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Obtaining Justice for Victims of Strangulation in Domestic Violence: Evidence Based Prosecution and Strangulation-Specific Training

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Abstract

Strangulation accounts for 10-percent of violent deaths in the United States, with six female victims to every male victim. A common form of abuse in domestic violence, strangulation may result in many harmful health effects and it often indicates either an ongoing pattern of abuse or it foreshadows escalating violence. Yet, strangulation is often minimized by the criminal justice system, including law enforcement officials, emergency room medical personnel, and prosecutors, who equate strangulation with a slap on the face. The phenomenon of minimizing a violent and life-threatening act occurs for two reasons: first, and most importantly, victims of strangulation often do not present with visible injuries; and second, domestic violence cases in general are inherently difficult to prosecute. As this article advocates, in order to obtain justice for victims of strangulation in domestic violence, the criminal justice system must unite and work together in a system which combines strangulation-specific trained investigative skills with evidence-based prosecution.

Strangulation accounts for 10-percent of violent deaths in the United States, with six female victims to every male victim.¹ In the domestic violence context, strangulation is particularly a dangerous problem because the victim usually does not present with visible injuries. Therefore, despite the harmful health effects of strangulation and its indication of an ongoing pattern of abuse and a foreshadowing of escalating violence in the relationship, strangulation is minimized by the criminal justice system, often going un-arrested and un-prosecuted.

In general, there are many obstacles that prevent the successful arrest and prosecution of batterers in domestic violence cases. The two main hurdles are victim reluctance to participate in the criminal justice system, including victims recanting their initial statements, and three problematic Supreme Court cases regarding the Confrontation Clause and Forfeiture by Wrongdoing, which limit the admissibility of hearsay evidence and testimony. These two problems are amplified in the specific context of strangulation in domestic violence cases because, as previously mentioned, the victim often does not present with visible injuries. Consequently, the allegation of strangulation is frequently not acknowledged or investigated by either emergency room medical personnel or law enforcement officials. For all intents and purposes, there is no possibility of a successful case against the abuser who allegedly strangled his victim because evidence is not collected or documented.

This article discusses both the general obstacles to successfully prosecuting a domestic violence case as well as the specific difficulties when strangulation is involved. It suggests the use of evidence-based prosecution in combination with strangulation-specific training for law enforcement officials and, when feasible, emergency room medical personnel to overcome these difficulties. These measures will increase the likelihood of successful prosecution of strangulation in domestic violence cases and render batterers accountable for strangling their victims.

Strangulation: A Killer in Domestic Violence

Strangulation is one of the most dangerous forms of actual violence that occurs in the context of domestic violence cases.² There is usually an allegation that the abuser grabbed, squeezed or crushed the victim's throat with his hands or used a ligature.³ Although serious injuries may result from being strangled and strangulation is often an indication of an ongoing pattern of abuse or a foreshadowing of escalating violence, the victim often does not have visible injuries.⁴ Therefore, despite the frightening description of events, the victim does not receive medical attention, the act of strangulation is not included in police reports, strangulation is not charged by law enforcement as a crime and it is not prosecuted in court. In essence, strangulation, a lethal form of assault, is minimized or disregarded entirely, making it an even more life-threatening crime.

Strangulation is formally defined as "asphyxia" or "lack of oxygen caused by the closure of blood vessels and air passages in the neck resulting from external pressure."⁵ It is commonly and incorrectly referred to as "choking" which involves an "internal blocking of the windpipe by an object,"⁶ such as a piece of food or candy. The two forms of strangulation relevant in the context of domestic violence are ligature and manual strangulation. Ligature strangulation occurs when the strangler uses a "cord-like object,"⁷ which can include anything from a rope or cable to a scarf or a belt, to strangle the victim.⁸ In contrast, manual strangulation is done with the hands or, alternatively, with the forearm, in a position commonly known as the carotid restraint.⁹

Serious injuries, if not death, can result from strangulation within seconds. The "general clinical sequence of a victim who is being strangled is one of severe pain, followed by unconsciousness, followed by brain death."¹⁰ Even if the victim does not go through all three stages of the clinical sequence, there can be many harmful health effects at each stage. These negative effects may be physical and include dizziness, nausea, sore throat, voice changes, throat and neck injuries, breathing problems, or swallowing problems.¹¹ More critically, neurological effects from a lack of oxygen to the brain can occur in less than a minute, and include eyelid droop, facial droop, left or right side weakness, loss of sensation, loss of memory, or paralysis.¹² Finally, and quite commonly, a victim can suffer from negative psychological effects including Post-Traumatic Stress Disorder, depression, suicidal ideation, or insomnia.¹³

The act of strangulation also symbolizes an abuser's power and control over the victim.¹⁴ More importantly, the extremely violent nature of strangulation in domestic violence can serve as two important warnings. First, strangulation may indicate an ongoing pattern of abuse in the relationship.¹⁵ Reports have indicated that 40-percent of domestic violence victims described being strangled as part of abusive conduct at least once in their relationship.¹⁶ Second, it can foreshadow escalating violence within the already abusive relationship.¹⁷ Strangulation is typically one of the last abusive acts committed by a violent domestic violence partner before actual murder.¹⁸ When an abuser decides to put his hands around the victim's neck and squeeze, he has indicated intent to cause great physical harm, if not death.¹⁹

Strangulation is more lethal than other forms of violence because, unlike a punch or a kick, it frequently does not leave marks on the skin or any other visible indications.²⁰ As previously indicated, strangulation accounts for 10-percent of violent deaths each year and many of these victims “die without a single visible mark to the neck.”²¹ The San Diego Study, conducted by the San Diego City Attorney’s Office, reviewed 300 domestic violence cases involving attempted strangulation that were submitted for misdemeanor prosecution. The study showed that 50-percent of victims who had survived strangulation had no visible markings to the neck.²² Given the potential for serious injury, all allegations of strangulation should be taken seriously, investigated thoroughly and, if there is substantiation, the perpetrator should be arrested and prosecuted.²³ However, because there are often no visible injuries, strangulation is minimized and treated as a trivial incident, comparable to pushing or a slap on the face, where only redness may appear.²⁴ In actuality, strangulation is a much more serious and deadly crime.

Minimization is what makes strangulation one of the most dangerous forms of actual violence that occurs in domestic violence. Strangulation is minimized by both the victim and the criminal justice system including 911 dispatchers, emergency room medical personnel, law enforcement officials, prosecutors and judges.²⁵ After being strangled, a victim may experience painful symptoms, such as difficulty breathing or lightheadedness. Yet, the victim often fails to inform law enforcement officials of these symptoms or declines medical attention.²⁶ The victim’s attitude may cause a 911 dispatcher, a medical personnel employee, or a law enforcement official to underestimate allegations of strangulation. The lack of visible injuries only further underrates strangulation in the eyes of medical personnel and law enforcement officials. Consequently, many victims do not receive medical attention, strangulation does not appear in the police report and law enforcement officials do not document or collect evidence of strangulation.²⁷ If there is no evidence, a prosecutor cannot prosecute a batterer for strangulation and a judge is not provided with all important information regarding a domestic violence incident. Thereby, both allowing the pattern of minimizing strangulation to continue and allowing a strangler to go unpunished.

General Obstacles to Successfully Prosecuting a Domestic Violence Case

Domestic violence can be challenging to prosecute because it is a crime that occurs in the privacy of one’s home.²⁸ As a result, the only witnesses to the crime are often just the victim and the abuser.²⁹ Despite the typical he-said/she-said complexities, a live victim, who has the ability to testify against her abuser, is the most common barrier to successfully prosecuting a batterer. Although it seems illogical that a live victim who can testify is a hurdle, studies have indicated that 80 to 85-percent of battered women will deny their allegations against an abuser at some point after the domestic violence incident and refuse to testify in court against their abuser.³⁰ When a victim is reluctant to participate in the criminal justice system and recants her statements, a prosecutor faces the major obstacle of explaining to a judge or the jury why a victim is unavailable. It can be a very difficult task to convince a judge or the jury to accept that it is not a legal requirement for a victim to testify in court.³¹ Furthermore, a victim who is unavailable or is reluctant to testify as a witness also causes a judge or the jury to question the legitimacy of the initial domestic violence complaint.

As a substitute for victim testimony, prosecutors have been attempting to introduce hearsay evidence, in order to prosecute a batterer and explain the severity of the crime(s) committed.³² This evidence includes verbal statements given by the victim to the police upon arrival at the scene of a crime and written statements made by the victim in the form of affidavits or civil restraining orders.³³ However, these efforts have been thwarted by the Supreme Court in three specific cases dealing with the Confrontation Clause and Forfeiture by Wrongdoing. Although it can be assumed that the Supreme Court did not intend to hinder prosecution of domestic violence cases, the practical effect of the rulings

was to limit hearsay that may be admitted into evidence during trial.

Victim Reluctance to Participate in the Criminal Justice System

Although some women want their abusers arrested and prosecuted to the fullest extent of the law, many do not. Some victims will even take steps to obstruct prosecution.³⁴ Society typically does not understand why a victim would protect her abuser from the criminal justice system. Although the phenomenon is perplexing, it can be explained, to some extent, by the unique and cyclical nature of domestic violence. In the first stage of domestic violence, an abuser acquires control by manipulating his victim's daily activities and independence. The batterer also expands his control by demeaning the victim's self-esteem through a combination of verbal and emotional abuse.³⁵ In the next stage, the abuse escalates to physical assaults with "varying degrees of severity."³⁶ Finally, during the last stage, an abuser may apologize, make promises that the violence will end or profess his continued love and affection.³⁷ The final stage tends to be followed by a period of calm before the cycle begins again. The victim often finds herself trapped in this endless cycle of power and control, too scared, fragile or hopeful the violence will end to break away.³⁸

Often, even if a victim was initially cooperative in the investigation of her case and willing to testify in court against her abuser, batterers use many methods to convince the victim to recant, or withdraw her statements and not testify. Batterers are skilled at the "art of manipulation,"³⁹ they know how to exploit a victim's weaknesses, especially drug and alcohol dependence, physical and mental disabilities, personal insecurities or her love for their children.⁴⁰ Abusers use a variety of methods, which typically relate to the cycle of violence, in order to make a victim feel scared that she might lose the things she loves or cares about or make a victim feel guilty for calling law enforcement in the first place.

The first method used to convince a victim to recant her statements is to instill fear. Due to the first and second phases of the cycle of violence, a victim believes that her abuser will view cooperation with law enforcement or a prosecutor as a "hostile act."⁴¹ The already established dynamic within the relationship causes a victim to fear that her abuser will retaliate.⁴² In fact, abusers often do retaliate; studies have shown that 30-percent of batterers physically or emotionally abuse their victims again, during their prosecution.⁴³ The retaliation can take many different forms, ranging from the abuser physically attacking the victim, threatening to financially cut-off the victim if she testifies, or tricking the victim into believing that she can lose her job or her children when society finds out about the abuse.⁴⁴

Another method used by abusers to dissuade a victim from testifying relates to the final stage of the cycle of violence. The abuser will make "promises of reform."⁴⁵ Abusers send love letters and flowers promising future happiness or they leave apologetic voicemails swearing that the abuse will never happen again.⁴⁶ A victim often believes her abuser because she wants to. She may be in denial about the abuse, she may think that she and the victim are in love, or, if they have children together, she does not want to break up the family.

Finally, there are many situations in which a batterer's family or friends also approach the victim to dissuade her from cooperating with law enforcement or testify in court against her abuser. A batterer's family and friends are loyal to the batterer, often "to the detriment of the victim."⁴⁷ Family and friends use coercive methods, such as turning off the electricity, denying the victim and her children a place to live, or paying a victim to leave town so that she will not testify.⁴⁸

The cycle of violence, which often leaves a victim fragile and scared, combined with pressure from an

abuser and his family or friends not to testify, is likely to cause a victim to feel alone and that she is wrong for cooperating with law enforcement or a prosecutor. Predictably, many victims, who once sought police assistance, “surrender under the pressure of such effective manipulation and intimidation.”⁴⁹

Three Problematic Supreme Court Cases

It has been demonstrated that relying on victim testimony can be extremely challenging; most victims do not want their abuser arrested and, more importantly, are reluctant to participate in the criminal justice system. As a result, law enforcement and prosecutors began to use other strategies and techniques to prosecute domestic violence abusers. Focus shifted from relying on victim participation to using hearsay or out-of-court statements made by victims and, in few cases, by observing witnesses.⁵⁰ When a victim is unwilling to testify about a domestic violence incident, hearsay can be the only way to provide a description of what really happened.⁵¹ Hearsay also diminishes the incentive for abusers to threaten or manipulate their victims while awaiting trial because the abuser can still be prosecuted without a victim’s live testimony.⁵² Despite the effectiveness of hearsay in the prosecution of domestic violence cases, the Supreme Court determined that there are many instances in which the use of hearsay violates the Confrontation Clause and a defendant’s Sixth Amendment rights, and is therefore inadmissible evidence.⁵³

In 2004, the Supreme Court significantly altered the doctrine of the Confrontation Clause in its treatment of “testimonial” statements made by an out-of-court declarant. In *Crawford v. Washington*,⁵⁴ the Court ruled that out-of-court statements made by witnesses, which are testimonial in nature, are “barred” under the Confrontation Clause, unless the “witnesses are unavailable and defendants had prior opportunity to cross-examine the witnesses.”⁵⁵ Although the Court did not specifically define “testimonial” statements, it did indicate that these statements were comprised of testimony given at a prior hearing, trial or grand jury proceeding and included police interrogations, as well.⁵⁶ Unfortunately, most hearsay evidence used in domestic violence cases fell outside the scope of “testimonial” statements explained by the Supreme Court. As a result, the *Crawford* decision left behind “interim uncertainty,”⁵⁷ a period in which courts split, had multiple definitions for “testimonial” statements, and prosecutors were unsure as to which hearsay evidence would be admissible, thereby complicating the prosecution of domestic violence cases. ⁵⁸

Two years later, the Supreme Court slightly clarified *Crawford* with its ruling in *Washington v. Davis*⁵⁹. The Court explained that statements are “non-testimonial” when they are made “in the course of police interrogations under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.”⁶⁰ With this ruling, the Court refined “testimonial” to statements made when the “circumstances indicate that there is no such ongoing emergency and the primary purpose of the interrogation is to establish or prove past events.”⁶¹ Basically, a court must now evaluate the nature of questions asked by a 911 dispatcher or a law enforcement official responding to a crime scene to determine the “level of formality”⁶² and to “assess the primary purpose”⁶³ of the questions.⁶⁴ If a court determines that the questions were asked to “preserve information for later prosecution,”⁶⁵ the statements will be considered testimonial and, in effect, inadmissible.⁶⁶ Therefore, although the Supreme Court assisted prosecutors by more clearly distinguishing between “testimonial” and “non-testimonial” statements, the Court also definitively limited the type of hearsay which may be admitted into evidence during a domestic violence trial.

Domestic violence prosecution encountered another hurdle in 2008 with the decision in *Giles v. California*.⁶⁷ This time, the Supreme Court addressed Forfeiture by Wrongdoing, a doctrine which

allows the introduction of a witness's out-of-court statements when the witness is "detained or kept away by the means or procurement of the defendant."⁶⁸ For example, prior to *Giles*, if an abuser killed his victim during a domestic violence incident, the victim's previous statements regarding the abuse could be admitted as hearsay evidence during trial. The Court's ruling in *Giles* limited the doctrine of Forfeiture by Wrongdoing. Now, if "the evidence suggested that the defendant had caused a person to be absent, but had not done so to prevent the person from testifying,"⁶⁹ previous statements are inadmissible. After *Giles*, "testimony is excluded unless it was confronted or fell within the dying declarations exception."⁷⁰ The actual effect of *Giles* was to add an additional requirement for prosecutors. They must now prove that the defendant "specifically intended to keep a witness from testifying against him at [this] trial."⁷¹

The Supreme Court's rulings in *Crawford*, *Davis*, and *Giles* were intended to protect a defendant's Sixth Amendment rights by limiting admissible hearsay evidence. Unfortunately, due to the unique nature of domestic violence, prosecutors relied on this type of hearsay evidence to prove their cases. Therefore, the practical effect of the Supreme Court's rulings was to limit hearsay evidence which can be presented at trial for the successful prosecution of a domestic violence case.

Specific Obstacles to Successfully Prosecuting Strangulation in a Domestic Violence Case

The general obstacles to successfully prosecuting domestic violence also exist in the specific context of strangulation in domestic violence cases. As discussed above, victims are reluctant to participate in the criminal justice system and they often recant initial statements made to law enforcement officials. Furthermore, prosecutors face challenges during trial because of the Supreme Court's decisions in *Crawford*, *Davis*, and *Giles*. However, these obstacles, which exist in almost all domestic violence cases, are amplified when a victim is strangled by her abuser. As previously discussed, unlike domestic violence incidents where a victim has bruises or broken bones, victims of strangulation do not present with visible injuries. Also, as previously discussed, this lack of visible injuries causes the criminal justice system to minimize strangulation from the beginning of the investigation. Emergency room medical personnel and law enforcement officials often either disregard or do not collect evidence of strangulation. As a result, unlike typical domestic violence cases which are simply difficult to prosecute, strangulation cases cannot be prosecuted at all. Furthermore, victims may be hesitant to even claim that strangulation occurred due to the low rate of domestic violence related strangulation cases addressed by emergency room medical personnel, law enforcement officials, and prosecutors.

When a victim of domestic violence informs medical personnel at an emergency room that she has been strangled, the report is often "under-evaluated."⁷² The description of the attempted strangulation does not coincide with the fact that there are no visible markings to the neck. As a result, medical personnel consider strangulation to be an "exaggerated claim" by an "emotionally unstable victim" and do not look for medical evidence or entirely disregard symptoms of strangulation which may be present.⁷³ For example, hoarseness, which occurs in up to 50-percent of strangulation victims, is often attributed to screaming during an argument.⁷⁴ Or, subconjunctival hemorrhages, which are broken blood vessels in the eye common in victims of strangulation, are misdiagnosed as pink eye or as an indication of drug use.⁷⁵ If there is, in fact, any evidence or admission of drug or alcohol use by the victim, emergency room medical personnel are usually even more unwilling to examine allegations of strangulation.⁷⁶ In reality, medical personnel should be performing the appropriate workup because they have the most training in determining if there are serious internal injuries resulting from strangulation. Instead, emergency room personnel are the first to minimize the severity of strangulation.

Similarly, law enforcement officials frequently do not investigate allegations of strangulation either. Law enforcement officials rely on physical evidence to determine if there is probable cause to arrest a perpetrator. Therefore, when a victim does not present with visible injuries, law enforcement officials typically do not think an arrest-able or prosecutable crime has occurred. Unfortunately, this occurs all too often; the San Diego Study, previously discussed, reported that police officers found no visible injuries in 62-percent of strangulation cases and only minor injuries, such as redness or scratch marks, in 22-percent of cases.⁷⁷ Due to the lack of physical evidence, law enforcement officials typically do not document allegations of strangulation in police reports or investigate. The major flaw in this practice is that even though there are no visible injuries present, a victim can still inform an investigator of other “subjective indications of strangulation or the [abuser’s] intent.”⁷⁸ However, victims may be too emotional to know what information is important to disclose and law enforcement officials often overlook evidence of strangulation simply because they do not know what questions to ask to prove strangulation.

When emergency room medical personnel and law enforcement officials do not properly evaluate allegations of strangulation and minimize the incident, a prosecutor cannot bring charges or prosecute a batterer for strangling his victim. As a result, batterers who strangle their victims are not held accountable. This outcome is an indication that a new practice should be developed which combines the elements needed for a successful prosecution with the investigative skills of law enforcement, and when possible, emergency room medical personnel, to ensure that abusers are prosecuted for strangling their victims.

Obtaining Justice for Victims of Strangulation in Domestic Violence Cases

The practice of emergency room medical personnel, law enforcement officials, and prosecutors focusing on visible injuries to prove strangulation in domestic violence cases is not effective. Stranglers are not held accountable and, according to previously mentioned statistics, strangulation remains a killer in domestic violence. The dangerously minimized nature of strangulation requires the criminal justice system to re-think their reliance on visible injuries and develop a new, uniform method of investigation, collection of evidence and prosecution. As previously introduced, this article suggests and argues that the practice of evidence-based prosecution in combination with strangulation-specific training for law enforcement officials, and when feasible, emergency room medical personnel, is an effective approach for successfully prosecuting abusers who strangle their victims and obtaining justice for victims of strangulation in domestic violence.

Evidence-Based Prosecution

The practice of evidence-based prosecution, also known as “victimless prosecution,” is not a new occurrence.⁷⁹ Evidence-based prosecution in domestic violence strangulation cases is the process of using “independent corroborative evidence to prove elements of a crime without relying on the victim’s testimony.”⁸⁰ In effect, evidence-based protection requires law enforcement officials and prosecutors to treat the offense as a homicide case, where there is no victim.⁸¹ There are five types of evidence, both collected at the scene of a domestic violence incident and supplemented through other means, which can be used to effectively prosecute an abuser who strangles his victim. The five types of evidence are: a 911 phone call recording, photographs, physical evidence, medical evaluation forms, and expert testimony.

The first, and perhaps the most valuable, piece of evidence used by prosecutors is a recording of the 911 phone call, made by the strangulation victim after being attacked. A 911 phone call is important and

valuable because it is the first time that a victim may have explained what has happened to her. Typically, when a 911 phone call is being made, the abuser is in or around the home and the victim is still feeling scared, traumatized, or may still be in danger. Any questions asked by the 911 dispatcher would be to address an ongoing emergency. Therefore, the recording should be considered non-testimonial and admissible as hearsay evidence during trial, even in light of *Crawford* and *Giles*. A recording of the 911 phone call is also weighty evidence because hearing the voice of a scared and emotional victim seeking help immediately after being attacked can be very “moving for a jury.”⁸² More importantly, in the specific context of a strangulation case, a recording of the victim’s voice may show that her voice was hoarse, she was coughing, or that she was having difficulty breathing, thereby confirming that victim was in fact strangled. During trial, prosecutors have historically provided a transcript of the 911 phone call recording to the jury so that they can read along during the actual playing of the phone call and more easily comprehend what is being said.⁸³ Or, for a more dramatic effect, prosecutors have presented the transcript of the phone call as a PowerPoint presentation at the same time the recording was being played in court.⁸⁴ However, even without prosecutorial theatrics, a recording of a 911 phone call is an extremely valuable piece of evidence for evidence-based prosecution in domestic violence strangulation cases.

Photographs and physical evidence are also essential elements to evidence-based prosecution in domestic violence strangulation cases. Photographs of the home where the domestic violence and strangulation incident occurred are important for establishing context for the judge and jury.⁸⁵ Pictures of overturned furniture, holes in walls, or bodily fluids on the floor may show a judge and the jury how dangerous or frightening the assault was.⁸⁶ Specifically, urine, defecation, and vomit are signs that the victim was strangled.⁸⁷ Pictures of these bodily fluids on the floor may help to prove that the victim was in fact strangled even though there were no visible injuries to her neck. However, if there are visible injuries, no matter how minimal they may be, photographs of these injuries are important to show a judge and the jury what the victim went through. In some cases, a victim may actually have fingerprints on her neck or markings resembling a ligature used during strangulation. It can be case-winning to physically line up the ligature used to strangle the victim with a photograph of the victim’s injured neck and have it match perfectly. Even better is to have the ligature that was used to strangle the victim. Some prosecutors actually use the ligature on themselves or on a volunteer to make the incident come to life for a judge or the jury. Physical evidence collected at the scene of a domestic violence incident also helps prosecution. Similar to photographs, physical evidence, such as ripped clothing helps to establish the context of the assault.⁸⁸ A combination of various photographs and physical evidence is ideal for an evidence-based prosecution.

Medical evaluation forms are another essential piece of evidence used in evidence-based prosecution for proving strangulation. As has been discussed multiple times in this article, strangulation often does not leave visible injuries on the victim. As a result, photographs may not always be available as evidence. Furthermore, the abuser does not always use a ligature, he may just use his hands, and so physical evidence may also be scarce. Therefore, a medical evaluation form detailing strangulation symptoms described first-hand by the victim is valuable. Furthermore, medical personnel documenting internal injuries which were most likely caused by strangulation may be the only way to indicate that a victim was in fact strangled. For these reasons, medical evaluation forms are a critical piece of evidence during trial.⁸⁹

The final type of evidence, expert testimony during trial, serves two distinct and important functions during a domestic violence strangulation case. First, regardless of whether the victim has obtained medical treatment or not, it can be informative to use a medical expert who can educate the judge and the jury about the physical danger of the act of strangulation.⁹⁰ Strangulation statistics are not common

knowledge, both the judge and the jury need to understand that strangulation can cause unconsciousness within seconds and death in just minutes.⁹¹ Explaining the severity of strangulation also assists in demonstrating an abuser's potentially deadly intent when he put his hands around the victim's neck and squeezed.⁹² Second, an expert witness, such as a social worker or psychologist, can be beneficial in explaining the dynamics of domestic violence.⁹³ For the majority of judges and jury members, the issue of power and control in an abusive relationship and the cycle of violence, discussed earlier in this paper, are outside of their understanding or experience.⁹⁴ Most judges and jury members cannot comprehend why a victim of domestic violence continues to stay in an abusive relationship or refuses to testify against her abuser, especially when he strangles her.⁹⁵ Judges and juries incorrectly believe that a victim can leave an abusive relationship at any point. In reality, a victim may make numerous unsuccessful attempts to escape her abusive relationship. Often, these attempts result in the victim being physically punished by her abuser, sometimes even strangled.⁹⁶ An expert witness who can teach a judge and a jury about the dynamics of domestic violence can provide an explanation of the victim's feelings and thoughts. This may be helpful in explaining why a victim has not left her abuser or why she is not testifying against him.

Although not all five types of evidence are always available, a combination of just a few of the types discussed will make strangulation in domestic violence cases stronger than they currently are.

Strangulation-Specific Training

The nature of evidence-based prosecution requires a prosecutor to rely on both law enforcement officials and, in some cases, emergency room medical personnel to collect evidence at the scene of the domestic violence incident. In doing so, even if a victim refuses to participate or recants, the prosecutor can still have sufficient evidence to bring the strangulation case to trial.⁹⁷ Unfortunately, as previously discussed, law enforcement officials and medical personnel often focus on visible injuries and overlook the other symptoms and indications of strangulation. The focus of law enforcement officials and emergency room medical personnel is skewed simply because they are not familiar with strangulation, they do not know what signs and symptoms to look for or what questions to ask.⁹⁸ Strangulation-specific training for law enforcement officials and, when feasible, emergency room medical personnel, will help to ensure that evidence is properly collected so that a prosecutor can go forth with evidence-based prosecution and convict a batterer of strangling his victim. The curriculum of strangulation-specific training for law enforcement officials and emergency room medical personnel should teach three fundamentals: what questions to ask, what symptoms to look for, and the importance of documentation.

Law enforcement officials and emergency room medical personnel are faced with the very important task of figuring out what happened during a strangulation incident. The purpose of questioning a victim is to put together a description of the crime. The initial question should relate to the "mechanism of the injury."⁹⁹ It is imperative that law enforcement and medical personnel ask the victim how she was strangled: Did the abuser use one or two hands or was the victim strangled with a ligature?¹⁰⁰ A victim or the abuser can even be asked to demonstrate the incident.¹⁰¹ Next, it should be determined for how long a victim was strangled for.¹⁰² Follow up questions may include if the victim lost consciousness or experienced any pain including dizziness or faintness, nausea, or difficulty swallowing or breathing.¹⁰³ These questions are important for two reasons; first, to determine whether or not the victim is in need of immediate medical assistance and second, to create the foundation of the strangulation case against the abuser.¹⁰⁴

Victims of domestic violence strangulation may be embarrassed or may minimize the incident.¹⁰⁵

Therefore, law enforcement officials and emergency room medical personnel must also be trained in what symptoms of strangulation to look for.¹⁰⁶ Law enforcement and medical personnel should check for bruises and fingertip or thumb prints typically located around the ears.¹⁰⁷ Tiny red spots, known as petechia, may be found inside of or around the eyes.¹⁰⁸ Petechia is a common symptom resulting from strangulation due to ruptured capillaries, but is often confused with pink eye or an indication of drug use.¹⁰⁹ Redness and scratches on a victim's neck may have been caused by the abuser while strangling or by the victim's own fingernails while trying to fight against the abuser. Abrasions to the chin may have been caused by holding it down in defense of her neck during the attack.¹¹⁰ Law enforcement and medical personnel should also check the suspected abuser for defensive wounds to confirm where his hands or arms were during the strangulation; in particular, bite marks are a common injury.¹¹¹

Finally, and most importantly, law enforcement officials and emergency room medical personnel need to understand the importance of documentation. There may be a lot of evidence of strangulation, however, if it is not fully and accurately documented, a prosecutor cannot use it at trial.¹¹² Everything that the victim, suspect or witnesses say must be either written down verbatim or electronically recorded.¹¹³ Every symptom described by the victim, however insignificant it might seem, must also be noted and photographed.¹¹⁴ It is often helpful to use audio taping to document a change in the victim's voice due to strangulation. Law enforcement should take multiple photographs of the crime scene and all of the victim's injuries, no matter how minor they appear.¹¹⁵ Follow-up photographs, taken two to three days after the incident, are also helpful in demonstrating the severity of certain injuries sustained because bruises may not appear until a few days after the incident.¹¹⁶ Although it is not always possible to document all of this evidence, law enforcement officials and emergency room medical personnel need to be educated about the importance of documenting everything and take every step possible to ensure complete and accurate documentation.

By understanding what questions to ask, what symptoms to look for, and the importance of documentation, law enforcement officials and emergency room medical personnel will help guarantee that prosecutors have all necessary evidence and testimony to bring the strongest case possible to trial.

Conclusion

Although strangulation, one of the most lethal forms of domestic violence, has a history of being minimized by all members of the criminal justice system, it is still possible to curtail this occurrence. However, ending strangulation in domestic violence cannot be done by one group; it requires all members of the criminal justice system to work together.¹¹⁷ If emergency room medical personnel, law enforcement officials, and prosecutors collaborate, in a system which unites evidence-based prosecution with trained investigative skills, it is possible to hold abusers accountable and obtain justice for victims of strangulation. Although this may not happen immediately, cases previously thought to be inadequate, could possibly be prosecuted as misdemeanors and cases previously thought to be misdemeanors should be prosecuted as felonies.¹¹⁸ In general, ending minimization of strangulation and aggressively addressing the problem may alert abusers and prevent them from strangling their victims or, at least, encourage more strangulation victims to seek help.

Notes

1.) Allison Turkel, *Understanding, Investigating, and Prosecuting Strangulation Cases*, 41 DEC PROSC 20, 20 (2007) (discussing the dangerous nature of strangulation)

- 2.) Gael B. Strack & Eugene Hyman, *Your Patient. My Client. Her Safety: A Physician's Guide to Avoiding the Courtroom While Helping Victims of Domestic Violence*, 11 DePaul J. Health Care L. 33, 59 (2007) (describing strangulation as one of the most lethal forms of domestic violence).
- 3.) Turkel, *supra* at 20 (describing an allegation of strangulation).
- 4.) Fact Sheet of Strangulation Assaults in Domestic Violence Cases, Ortner-Unity, http://www.sp2.upenn.edu/ortner/docs/factsheet_strangulation.pdf (last visited October 30, 2011) (discussing strangulation may indicate an ongoing pattern of abuse and foreshadows escalating violence); *See also*, Strack & Hyman, *supra* at 59 (explaining strangulation leaves no visible injuries).
- 5.) Gael B. Strack, Dr. George E. McClane & Dr. Dean Hawley, *A Review of 300 Attempted Strangulation Cases, Part II: Clinical Evaluation of the Surviving Victim*, 21 J. Emergency Med. 311, 311 (2001) (formally defining strangulation).
- 6.) *Id.* (formally defining choking).
- 7.) *Id.*
- 8.) *Id.*
- 9.) *Id.*
- 10.) Strack, McClane & Hawley, *supra* at 311 (describing the clinical sequence of strangulation).
- 11.) Fact Sheet of Strangulation Assaults in Domestic Violence Cases, Ortner-Unity, http://www.sp2.upenn.edu/ortner/docs/factsheet_strangulation.pdf (last visited October 30, 2011) (listing possible physical injuries of strangulation).
- 12.) Fact Sheet of Strangulation Assaults in Domestic Violence Cases, Ortner-Unity, http://www.sp2.upenn.edu/ortner/docs/factsheet_strangulation.pdf (last visited October 30, 2011) (listing possible neurological injuries of strangulation).
- 13.) Fact Sheet of Strangulation Assaults in Domestic Violence Cases, Ortner-Unity, http://www.sp2.upenn.edu/ortner/docs/factsheet_strangulation.pdf (last visited October 30, 2011) (listing possible psychological injuries of strangulation).
- 14.) Gael B. Strack, Dr. George E. McClane & Dr. Dean Hawley, *A Review of 300 Attempted Strangulation Cases, Part I: Criminal Legal Issues*, 21 J. Emergency Med. 303, 308 (2001)
- 15.) Fact Sheet of Strangulation Assaults in Domestic Violence Cases, Ortner-Unity, http://www.sp2.upenn.edu/ortner/docs/factsheet_strangulation.pdf (last visited October 30, 2011) (discussing strangulation may indicate an ongoing pattern of abuse).
- 16.) Resource Materials on Strangulation, New York Correction History Society, <http://www.correctionhistory.org/northcountry/html/knowlaw/strangulation3.htm> (last visited on November 30, 2011) (providing material used at the New York Prosecutors Training Institute).
- 17.) Fact Sheet of Strangulation Assaults in Domestic Violence Cases, Ortner-Unity,

http://www.sp2.upenn.edu/ortner/docs/factsheet_strangulation.pdf (last visited October 30, 2011) (discussing strangulation may foreshadow escalating violence).

18.) Resource Materials on Strangulation, New York Correction History Society, <http://www.correctionhistory.org/northcountry/html/knowlaw/strangulation3.htm> (last visited on November 30, 2011) (providing material used at the New York Prosecutors Training Institute).

19.) Turkel, *supra* at 21 (discussing a perpetrator's homicidal intent).

20.) Strack & Hyman, *supra* at 59

21.) Strack, McClane & Hawley, *supra* at 314

22.) *Id.* at 312

23.) Turkel, *supra* at 21

24.) Strack & Hyman, *supra*, at 59 (describing strangulation as one of the most lethal forms of domestic violence).

25.) Strack & McClane, *supra* at 13 (discussing minimization of strangulation by police officers and prosecutors).

26.) *Id.* at 1 (discussing victim minimization of strangulation).

27.) *Id.* at 3.

28.) Eleanor Simon, *Confrontation and Domestic Violence Post-Davis: Is There and Should There be a Doctrinal Exception?*, 17 Mich. J. Gender & L. 175, 185 (2011)

29.) *Id.*

30.) Tom Lininger, *Prosecuting Batterers after Crawford*, 91 Va. L. Rev. 747, 768 (2005).

31.) Erin Leigh Claypoole, *Evidence-Based Prosecution: Prosecuting Domestic Violence Cases Without a Victim*, 39 Feb Prosc 18, 20 (2005).

32.) Laurence Busching, *Rethinking Strategies for Prosecution of Domestic Violence in the Wake of Crawford*, 71 Brook. L. Rev. 391, 394 (2005) (describing hearsay evidence used in domestic violence prosecutions).

33.) *Id.*

34.) Donna D. Bloom, "Utter Excitement" About Nothing: *Why Domestic Violence Evidence-Based Prosecution Will Survive Crawford v. Washington*, 36 St. Mary's L.J. 717, 728 (2005) (describing a domestic violence victim's lack of cooperation).

35.) Katherine G. Breitenbach, *Battling the Threat: The Successful Prosecution of Domestic Violence after Davis v. Washington*, 71 Alb. L. Rev. 1255, 1255 (2008) (describing the tension-building stage)

- 36.) *Id.* at 1257 (describing the violent stage).
- 37.) *Id.* (describing the honeymoon stage).
- 38.) *Id.*
- 39.) Bloom, *supra* at 728.
- 40.) *Id.* at 728-729 (explaining how batterer's manipulate their victims).
- 41.) *Id.* at 728
- 42.) *Id.*
- 43.) Aiysha Hussain, *Reviving Hope for Domestic Violence Prosecutions: Giles v. California*, 46 Am. Crim. L. Rev. 1301, 1302 (2009).
- 44.) Bloom, *supra* at 728-729 (describing retaliatory methods used by batterer's against victims); *See also* Breitenbach, *supra* at 1257 (listing reasons why victims recant).
- 45.) Bloom, *supra* at 728.
- 46.) *Id.* at 728-729.
- 47.) *Id.* at 729.
- 48.) *Id.* at 728-729.
- 49.) *Id.* at 729.
- 50.) Busching, *supra* at 394.
- 51.) Lininger, *supra* at 771 (describing the value of hearsay in prosecuting a domestic violence case).
- 52.) *Id.*
- 53.) *See Generally*, Crawford v. Washington, 541 U.S. 36 (2004) (stating that hearsay may violate the Confrontation Clause and a defendant's 6th Amendment rights).
- 54.) Crawford v. Washington, 541 U.S. 36 (2004)
- 55.) Id. (holding of case).
- 56.) Bloom, *supra* at 720-721 (listing examples of testimonial statements).
- 57.) *Id.* at 737.
- 58.) *Id.* 737-738 (defining interim uncertainty).

- 59.) Washington v. Davis, 547 U.S. 813 (2006).
- 60.) Id. at 814 (defining non-testimonial statements).
- 61.) Simon, *supra* at 181 (defining testimonial statements in light of Washington v. Davis).
- 62.) *Id.*
- 63.) *Id.*
- 64.) *Id.* (describing the primary purpose and ongoing emergency test articulated by the Court in Washington v. Davis).
- 65.) Breitenbach, *supra* at 1276.
- 66.) *Id.* at 1276-1277.
- 67.) Giles v. California, 554 U.S. 353 (2008).
- 68.) Id. at 358 (defining Forfeiture by Wrongdoing).
- 69.) Id. at 361-362 (holding of case).
- 70.) Id.
- 71.) Hussain, *supra* at 1309 (describing the practical effect of *Giles*).
- 72.) Stack, McClane & Hawley, *supra* at 312.
- 73.) *Id.*
- 74.) *Id.*
- 75.) *Id.*
- 76.) *Id.*
- 77.) Strack & McClane, *supra* at 1.
- 78.) Turkel, *supra* at 21.
- 79.) Claypoole, *supra* at 18.
- 80.) *Id.* (defining evidence based prosecution).
- 81.) *Id.*
- 82.) *Id.* at 21 (describing benefits of a 911 phone call recording).

- 83.) *Id.*
- 84.) *Id.*
- 85.) *Id.* at 20 (describing benefits of photographs).
- 86.) *Id.*
- 87.) Turkel, *supra* 21-22.
- 88.) *Id.*
- 89.) Strack & Hyman, *supra* at 51.
- 90.) Strack & McClane, *supra* at 11-12 (discussing use of an expert witness).
- 91.) *Id.*
- 92.) Turkel, *supra* at 21.
- 93.) Claypoole, *supra* at 21.
- 94.) *Id.*
- 95.) *Id.*
- 96.) Strack & Hyman, *supra* at 41.
- 97.) Breitenbach, *supra* at 1279.
- 98.) Strack, McClane & Hawley, *supra* at 308.
- 99.) Turkel, *supra* at 21.
- 100.) *Id.* at 21-22 (listing questions to ask a victim of strangulation).
- 101.) *Id.*
- 102.) *Id.*
- 103.) Strack & McClane, *supra* at 6-7 (listing follow-up questions).
- 104.) Turkel, *supra* at 21
- 105.) Strack & McClane, *supra* at 8.
- 106.) *Id.*
- 107.) Tukel, *supra* at 22.

108.) *Id.*

109.) *Id.* (discussing and describing petechia).

110.) *Id.*

111.) *Id.*

112.) Strack & Hyman, *supra* at 51.

113.) *Id.* (discussing importance of documentation).

114.) *Id.* at 60.

115.) *Id.*

116.) Strack & McClane, *supra* at 8 (discussing importance of follow-up photographs).

117.) Strack & Hyman, *supra* at 34.

118.) Strack, McClane & Hawley, *supra* at 308.