain this turn of events by focusing more closely on the development and circulation of this body of photography.

STRATEGIES OF THE FLESH

In order to say something about the historical social conditions of Black life in the diaspora, Hortense Spillers turns to flesh for the way its mutilation imposes race upon the body of the victim and perpetrator. Spillers's "hieroglyphics of the flesh," a four-word phrase, contains within it a suggestive theory of enslavement that I use to examine the relationship between photographs, skin, and flesh. Likewise, I rely upon Frantz Fanon's concept of epidermalization, usually described as the psychological internalization of the process of colonialization. According to poet and critic David Marriott, "Epidermalization [transfers inferiority] *inside* the body *qua* introjection and imposition" (85).¹⁹ *Legal Spectatorship* studies epidermalization as a projection of photographic forms to witnesses. The analysis adds specificity to how epidermalization operates through spatialized rituals of human movement involving photographs. From time to time I refer to ritualized acts of movement as "strategies of the flesh." My choice in phrasing is an attempt at two things: (1) to further divest the notion of the moving image from its claim to objectivity and (2) to further invest the moving image within a process of epidermalization that includes Spillers's flesh-body distinction as a mediating factor. Spillers famously hyphenates "flesh-body" to describe how the slave is made through ritualized acts of violence, where violence creates something in excess of flesh and body. I read the hyphenation as a way to understand how violence installs pliability in the slave, which makes her reproductive labor fungible. Yet, the hyphenation also inspires a reading of the photographic image as part of the excess of flesh and body. The examples discussed in *Legal Spectatorship* demonstrate how the courtroom space comes to hyphenate something like "photography-skin." The DV courtroom is a space where the boundary between skin and photograph is made pliable; this, too, is part of slavery's afterlife. The process of courtroom projection of photography-skin is thus an instance of epidermalization. The evaluation regime of visual evidence of DV is "part of the process of *epidermal* or *sociogenic* memorization by which the colony repeats the traumatic after-the-eventness-of-colonization."²⁰

This book's reading of the courtroom image is indebted to Fanon's and Spillers's respective theories of the flesh and body. I make a critique of the ahistorical character of legal positivism using their work. The flesh is an analytic that this book deploys and that is in excess of law and its claims to truth. Epidermalization and the flesh-body distinction are layered genealogical concepts that defamiliarize the Foucauldian approach to the body.

The victim of DV, as written in constitutional law and presented in the DV courtroom, must be approached as an epidermalized incarnation.²¹

There is an iconic relationship between Blackness and pain that Nicole Fleetwood argues plays a role in Black liberation. In her study of racial iconicity Fleetwood introduces the Black icon, a public figure whose visual depiction and circulation in visual culture “make us want to *do* something.”²² Black icons are part of a process of “cultural fixation” through which value accrues to the individual’s public persona because it is used in the negotiation of meaning of “nation, representation, and race in the context of the history of US slavery and the present of enduring racial inequality.”²³ The images discussed in *Legal Spectatorship* are equally entwined in the struggle over what the United States tells itself about itself on matters of race. However, the images I discuss and the conditions of their viewing suggest a different, but no less engaged, way to think about the icon and iconicity from those examined by Fleetwood. Her concept of the racial icon is a crucial intervention for the current study precisely because her examples intend to express the Black individual’s personhood and personality in a way that photographic evidence of domestic abuse victims does not.

The images I examine are either taken by police or staged by artists and media activists. The photographs are not taken for the purpose of recognizing the cultural significance of a particular Black individual’s identity, deeds, misfortunes, or accomplishments relative to national racial politics. The intent behind the images is not Black liberation. They are not produced to contribute to centuries-long efforts toward Black freedom. When compared with Fleetwood’s analysis of the political work performed by the Black icon, photographic evidence of DV depicts an altogether different one—victims who are overwhelmingly white. The racial icon of DV photography is a white woman. *Legal Spectatorship* investigates how this came to be by theorizing the visual culture of DV through the colorblind psychic foreclosure of constitutional law.

Along these lines Courtney Baker homes in on specific encounters where the gaze is brought to bear on photographs documenting Black pain and suffering experienced as a direct outcome from the history of enslavement. Baker points out a difference in sensorial experience when pain and Blackness collide. On the one hand, pain is “resolutely private,” “locked in tight within the borders of the individual’s fleshly body.”²⁴ On the other hand, “blackness and racial difference” together suggest a being who does not feel pain as “normal” humans do.²⁵ The accumulation and fungibility of slaves are integral to contemporary narratives in which Black people are denied

the capacity to feel pain. Examples of ignored Black pain and suffering may be found in circumstances ranging from hospital narratives where Black women's communication about their physical pain during childbirth are ignored or disavowed by medical professionals to street interactions with police in which the response to requests for air and space is the increased evacuation of air and contraction of space. Baker's examination of the photographic encounter with Black pain and suffering guides my analyses of the DV courtroom scene in which audiences apprehend the look of abuse and are obligated to use spectatorship of visual evidence to decide matters of law.

Encounters with photographic evidence entail performances of citizenship that are made possible through the interlocking First and Sixth Amendments that guarantee free assembly and court trial by one's peers. The arguments set forth in this project also suggest the public encounter with DV photography calls up the moment "domestic Violence" (lower case *d*, capital *V*) is inscribed in the Constitution to guarantee a republican form of government. The 1787 Domestic Violence Clause guarantees a republican form of rule in which the significance of race, gender, class, and sexuality is latent. *Legal Spectatorship* reads the encounter with photographic evidence of DV and its historical development in the United States in such a way that the analysis of race, gender, and sexuality is not latent but manifest. I make such an argument in order to bind the Constitution to the everyday practices of staying with the trouble of DV, which ostensibly refers to both the violence between intimate partners and the violence of internal insurrection or foreign invasion. Citizens engaged in the courtroom audience assume part of the burden of guaranteeing a republican federal government through their courtroom looking practices. To regard images of pain and suffering is to bear witness to domestic violence in both of its meanings.

Kimberly Juanita Brown reads the appearance of Black women in contemporary art installation, documentary photography, book cover art imagery, and ceramic material culture as a way of performing an "attune[ment] to the visual properties of slavery's memory."²⁶ She draws attention to how slavery's rituals, rites, mores, and ways of living keep coming back in contemporary visual culture. Like Han's argument in the field of critical studies of law, Brown's work points to the phantasmic ways slavery returns through visual culture as a "repeating body." Slavery has an afterlife that haunts the practice of making images and material culture, including the scenes and settings of their display. Brown also offers careful and sustained readings of Black visual art work, evoking Selwyn Cudjoe's consideration of "literary resistance" in Caribbean literature as a way of conceptualizing Black visual

artists' use of reference and citation to create resistant images.²⁷ The link made between literary and visual resistance is one I also employ to consider domestic abuse photography that is created outside the confines of police customs and protocols. Following Brown's titular claim that slavery's visual resonance in the contemporary is a function of the Black body repeating, *Legal Spectatorship* explores the extralegal encounter with domestic abuse imagery as a space where such iconography may take flight as visual resistance.

The activity of witnessing by enslaved people and their descendants is historically discredited or altogether left out of discourse about the domestic sphere and violence. Given the historical disavowal of Black claims to truth and freedom, another reading of the debates that plagued photography in law soon after its inception emerges. In law, photographic evidence operates as a "silent witness." This evidence owes this status to an ongoing struggle between institutions of science and law about the capacity of evidentiary forms to speak for themselves, unmediated by expert verifying witnesses. For example, Sameena Mulla's analysis of the activities of forensic nurses who administer sexual assault forensic exams to rape victims is situated within the legal-scientific problematic of silent witness.²⁸ Her explication of the simultaneous enactment of care and violence in forensic nursing in the sexual assault investigation context guides *Legal Spectatorship* in its pursuit of one of many possible origin stories of forensic tools used to help victims of abuse. I situate the experiences of enslaved people in the conceptualization of forensic tools that are silent witnesses. Doing so requires reading enslaved people into DV, forensic photography, and courtroom activity—contemporary places and situations where they ostensibly appear not to be.

HISTORIES OF SLAVES AS WITNESSES

According to Karine Schaefer, "A witness is a spectator whose morality or system of judgment has been pricked by a performance."²⁹ The distinction between spectator and witness is crucial for theorizing the visual culture of DV and the position of the slave within it. *Legal Spectatorship* situates the distinction between the two terms, "domestic" and "violence," in the history of slavery. Specifically, histories of Southern slave-owning households offer valuable details of the role of enslaved Black people as witnesses to white kinship structures in which they were held captive. Loren Schweninger's *Families in Crisis in the Old South: Divorce, Slavery and the Law* examines how slaves were entangled in white marital discord. From courtship to marriage contract to daily life in the home, the health of white marital relations and

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the tone of the household were balanced on the backs of enslaved people.³⁰ Moments of marital discord in white households were particularly violent times for slaves. Anger toward a spouse was often displaced onto them. Masters and mistresses would use slaves to mediate communication between each other, frequently with violent results for the slave. Enslaved people were deeply entangled in separation and divorce proceedings of white married couples. In slave-owning families the consequences of divorce between master and mistress could be the same as the death of one or both of the owners—namely, financial trouble and owner capriciousness. Splitting up white households and assets could necessitate selling slaves to raise liquid funds. Slaves could be sold or otherwise distributed among heirs, resulting in a catastrophic rupture of the precarious bonds between family members enslaved together. As Schweninger notes, the very “prelude to divorce could be even worse for slaves who found themselves caught in the middle of a disagreement and forced to choose sides.”³¹ The divorce petition testimony suggests that “slaves suffered more often from the consequences of being caught in the middle than they did from punishment inflicted because they disobeyed orders, slacked off their work,” or from otherwise being troublesome.³² I quote this part of Schweninger’s history to highlight the ways that white people used slaves to displace and thereby resolve their own frustrations with each other.

As they bore witness to every aspect of marriage between white masters and mistresses, slaves were peculiar informants whose testimony about “what they saw and heard,” though accumulated in legal records, was fungible. In court documents enslaved witnesses to white marital trouble often appear anonymously. Court papers refer to slaves as “negroe girl,” “negroe woman,” “Negroe wench,” “Negro boy,” “house servant,” “Negro fellow,” “negro paramour,” “negro mistress,” “grown negroes,” “young negroes.”³³ The appellations suggest the slave’s deeply vexed capacity to appear and perform as a witness made known to the court. When white people interacted with slaves, many did so through surveillance and spectatorship and the absence of moral and ethical judgment these terms entail. In court divorce documents the testimonial utterances of enslaved witnesses emerged not from slaves themselves but indirectly through owners, white plantation employees, or neighbors who spoke on their “behalf.”

As they are mentioned in court documents, slaves appear simultaneously anonymous and identifiable as playing particular roles in household relations. Though the generic terms sound innocuous, they would carry within them catastrophic feelings of dread. In the midst of white domestic discord,

enslaved people were forced into a diabolical arithmetic. How should they manage their responses to anyone regarding “what they know,” given that the wrong answer would surely result in violence that could not be calculated with any exactitude? Enslaved children were also forced to reckon with calculating possible violence as they were frequently used as go-betweens in the master’s family exchanges, and with punishing results. Spillers’s oft-cited phrase “hieroglyphics of the flesh” names the semiotic system of violence that makes the slave and fundamentally calls attention to how white domestic arrangements and flows become structured around the captured body. The vague mentioning of enslaved people in white couple’s divorce documents can be read as a stylized way of incorporating their entanglement in domestic disputes. The incomprehensible mutilation Spillers designates as “hieroglyph” is also referenced in the accounting of “negroe girl,” “negroe woman,” “Negroe wench,” “Negro boy,” “Negro fellow.”

The slave’s anonymous mention in divorce documents is a site of Black accumulation and fungibility as well as a sign system of violent touch and other forms of punishment. Saidiya Hartman’s emphasis on the structures of performance on the slave plantation confirms how the slave’s capacity for communicative expression was not open to clear legibility. Even the appearance of pleasure and joy in the slave’s daily life are manifestations of white sovereign power, the threat of the master and mistress’s violence structure the appearance of affect. The capacity of the enslaved to perform witnessing poses a cognitive challenge that *Legal Spectatorship* examines through the use of photographic evidence in the contemporary visual culture of DV.

In *They Were Her Property: White Women as Slave Owners in the American South* Stephanie Jones-Rogers examines the archival evidence of the central role Black men and women occupied in the negotiation of white marriage. Slaves were written into white women’s marriage contracts, often by their fathers, in order to ensure that white women had a perpetual source of income-producing property. White women’s ownership and command over their own slaves protected them from the profligacy of their spouses, who often participated in a variety of unstable economic schemes, including slavery. Jones-Rogers elaborates on the pedagogical roles of print and material culture in training white mistresses how best to handle their slaves. Children from slave-owning families learned that any household or field object could be wielded upon the bodies of slaves. Knitting needles, shovels, dishes, rope, shoes, rakes, knives, dowels, and furniture could become projectile objects to be hurled, driven, or struck, and paddles could be deployed against slaves until maiming or death. Beyond everyday material objects, a variety of print

media forms contributed to a science of discipling and punishing slaves with calm and controlled measure. These media forms were more than caricatures of Black people common to graphic prints that lampooned abolition as slavery increased in debate. Advertisements selling enslaved wet nurses, for example, can be read for clues about how white families might displace the effects of dV onto the enslaved women forced to nurse their children. Also common were agriculture and planters' magazines that advised Southern farmers how to cultivate their fields. An important component of these communications included suggestions for how to handle slaves.

THE CYBERNETIC SCIENCE OF SLAVE MANAGEMENT

As spectators of enslaved people, white men and women practiced a science at the center of which was the slave's flesh. The decision to beat a slave was both systematic and capricious. The overuse of force could waste a form of living property that would be detrimental to income streams. For this reason, the slave was an object of management. But, so too was the owner. In managing slaves, the slave owner—the sovereign—also had to manage the self. Slaves were learning tools for white family members, women in particular, who quickly found out that violence directed toward them from their husbands mimicked the techniques of violence reserved for slaves. As Jones-Rogers makes clear, white women's "status as slave owners granted them access to a community that was predicated upon the ownership of human beings and afforded them rights they did not possess in other realms of their lives."³⁴ A line of thought in *Legal Spectatorship* is that for many white women, learning how to handle the people they legally owned through techniques of violence could have been a practice of personal sovereignty that protected them from what in current epidemiological parlance is known as "abuse risk factors."³⁵

The Black radical tradition has made important clarifications to Marxist analyses of production by complicating the experience of the worker and her experience of alienation with the concepts of accumulation and fungibility that are central to the slave's experience.³⁶ In a slave economy agricultural production involves acts of brutal and repetitive violence to integrated systems of the slave's body: nervous, respiratory, reproductive, muscular, integumentary, endocrine, and skeletal. The violence of slave owners affected all of these systems. In this sense slave owners and white people as a class discovered their body politic in the degradation of the slave's flesh. At a

more personal level white owners discovered aspects of the self by finding their way into and around enslaved people.

Jones-Rogers demonstrates how and where white slave owners reflected on such matters in print media, including youth-directed weeklies such as *The Southern Rose/Rose Bud* and agricultural journals.³⁷ The advice in these publications was preoccupied with the planter's ability to control his passions before and during the administration of discipline. Punishment decreased a slave's value. As Jones-Rogers illustrates, agricultural journals recommended "never inflict[ing] punishment on slaves in anger" and "allow[ing] 24 hours to elapse between the discovery of the offence and the punishment."³⁸ State legislatures were also involved in managing slaves and owners, imposing fines upon owners for *not* punishing a slave's offensive conduct. While brutality would be seen as a deterrent to slaves hoping to escape, "punishments also served to compel slave owners to comply with state law."³⁹

It is worth noting that in Jones-Rogers's history of slave ownership the object of complaint among non-owning overseers, public officials, and patrollers was *not about wages, but the more provocative question "Who is in charge?"* "Who is in charge?" is a question of the sovereign's ego, and this book shows its projection into behavioral science, psychology, and cybernetics. These scientific fields share a research question about the nature of power, control, and motivation held and exchanged between peoples and machines at the core of the study of sovereignty and its pertinence to DV support services and prosecution. The management of slaves in American law and culture informed social, behavioral, and cybernetic science. Slave owners and state legislatures were thinking in terms of cycles of power, control, and the use of force in ways that would later inform theories of domestic abuse and prosecution strategies.

Cybernetics and the histories by Schweninger and Jones-Rogers are a crucial backdrop for the claims *Legal Spectatorship* makes about how enslaved people functioned as forensic technologies that document and authenticate DV. As witnesses, slaves were the recorders of domestic abuse incidents; their vestibular position within white kinship endowed them with a kind of distance enabled by "objective" technologies of vision while disavowing any claims their witnessing could support. By tracing the production of the DV photograph to the vestibular positioning of enslaved people in white households and surrounding environs, I demonstrate that the slave embodied a form of silent witnessing that characterizes contemporary forensic evidence. Long before the invention of photography, enslaved people

witnessed the regular and ritualized events that sustained white kinship systems, systems that include the machinations of law. Enslaved people were expert witnesses of the rhythms and patterns of DV. The obscured and negligible status of their testimony at the time of its creation haunts the contemporary operation of forensic photography in DV cases. *Legal Spectatorship* makes the case that the visual culture in which forensic evidence circulates is rooted in the lives of enslaved Black people ensnared in the broadest conception of white domestic conflicts.

OUTLINE OF THE BOOK

The image of Harriet Jacobs's loophole of retreat and the *carte de visite* of the slave Gordon, known as "The Scourged Back," are frequently discussed in Black studies, literature, and visual culture studies. Chapter 1 returns to these important images, one literary and the other photographic, to explore how their contemporary treatment by scholars and artists criticizes the humanitarian aesthetics of white abolitionism even as they try to authenticate the images. In contrast to these art and historical treatments, I examine how Jacobs's memoir and "The Scourged Back" spatialize the fugitive freedom of the escaped slave. By "spatialize," I mean how both images organize the psycho-physical spaces where the testimony of former slaves is seen through new media forms. Adding to the critique of white sentimentalism framing abolitionist media, I further speculate that sulking and vestibular imbalance characterize the psycho-physical condition of the slave. This reorients the discourse of sulking away from the discourse of child psychology to the history of US slavery while also counter-narrating the sentimental and upright-ness with the sulks and vertigo.⁴⁰

Jacobs's slave narrative and other examples of abolitionist media circulated in a changing media-scape, one in which concepts of authority, authorship, and authenticity were in peculiar tension with ideals of proof and evidence previously set forth by the camera obscura. I introduce a reading of Jacobs's and Gordon's famous images in relation to Article IV, Section 4 of the US Constitution (the Domestic Violence and Republican Guarantee Clauses). This first chapter brings constitutional law and theories of affect and motivation to bear on the visual culture of abolitionist media in order to extricate a model of DV photography that is the subject of this book.

Legal Spectatorship's frequent transitions between narrative and visual technology allow "something on the other side of either the freedom to perform or not to perform (or even to be or not to be), which might open

up the possibility of another kind of examination of the metaphysics of ‘behavior’ and ‘decision,’” in critic and poet Fred Moten’s phrasing.⁴¹ As part of the legal, technical, scientific, and textual apparatus of DV, Blackness operates as a technological witness while also subverting what we mean by the term “domestic violence.” Thus, chapter 1 moves fluidly between literary and visual technologies, between slave narrative and photographic evidence. The transitions are informed not only by the ways slave narratives of the big house and the swamp as sites of liberation and capture drew upon the *sensory images* constitutive of the genre of Victorian gothic literature—with its decaying mansions, wild and threatening forests, and moors—but also the metaphysical disturbance posed by Blackness itself. This book moves between narrative and photography and, gestures toward the digital because, I argue, they are metaphysically intertwined.

The first chapter develops three strands of inquiry that organize the remainder of the book: (1) reading constitutional law into abolitionist media, (2) reading affect and feeling in the former slave’s experience of brutality, and (3) examining conventions for authenticating evidence of DV. The second and third chapters continue the arguments made in the first, with different emphases on the space of DV testimony and the tools and choreography through which courtroom testimony is brought forward. For this reason, readers may want to first delve into the third chapter and then the second. If you are immediately gripped by how Jacobs’s loophole of retreat informs the experience of the contemporary witness stand in the DV courtroom, you might skip to chapter 3. Should you first be intrigued by how the reproduction of Gordon’s slave daguerreotype in abolitionist media informs the circular, microcosmic design of visual tools used to explain DV and condition the photographs circulated therein, continue with chapter 2.

The second chapter follows the migration of “the sulks” into the psychology laboratory. I read the slave and her descendants as social identities that animate the experimental designs of psychologists Martin Seligman, Sylvan Tomkins, and Lenore Walker. From the 1960s through the 1980s these social scientists studied human affect and motivation in a political context that spanned civil rights and the Cold War. Control, helplessness, and power were at the center of these scientific studies, and I show how the lives of Black people were integral to the theoretical development of the experiments. Black subjectivity, even when excluded from experimentation, is at the core of research on the psychology of battered women’s syndrome (in Walker), the object of affective distress (in Tomkins), and learned helplessness (in Seligman). What unites these feelings is the condition of being

unfree to leave yet unfree to remain in a place of violence. Black feminist and Afro-pessimist (the two are not mutually exclusive, obviously) critiques of the human are germane here because they shift how we read scientific research on human behavior and motivation. So too is the civil rights context upon how we read the experimental designs of Seligman, Tomkins, and Walker. The reading practice of this chapter opens scientific research and experimentation to the political and social purposes of an abolitionist science, even as the researchers examined failed to cite Black authors writing from within or outside other disciplines in the context of the Second Reconstruction.

Readers might question why I read the experiments of Seligman, Tomkins, and Walker—white social scientists—when there is pertinent scholarship from Black social scientists and legal scholars ranging from the 1860s through the 1980s.⁴² I do so because it is precisely through white incorporation and erasure of Black experience in social science theories of power, control, and motivation that DV begins to acquire its legal life centered on the intimate couple in the DV courtroom. A feature of this chapter is its contribution to the genealogy of cybernetics and infrastructure. Both topics concern the control and background architecture of media and communication systems and need to pass through the slave narrative to realize their more ardent claims about the spatialization of technology.

I position battered woman syndrome (BWS) within Cold War cybernetics research on the experimentation, theorization, and visualization of control in abusive relationships in the 1970s and 1980s. Martin Seligman and Sylvan Tomkins are two psychologists whose influential experiments inspired Walker, including the Cycle and the Wheel visual aid tools, whose BWS theory they embody. Unlike Walker, who developed her understanding of BWS to offer a feminist analysis of women's experiences in abusive relationships, Seligman and Tomkins were inspired by the tumultuous context of US civil rights struggles, specifically the freedom struggles of Black people. By attending to the experiments and curricular objects developed by Seligman, Tomkins, and Walker, I demonstrate that battered women's subjectivity and their advocacy needs emerged from cybernetics research that based its experimental procedure, instruments, and scientific rhetoric in the experiences of Black folks in the United States. The itinerary of legal and scientific knowledge production of battered women merged Cold War cybernetics research and civil rights claims in which the problem of Black freedom is central to, yet obscured from, the study of how women gradually lose freedom through particular forms of violent interaction.⁴³ In this chapter, the struggles of Black folks are revealed to have inspired experiments

that helped constitute DV as violence between romantic couples through cybernetic theories of control. Blackness as an abject social position is vestibular to the development of BWS, and the Cycle and the Wheel are necessary propaedeutics to conceptualizing the work of power and control in domestic abuse relationships. I reveal how both Walker and the Black subject recede into the background of contemporary cybernetics research.

Chapter 3 moves into the DV criminal courtroom to explore the production and circulation of visual evidence of DV. Here I consider courtroom movement outside the dominant example of video-recording and focus instead on the projection of the still image. Since the Rodney King police brutality trials, the visual culture of the courtroom has focused heavily on the rhetorical use of video evidence. This continues to be the case in the context of nationwide adoption of dashboard cameras by law enforcement. The use of video to surveil the police is a criminal justice reform that has yet to result in meaningful change to the structure of police power.⁴⁴ Policing involves the creation and control of communicative interactions in which civilians are exposed to death, rape, and maiming. Moving images capturing nefarious police activities actually strengthen the law's ability to read and sustain police deadly use of force. The third chapter moves away from this recent line of research to return to the historical creation of still image photography by police and its projection of criminality as power-knowledge. The chapter deconstructs the architecture and formal routines of evidence display. I draw on Sianne Ngai's theory of the "ugly feelings" and its link to spatial projection to understand the moment of testimony, when witnesses authenticate visual evidence of their injuries sustained during DV.⁴⁵ This chapter demonstrates how the state controls strategies of the flesh through the authentication of visual evidence in DV cases. I present ethnographic observations of the failure of images of wounding that are thrown into courtroom space. A key intervention of the chapter is the inclusion of victims of DV into the strategies of population management that sociologist Issa Kohler Hausmann calls "misdemeanorland."⁴⁶ The chapter describes an exemplary DV trial that confirms that victims of misdemeanor-level DV are subject to increased state management schemes as are misdemeanor offenders.

The failures of testimony described in chapter 3 give way to anti-DV activism, examined in chapter 4. Advocates and activists employ numerous strategies in the fight against DV. The fourth chapter performs a reading of a tactical media example in which DV injuries are simulated using cosmetics. "Legal camp" is a strategy of the flesh introduced to explain how the cosmetic simulation of DV wounds establishes a visual literacy for reading courtroom

images of battered women. The interaction between skin-photography, color cosmetics, and the physics of the camera help establish a limit in which white and Black skin are naturalized as the possibility and impossibility of vision, respectively.

I argue that legal camp imports the signifying practices of queer camp into the state-corporate space. I compare media deploying legal camp against media examples that center the DV escape narratives of queer women of color. Comparatively, DV media featuring queer women of color may appear dry and informational, yet they offer stronger critiques of the criminal justice system that subjects them to racism and heteropatriarchy than do examples of legal camp. As a strategy of the flesh, legal camp encompasses earlier theorizations of how colonial violence is internalized in the subject—epidermalization and the hieroglyphics of the flesh. The concept internalizes the look of violence between intimate partners at the same time that it aligns the state's desire for visual proof with battered women's psychology. Ultimately, legal camp operates in legal and extralegal settings to establish a baseline for interpreting visual evidence of DV, something queer of color media-makers resist.

Legal Spectatorship concludes with a discussion of the book's claims and strategies. I then briefly explore the future of testimonial performance in the context of digital applications and algorithmic cultures. In media studies of the long nineteenth century the proliferation of communication technologies and systems is a major thematic. *Legal Spectatorship* reorients the development of new media toward the managed emancipation of Black people. While I find antiblackness in the techno-physical affordances of photography, I am more interested in showing how the transition out of slavery informs one of the largest but also most confounding areas of criminal court processing and social organizing: DV cases. Black feminist concerns with representation identify several controlling images that stereotype and dishonor Black women's character. These images rob Black people of membership in the citizenry while naturalizing the failure to belong as the result of dangerous character flaws rather than the outcome of structural violence associated with antiblackness. In this context I position a new controlling image, visual evidence of DV, as one effect of law and media that conditions the contemporary experience of witnessing and claims to vulnerability. These images, whose origins are also linked to governance feminism's hard-won but nonetheless thorny deployments of state power, encompass the visual and textual culture of slavery's repeating bodies.⁴⁷ *Legal Spectatorship* amends governance feminism by focusing on embodiment, the epidermalized incarnation of the slave's repetition across time-space and media forms.

Ultimately, this book is a study of the many ways a person might see and read, and be seen and read, in the courtroom space, a space whose activities are historical and always in dialogue with those outside courthouse architecture. It is a book that scrutinizes scrutiny through the case example of DV prosecution, its evidentiary material, and its role in the unfinished project of abolition.

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NOTES

Introduction

- 1 See Corrigan, *Up against a Wall*; Andrus, *Entextualizing Domestic Violence*; Trinch, *Latinas' Narratives of Domestic Abuse: Discrepant Versions of Violence*; Lemon and Perry, "Admissability of Hearsay Evidence."
- 2 See Crenshaw, "Mapping the Margins"; Davis, *Violence against Women*; Roberts, "Criminal Justice and Black Families."
- 3 Han, *Letters of the Law*, 23–24.
- 4 Han, *Letters of the Law*, 17.
- 5 As Carrie Rentschler explains, "*Law and order* signifies a political ideology vis-à-vis crime that focuses on crime control and the containments and warehousing of those deemed criminal" (emphasis in original). See *Second Wounds*, 33.
- 6 Testimony at VAWA congressional hearings implicated police and court practices in the escalation of dangers facing women who sought legal action from violent partners. This exposed many instances of orders of protection—court documents that safeguard individual(s) from harassment by another by controlling the amount of personal contact and space that must exist between parties—that had gone un-honored once women crossed state lines, as well as many stories about the police's routine lack of response to domestic incidence calls and their frequent ineffectiveness when they did respond to emergency calls. The Violence Against Women Act measures removed police discretion, a significant source of power, from the process of investigation in domestic violence cases: it instituted

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a “no-drop” policy that requires police to pursue charges, provided there is evidence of probable cause, with or without the victim’s consent, and it also introduced “mandatory arrest,” stipulating 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 calls a “regime of domestic violence governmentality” embedded within law and order criminal reform (“Spatial Governmentality and the New Urban Social Order,” 16). See also Merry, “Governmentality and Gender Violence in Hawai’i.”

7 *Crawford v. Washington* 541 US 36 (2004).

8 *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 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 not witness the attack but upon further questioning claimed that she did in fact see the struggle and that 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 that 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 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 secured 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 US Supreme Court ultimately agreeing to hear the case in 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.” *Crawford v. Washington* 541 US 36 (2004). 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.

- 9 Lyon, *Surveillance Studies*, 14.
- 10 On this point I follow Han's citation of the work of Vicky Labeau and her reading of Frantz Fanon, where he specifies how he understands fantasy's relationship with Lacanian notions of "the real." Labeau, "Psycho-Politics."
- 11 Simone Browne's emphasis on the convergence between surveillance and anti-black racism is helpful for linking the forms of witnessing of enslaved people to contemporary forensic technologies. See Browne, *Dark Matters*.
- 12 See Moore, "Held in the Light."
- 13 Here I am inspired by the work of Bruno Latour and actor network theory. See Latour, *The Making of Law*.
- 14 See Brownmiller, *Against Our Will*.
- 15 See Sokoloff and Dupont, "Domestic Violence at the Intersections of Race, Class, and Gender."
- 16 See Crenshaw, *Say Her Name*. See also Threadcraft, "North American Necropolitics and Gender."
- 17 Threadcraft, *Intimate Justice*.
- 18 Han, *Letters of the Law*, 2.
- 19 Marriott, "Inventions of Existence," 313; emphasis in original.
- 20 Marriott, "Inventions of Existence," 298; emphasis in original.
- 21 I am grateful to Allen Feldman for his discussion on this point.
- 22 *On Racial Icons*, 4; emphasis in original.
- 23 Fleetwood, *On Racial Icons*, 1.
- 24 Courtney R. Baker, *Human Insight*, 7.
- 25 Baker, *Human Insight*, 7.
- 26 Brown, *The Repeating Body*, 8.
- 27 Following Cudjoe, Brown writes, "Caribbean literature boasts a history of art being connected to acts of structured rebellion" (*The Repeating Body*, 170). Both writers suggest any discussion of Black literature is impossible without a conception of (literary) resistance. See also Cudjoe, *Resistance and Caribbean Literature*.
- 28 The literature on forensic technologies and the racialized surveillance of women addresses a number of techno-cultural dilemmas facing victims of violence. See Das, "The Act of Witnessing"; Dubrofsky and Shoshana Magnet, *Feminist Surveillance Studies*; Corrigan, *Up against a Wall*; White and DuMont, "Visualizing Sexual Assault"; Campbell et al., "The Impact of Sexual Assault Nurse Examiner (SANE) Program Services on Law Enforcement Investigational Practices: A Mediation Analysis," *Criminal Justice and Behavior*.
- 29 Schaefer, "The Spectators as Witness?," 1, 5.
- 30 Other relevant histories of marriage dissolution during slavery include Basch, *Framing American Divorce* and *In the Eyes of the Law*; Manfred, *The Road to Reno*; Coryell et al., *Negotiating the Boundaries of Southern Womanhood*; Grossberg, *Governing the Hearth*; Hartog, "Marital Exits and Marital Expectations"; O'Hear, "Some of the Most Embarrassing Questions"; Stevenson, "Distress and Discord in Virginia Slave Families"; Daniels and Kennedy, *Over the Threshold*.

- 31 Schweninger, *Families in Crisis in the Old South*.
- 32 Schweninger, *Families in Crisis*, 99.
- 33 Schweninger, *Families in Crisis*, 100, 195n3.
- 34 Jones-Rogers, *They Were Her Property*, 61–62.
- 35 There is a point of speculative tension between Schweninger and Jones-Rogers. Their respective histories support two different profiles of white womanhood in the plantation South that are suggestive of the conditions of white women as a class. In Jones-Rogers's history slave-owning white women are empowered, capable of extreme, premeditated, and vicious violence against slaves—the kind of violence it is difficult to read and write about. Profligate white husbands are found desperately trying to gain access to their wives' income generated by slaves. Yet, a variety of legal documents including marriage contracts, pre- and postnuptial agreements, and wills create permanent enslaved income for white women that their husbands cannot appropriate. Jones-Rogers reports that despite how desperate husbands are to assume control of their wives' property, there was little to no physical force, no “domestic violence” between white couples disagreeing about money even though such disagreements were part of the pattern of their lives. Schweninger, for his part, presents copious analyses of marriage disputes, divorce documents, and other court papers between white slave-owning couples in which physical violence is mentioned as a dominant form of communication. Domestic violence was rampant in Southern slave-holding society. White men were physically disciplining their wives in ways indistinguishable from punishments traditionally meted out to slaves. White women in Schweninger's text appear without power but are increasingly motivated to divorce in the pre-Civil War years. The question that must be asked of both texts is, where, in Jones-Rogers, is the domestic violence one would expect given its frequency during the period; and, where, in Schweninger, is white women's violence against slaves, given its rampancy during the period?
- 36 See de Silva, “Toward a Black Feminist Poethics.”
- 37 See *Farmer and Planter*, *DeBow's Review* (New Orleans, LA, 1868–80); *Southern Agriculturalist* (Charleston, SC, 1841–46); *Southern Cultivator* (Augusta, GA, 1843–).
- 38 Jones-Rogers, *They Were Her Property*, 68.
- 39 Jones-Rogers, *They Were Her Property*, 63; emphasis added.
- 40 My work here is indebted to Sara Ahmed's phenomenological approach that draws on a politics of disorientation in *Queer Phenomenology*.
- 41 Moten, *Stolen Life*, 250.
- 42 In addition to the entire corpus of Dubois's scholarship, I am thinking here primarily of anthropologist and writer Zora Neale Hurston's coverage of the 1952 murder trial of Ruby McCollum. McCollum stood trial for killing Dr. C Leroy Adams, a white doctor and senator-elect who repeatedly raped McCollum and forced her to bear his child. The trial and treatment of McCollum by the judge and an all-white jury provide an important case study of Black women and clemency rights and the topic of Black women and “paramour rights.” Hurston

covered McCollum's trial in the *Pittsburgh Courier*. For work on Black life worlds by Black anthropologists, see Beale, "Double Jeopardy"; Bolles, "Anthropological Research Methods"; Gwaltney, *Drylongso*.

- 43 In this sense this chapter speculates on the intellectual successors of German philosopher Ernst Kapp's thinking on philosophy of technology and networks to demonstrate how ideas of freedom and the slave were made vestibular to Cold War era social science even as they continued to be central to concurrent civil rights-era politics. See Kapp, *Elements of a Philosophy of Technology*.
- 44 Allissa V. Richardson shows that while bystander recordings of Black death and dying have not done much to radically change US policing, the use of video has mobilized many Black Americans to use smartphone technology toward civil rights work and forms of protest. See Richardson, *Bearing Witness While Black: African Americans, Smartphones, and the New Protest #Journalism*.
- 45 The "ugly feelings," also known as minor affects, are negative affects (e.g., irritation, confusion, consternation) whose negative flow is characterized by the absence of noncathartic release. Ngai suggests political theory consider building politics around the underacknowledged significance of minor affects. See Ngai, *Ugly Feelings*.
- 46 See Kohler-Hausmann, *Misdemeanorland*.
- 47 For work on governance feminism, see Halley, *Split Decisions*. See also Halley et al., *Governance Feminism*.

Chapter One. Authenticating Domestic Violence

- 1 In *Reconstructing Womanhood*, Hazel Carby observes numerous acts of subversion of the cult of True Womanhood committed by the narrative arguments in *Incidents in the Life of a Slave Girl*. Jennifer Larson, who follows Carby's analysis of Jacobs's indictment of the cult of True Womanhood, further analyzes its key tenets: purity and submission. Focusing on the actions of white women in Jacobs's text, Larson demonstrates that "any actions by actual slave mistresses that may have been labeled as 'passive resistance' can be revised to 'active acceptance' for they had the power to reject the cult of True Womanhood's charge of submissiveness, and protect the purity of slave women, rather than continue to abuse it." Within the white married couple Black women occupied a vexed and vulnerable position. See Larson, "Converting Passive Womanhood to Active Sisterhood," 746. Yet, white women's understanding of the concept of victim of violence was oriented away from rather than in solidarity with Black female slaves, according to Barbara Omolade in *The Rising Song of African American Women*. But the garret has also been thought as a space of possibility where a modicum of happiness and relief could be discovered. In "Between the Rock and the Hard Place," Gloria T. Randle develops the psychoanalytic dimensions of Jacobs's estrangement from her own mother that is replicated in her estrangement from her own children and the role of her grandmother, her mother's twin, in mediating maternal absence and presence that nurtures

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