

# DOMESTIC VIOLENCE REPORT™

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## Strangulation and Domestic Violence: The Edge of Homicide

by Gael Strack, J.D.  
and Casey Gwinn, J.D.

In March 1995, as San Diego's coordinated community response to domestic violence was getting national attention with a 50% drop in domestic violence homicides since 1985, Sgt. Anne O'Dell, the founder of the Police Department's specialized Domestic Violence Unit, called us as the founders of the City Attorney's specialized Child Abuse/Domestic Violence Unit to question whether any of us were treating so called "choking" cases seriously. Her soul searching, and soon ours, came from the first two domestic violence homicides of 1995: two teenagers with small children who lost their lives after a history of domestic violence and reports of being "choked" by their boyfriends. The City Attorney or the District Attorney prosecuted none of the reported cases. And then both Casandra Stewart and Tamara Smith were murdered.

The deaths of Casandra Stewart and Tamara Smith triggered profound changes in San Diego and ultimately around the world, but such profound change started with Gael Strack going into the file room of the San Diego City Attorney's Child Abuse/Domestic Violence Unit and reviewing every case where

See *EDGE OF HOMICIDE*, page 90

## Law Reform Targets the Crime of Strangulation

by Casey Gwinn, J.D., Gael Strack, J.D., and Melissa Mack

*"Actually, when I came out of that [strangulation incident], I was more submissive—more terrified that the next time I might not come out—I might not make it. So I think I gave him all my power from there because I could see how easy it was for him to just take my life like he had given it to me."*

—Former San Diego Family Justice Center Client (2010)

Survivors of non-fatal strangulation have known for years what prosecutors and civil attorneys are only recently learning: Many domestic violence offenders and rapists do not strangle their partners to kill them; they strangle them to let them know they *can* kill them—any time they wish. Once victims know this truth, they live under the power and control of their abusers day in and day out. This complex reality creates challenges for prosecutors who have to decide whether to prosecute non-fatal strangulation cases

as attempted murders, serious felony assaults, or misdemeanors.

For many years in California and across the country, prosecutors have failed to treat non-fatal strangulation assaults as serious crimes, due to lack of physical evidence. Today, because of (1) involvement of the medical profession, (2) specialized training for police and prosecutors, and (3) ongoing research, strangulation has become a focus area for policymakers and professionals working to reduce intimate partner violence and sexual assault.

As of May 2014, 37 states and one territory (U.S. Virgin Islands) have passed strangulation laws that provide clear legislative definitions of the violent, life threatening assault now properly referred to as "strangulation."<sup>1</sup> One state, Utah, passed an "Intent of the Legislature" resolution, which made legislative findings to help

See *LAW REFORM*, next page

### About This Issue . . .

We are delighted to present this special issue on Strangulation, a topic of great interest because of the importance of the issue today, particularly in light of the high lethality of these cases, the profound consequences for survivors, and the challenges for law enforcement. We are especially pleased that Gael Strack and Casey Gwinn are Guest Editors. These two former prosecutors are leading national experts on strangulation as well as founders of the Family Justice Center movement.

D. Kelly Weisberg, Editor, *Domestic Violence Report*

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guide prosecutors to apply existing assault statutes with a special emphasis on non-fatal strangulation assaults. And, the newly re-authorized Violence Against Women Act added strangulation and suffocation language to federal law for the first time.

Prior to the enactment of felony strangulation laws, prosecutors and police officers were sometimes prevented from charging as felonies non-fatal strangulation cases with minimal or no visible injury even where there is loss of consciousness. In some juris-

or suffocation a felony punishable by imprisonment for up to 10 years and/or a fine of up to \$5,000. After New York passed its strangulation law, advocates, policymakers, police, and prosecutors found the “new [law] ... holds individuals criminally liable for their abusive and deadly conduct and serves as a valuable tool for the intervention and victim protection process.”

### The Crime Is Not “Attempted Strangulation”

As we gain a deeper understanding of existing strangulation laws and the need for new ones, a special point

of strangulation is derived from post mortem examination (autopsy) of the body. An autopsy affords the ability to examine all of the tissues of the neck, superficial and deep, and track the force vector that produced the injuries. In living survivors of strangulation, the assessment of the victim/patient is usually limited to superficial examination of the skin. In rare circumstances, if the victim/patient seeks medical attention, the assessment may include two-dimensional shadows by radiography. So, the thinking went, if a victim survived, it must not have been strangulation; it must have only been “attempted strangulation.” Sadly, this language is still used by some courts, professionals, and even media outlets. *The use of the word “attempted” should be viewed as incorrect and eliminated from the discussion.*

Based on the current state of the law and the current research, any intentional effort to apply pressure to the neck in order to impede airflow or blood flow should be viewed as a felony strangulation assault. The perpetrator did not “attempt” the assault. He completed it. If an offender said to a victim that he was going to “choke her,” and he lunged for her but was unable to get a strong hold with one or both hands, this might be an “attempted strangulation.” But the vast majority

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## *The vast majority of strangulation or suffocation assaults are not “attempts.” They are completed criminal acts and should be prosecuted based on this understanding.*

dictions, strangulation cases are prosecuted as misdemeanors, reduced to lesser charges or simply dismissed altogether.

Bea Hanson, Acting Director of the Office on the Violence Against Women recently pointed out, “When states get new laws about strangulation, it shines a light on it, shows the severity of the crime.” Michigan’s newly amended assault statute focuses on the severity of the offense and makes strangulation

should be made here. For many years, medical experts and researchers referred to strangulation assaults as “attempted strangulation.” This represented inadequate understanding of the nature of the assault. Indeed, even the seminal San Diego Study referred to “Attempted Strangulation” cases. The belief, though unstated in most research, was that strangulation meant death. And it is no coincidence that the best medical evidence

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# Investigation and Prosecution of Strangulation Cases

by Gael B. Strack, J.D., Casey Gwinn, J.D., Gerald W. Fineman, J.D., and Det. Michael Agnew (Ret.)\*

Every day police departments across the country receive a constant stream of 911 domestic violence calls where victims report being threatened, pushed, slapped, kicked, punched, stabbed, stalked, shot, and choked. Some agencies report that as many as 40% of all 911 calls are domestic violence related. Depending on the study, 30%-60% of domestic violence victims are strangled by their partner during a domestic violence assault. By the time officers respond, victims are often already recanting, minimizing, or are simply unaware of the seriousness of their assault, especially if strangulation is involved. This article will touch on a few key elements of the investigation and prosecution of strangulation cases. Our goal is to emphasize how much effort it takes to properly investigate and prosecute these life-threatening assaults.

In the past, victims, perpetrators, police officers, prosecutors, judges, and medical personnel often minimized “choking” cases. The lack of visible injury and inadequate training caused the entire criminal justice system to unintentionally treat non-fatal strangulation cases (as we now call them) as minor assaults with little or no consequences. An officer arriving to find a victim with two black eyes might quickly focus on the visible injuries, and if the victim says she was also choked and there are no visible injuries, the officer may not even follow up on the allegation of a strangulation assault.

Today, it is unequivocally understood that strangulation is one of the most lethal forms of domestic violence and should be a felony in most cases.

\*Detective Mike Agnew (Ret.) has over 38 years of law enforcement experience, including responding to cases involving strangulation, and founded the Domestic Violence Unit at the Fresno Police Department.

Gerald W. Fineman, J.D., is a Supervising Deputy District Attorney with the Riverside County District Attorney's Office. He is currently in charge of the Training Division, and trains both prosecutors and law enforcement. He has also testified in court as an expert witness on domestic violence.

Biographical information about Gael B. Strack and Casey Gwinn appear on page 92.

## I. The Investigation

The mindset of all domestic violence responders should mirror the philosophy of the prosecutor: How can we prove this case without the participation of the victim? Successful prosecution of domestic violence strangulation cases hinges on the responder's collection of evidence to prove the case even without the victim's testimony. Most strangulation cases involve corroborating evidence, but law enforcement must fully understand the kinds of evidence that exist.

Most law enforcement protocols today have developed specialized domestic violence reporting forms or checklists. We strongly support such reporting forms if they are a supplement to the narrative report. In those jurisdictions utilizing a law enforcement protocol for the investigation of domestic violence cases,<sup>1</sup> officers arriving at the scene conduct a thorough investigation and prepare written reports describing all incidents of domestic violence involving the victim and perpetrator, as well as documenting individual crimes, such as a strangulation assault, committed by the perpetrator. Some jurisdictions across the country are also including lethality assessments within their domestic violence reports.<sup>2</sup>

Special attention should be paid to the vocabulary when properly prioritizing strangulation assaults. While most victims will report they were “choked” or grabbed by the neck—and it is important to use words the victim is most comfortable using—responders need to acknowledge the seriousness of the abuse that is actually occurring. “Choking” is accidental. Strangulation is intentional. Choking means having the windpipe blocked entirely or partly by some foreign object, like food. Strangulation means to obstruct the normal breathing of a person or blood flow to the brain. For report writing, the proper term is “strangulation.”

Officers should use words such as “strangled,” “near-fatal strangulation,” (when petechiae, loss of consciousness and/or urination/defecation is present) and “non-fatal strangulation”

to describe what happened to the victim. By using the correct terminology, more awareness is brought to the seriousness of the crime that has been committed, and we can slowly begin to change how the criminal justice system treats strangulation cases. Use of the proper terminology will also produce more felony prosecutions. In a recent study conducted in Minnesota, when officers used the word “strangled” as opposed to “choked,” and described how the victim was strangled, more cases were prosecuted as felonies.<sup>3</sup>

If there is evidence to suggest the victim was strangled and her life was threatened, the case should be considered and investigated as if it were an attempted homicide or aggravated assault case. If the case is treated seriously from the time the 911 call is made, everyone involved, including the victim, will treat it seriously as well.

When officers respond to a domestic violence scene and the incident includes strangulation, the victim's subtle signs and symptoms become very important. Learning how to identify, document, and understand these signs and symptoms requires special training.

The Training Institute on Strangulation Prevention has created an excellent investigations checklist that can be downloaded from the Resource Library at [www.strangulationtraininginstitute.com](http://www.strangulationtraininginstitute.com). We also have an excellent, free on-line course for law enforcement officers that is available on our website. In addition, we teach a multi-day course on the investigation and prosecution of strangulation assaults. For more in-depth training, join us at one of our specialized courses held in San Diego every year.

## Review Every 911 Call

Emergency 911 tapes should be reviewed on every case. They accurately capture the victim's emotional state and often include (1) statements about the incident; (2) the domestic violence history in the relationship; (3) the victim's physical condition; (4) the suspect's level of intoxication

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*INVESTIGATION, from page 83*

and/or use of drugs; (5) the presence of witnesses; (6) the presence of weapons; and (7) the existence of protective orders. The 911 call is a microphone into the violent incident and often records statements from children, witnesses, and/or the abuser, and often the victim's voice changes from a strangulation assault.

### The Victim Interview

When contacting a victim of domestic violence, always look for evidence she may have been strangled. If the victim survives a strangulation assault, she may have been strangled to the point of unconsciousness and likely suffered some level of brain injury. Evidence of unconsciousness includes loss of memory, an unexplained bump on the head, and bowel or bladder incontinence. The victim may also report that she was standing up one minute, then simply woke up on the floor and did not know why. Symptoms of hypoxia or asphyxia (a lack of oxygen to the brain) will likely cause the victim to be restless or hostile at the scene. The victim may appear to be under the influence of drugs or alcohol, or appear to have stroke-like symptoms. Evidence of temporary or permanent brain injury may include problems with memory, inability to concentrate, headaches, anxiety, depression, and/or sleep disorders. The victim may be embarrassed or minimize the incident, and she will likely be traumatized from the attack. These factors can dramatically impact how the victim tells her story. It is common in such situations for the victim's story to be jumbled or confused. Trauma-informed interview techniques are crucial. Don't expect the victim to describe this near-death experience chronologically. Expect inconsistencies; expect gaps in her memory. Her failure to remember is corroboration of the assault!

The level of injuries and symptoms depends on many different factors, including the method of strangulation, the age and health of the victim, whether the victim struggled to break free, whether the victim was under the influence of alcohol and/or drugs, the size and weight of the perpetrator, and the amount of force used. Therefore,

it is important to ask the victim a series of questions designed to elicit specific information about her symptoms and internal injuries that are consistent with someone being strangled. Even when victims exhibit injuries from strangulation, the injuries will likely appear minor and limited to the point at which pressure was applied. It is important for investigators to look for other signs of injury, such as subtle injuries around the eyes, under the eyelids, nose, ears, mouth, neck, shoulders, and upper chest area. If injuries are present, look for redness, scratches, red marks, swelling, bruising, or tiny red spots (petechiae) that arise from increased venous pressure.<sup>4</sup>

Simply reporting that a victim was "grabbed by her neck and forced into the wall" does not provide sufficient detail for a prosecutor to walk into a courtroom and prove the case. The strangulation investigation checklist includes the following:

- Ask the victim to describe how she was assaulted.
- Document the victim's description of the assault, including the location and positions of each individual involved.
- Using a wig head or mannequin, ask the victim to physically demonstrate how she was strangled. Photograph the demonstration.
- Determine if the victim was simultaneously shaken while being strangled. (Possible whiplash.)
- Was the victim thrown against the wall, floor, or ground? (Possible concussion.)
- Ask the victim where she was strangled and look for corroborating evidence in those areas. If something was broken in the struggle, photograph it.
- How long did the suspect strangle the victim? Ask the victim to close her eyes and go through the assault with you while you look at your watch to determine the approximate length of time.
- How many times was the victim strangled during the incident? Were different methods used to strangle the victim during the incident? (Shows intent.)
- Determine the amount of pressure that was used. On a scale from one to 10, 10 being the most pressure, how hard was the perpetrator's grip?
- Ask (one at a time) if the victim could (1) breathe; (2) talk; (3) scream. (These questions will help in determining pressure applied to the victim.)
- Look for injuries behind the ears, around the face, neck, scalp, chin, inside the mouth, jaw, on the eyelids, shoulders, and chest area.
- Look for redness, abrasions, bruises, scratch marks, scrapes, fingernail marks, thumb-print bruising, ligature marks, petechiae, blood in the white of the eye, swelling, and/or lumps on the neck.
- If the victim is wearing makeup, ask her to remove it before leaving the scene. Take photographs before and after the makeup is removed. The first photo will show exactly what the investigator saw, and the second may capture additional injuries.
- Look for neck swelling (it may not be easy to detect). Ask the victim to look in the mirror to assess any swelling.
- Take photos of the neck even if you do not see injuries or swelling as they may appear later. ER nurses have reported using a tape measure to determine neck swelling.
- Injuries may be easily concealed with makeup, long hair, and/or clothing.
- Having a victim also look in a mirror when no injuries are apparent may be helpful to get her perspective. It is important to tell the victim to notify detectives working on her case if injuries appear or if she seeks additional medical care.
- Leaving your business card with encouragement to call will be more effective than if you give the victim a general phone number at your agency.
- Recognize that that the victim may not feel comfortable calling law enforcement. Always leave phone numbers for the local hotline, domestic violence or sexual assault agencies, or Family Justice Centers.

### Identifying Symptoms of Injury

To identify symptoms and injuries, consider asking the following questions:

- How does your neck feel? Do you feel any pain on movement or touch? Describe it.
- Do you have pain anywhere else? Describe the pain.

*See INVESTIGATION, page 93*

# Men Who Strangle Women Also Kill Cops

by Casey Gwinn, J.D.

In September 2008, Martinez Police Department Sgt. Paul Starzyk was killed by Felix Sandoval outside the Elegant Hair Salon in Martinez, CA. Paul was 47 years old and married with three children. I did not know Paul, but the story of his tragic death and the death of Catalina Torres, a volunteer advocate at a local domestic violence shelter, came up on a Google Alert I had that documented officers who were killed in the line of duty in domestic violence-related incidents. Paul gave his life trying to save Felix's estranged wife, Maria, and her three children. He and Catalina both died as heroes: laying down their lives to save others.

Less than a month later, I visited Martinez, CA, during a planning meeting for a Family Justice Center in nearby Richmond, CA. I went to pull Maria's restraining order application at the courthouse. In her declaration, months before she died, she described a history of domestic violence including prior strangulation assaults by Felix. It was not the first time I had seen cases where an abuser had strangled his partner and then later killed a police officer. But I could not get this case out of my head.

National studies have found that 14% of officers killed in the line of duty are killed in domestic violence or "domestic dispute" incidents.<sup>1</sup> But what if we have been asking the wrong question? Instead of asking how many officers die in domestic violence incidents, perhaps we should be asking, what is the relationship history of the cop killer? What are his prior relationships like? Is there a correlation between domestic violence history and later homicide of law enforcement officers? And because of our focus at the National Family Justice Center Alliance on the lethal nature of strangulation assaults, why not look at the cop killer's relationship history and see if we can find strangulation in his history? We know that a man who strangles a woman once is 800% more likely to later kill her.<sup>2</sup> What if men who "choke" women are most

dangerous to police officers as well? What if a strangulation assault is not only a lethality marker for female victims, but is also a lethality marker for police officers?

It was time to challenge friends to look at the issue. First, Nampa Police Chief Craig Kingsbury agreed to look at the last ten officer-involved critical incidents in Nampa, Idaho. Thankfully no officer died in those incidents, but each involved the shooting of an officer or the shooting of a criminal suspect by an officer. He recruited a graduate student at Boise State to pull the last ten incidents where an officer shot someone or someone shot an officer. They asked two questions:

the California District Attorneys Association's Domestic Violence Legislative Committee. He is a true advocate and zealous prosecutor. Jerry's review is now complete and posted on the Training Institute for Strangulation Prevention's online Resource Library.<sup>3</sup> The findings clearly show the danger to law enforcement officers of men who strangle women and should promote more research on this topic.

Jerry Fineman identified eight law enforcement officers who died in the line of duty from intentional homicide between 1993 and 2013. His review of the killers' histories was limited to public records. Significantly, he found that 50% of them had a public records

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## *What if a strangulation assault is not only a lethality marker for female victims, but is also a lethality marker for police officers?*

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(1) how many of the criminal suspects had a public records act history of domestic violence; and (2) how many of the criminal suspects had a public records act history of non-fatal strangulation assault against a prior partner? The results got our attention: 80% of the criminal suspects had a prior domestic violence history and 30% had a prior history of non-fatal strangulation against a partner. And this was only a public records act check. We did not have a social or relationship history of the perpetrator. We did not interview all his prior partners. But clearly those willing to attack a police officer or pull a gun on an officer had a substantial history of violence against women.

Soon after the Nampa review was completed, Supervising Riverside County Deputy District Attorney Jerry Fineman called to say he was going to conduct a public records act check of the killers of law enforcement officers in Riverside County California. Jerry has a long history of specialized prosecution work around gender-based crimes and has served as the Chair of

act history of strangulation assault and each of them had a history of domestic violence. A fifth officer was killed by a man with a history of domestic violence but no public record was found to document strangulation history. A sixth officer was killed by a man whose prior girlfriend had warned other women to stay away from him, but there was no public records act history of domestic violence or strangulation. The five officers killed by men with a history of domestic violence and/or strangulation assault deserve to be remembered:

1993: Deputy Kent Hintergardt  
 1997: Deputy James Lehmann, Jr.  
 1999: Deputy Eric Thach  
 2001: Officer Doug Jacobs III  
 2010: Officer Ryan Bonaminio

Fineman concluded that there does appear to be a link between strangulation assault and intentional homicide of police officers. Though the sample size for research purposes was small, he also pointed out that these numbers

*See MEN WHO STRANGLE, page 97*

## Summary of Recent Strangulation Case Law

by Casey Gwinn, J.D., Gael Strack, J.D., Annie Perry, J.D. and Melissa Mack

### Nurse's Non-Perceptible Expert Testimony on Domestic Violence and Strangulation Was Properly Admitted

Defendant was convicted of strangulation and domestic assault after attacking his girlfriend. At trial, and over Defendant's objection, the State introduced the expert testimony of a licensed registered nurse with specialized training in domestic violence and strangulation. The expert, who had neither met with nor interviewed Defendant or victim, testified specifically about the signs and symptoms of strangulation, including how the lack of visible injury is common and also the potential lethality of strangulation. On appeal, Defendant argued that the trial court erred in allowing expert testimony because the expert's definition of strangulation differed slightly from that of the statutory definition. The appellate court affirmed the convictions, finding that the expert's definition was "almost identical" to the statutory definition and thus did not risk unfair prejudice to Defendant. **State v. Cox, 842 N.W.2d 822 (Neb. Ct. App. 2014).**

*Editor's Note: The judge properly recognized the need for expert testimony in the area of strangulation, especially when there is a lack of visible injury. The expert testimony from a non-perceptible witness, such as a nurse, was helpful in order to explain the significance of symptoms, signs of internal injury and lethality of strangulation.*

### Evidence Was Sufficient to Prove Domestic Battery by Strangulation Causing Seriously Bodily Injury

Defendant strangled his girlfriend until she became unconscious. Defendant was found guilty of domestic battery by strangulation and other charges. On appeal, Defendant argued that the strangulation element was only supported by "speculation and ambiguous statements and that any difficulty in breathing resulted from Lane's anxiety."

The court reviewed the evidence and found that "a rational trier of fact could have found beyond a reasonable doubt that LaChance strangled Lane."

LaChance used his knee and hands to apply pressure to Lane's throat and neck, depriving Lane of oxygen to the point that her vision was impaired. The court also found the evidence sufficient to support the conviction for domestic battery causing substantial bodily harm, as Lane suffered "prolonged physical pain" and lasting injuries. Accordingly, the court affirmed the convictions for domestic battery by strangulation and domestic battery. **LaChance v. State, 321 P.3d 919 (Nev. 2014).**

*Editor's Note: The Defendant attempted to minimize the testimony of the victim and*

After considering the merger issue, the trial court merged violation of a protection order and domestic violence into the other convictions, but rejected the Defendant's argument that the rape and felonious assault (strangulation) convictions were allied offenses. The trial court sentenced Defendant to consecutive sentences for each separate offense. Defendant appealed the decision not to merge the rape and felonious assault convictions. The appellate court affirmed Defendant's separate convictions, concluding that Defendant "failed to establish that he committed both crimes with the same

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***The judge and the appellate court clearly understood that the felonious assault of strangulation and rape were two separate and distinct crimes and understood the significance and seriousness of each crime.***

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*argued the cause of her problems was anxiety. The victim testified she had difficulty breathing and her vision was impaired. The court found these symptoms consistent with strangulation. This case demonstrates the importance of police officers' conducting a quality investigation and asking victims key questions to support the elements of strangulation.*

### Strangulation and Rape Deemed Separate Conduct to Support Multiple Convictions

Defendant was convicted of assault and rape. The victim woke to Defendant strangling her after the rape occurred. When the police arrived, they observed the victim's neck displayed "severe redness" and bruising, and there were "red spots" on her face. The victim had blood on her shirt, her panties were torn, and the police observed urine and feces on the victim's bed linens and pillow. At the sentencing hearing, the judge heard from the victim, considered statements from the prosecution and the defendant. The defendant argued that the assault and rape convictions were of similar import and should be merged into a single conviction.

conduct and animus." **State v. Tanreuther, No. CA2013-04-062, 2014 WL 10785, \*1 (Ohio Ct. App. 2014).**

*Editor's Note: The judge and the appellate court clearly understood that the felonious assault of strangulation and rape were two separate and distinct crimes and understood the significance and seriousness of each crime. This case also demonstrates the importance of submitting a strong statement of facts as part of the plea bargain to show that the Defendant committed both offenses and should be held accountable for both strangulation and sexual assault. As a matter of policy, defendants should not be permitted to plead guilty to domestic violence charges without admitting to their conduct and taking full responsibility for their actions. "No contest" pleas allow the defendant to avoid admitting responsibility for the specific violent conduct.*

### Detective's Testimony That Strangulation Does Not Necessarily Result in External, Physical Injury Relevant

Defendant was convicted of domestic assault by strangulation. During

*See CASE LAW, page 98*

# Why Didn't Someone Tell Me? Health Consequences of Strangulation Assaults for Survivors

by Gael B. Strack, J.D., Casey Gwinn, J.D., Dr. Dean Hawley, Dr. William Green, Dr. Bill Smock, and Dr. Ralph Riviello\*

"Why didn't someone tell me?" she said with tears running down her face. We were in Longview, Washington, providing a four-hour training to police, prosecutors, medical professionals, and advocates. As we broke for lunch, an unidentified woman came up to me and said, "You need to hear my story." I (Casey) said, "Tell me your story."

As she spoke, she was angry and deeply troubled. She said she was 52 years old and in a healthy, happy 30-year relationship. But she said that when she was 19 she became involved with an abusive boyfriend. She said she had been strangled nine times to unconsciousness, but she always recovered. She said that after two years, she left him and never looked back. But then she began to shake. She said, "Four years ago, I had my first cryptogenic stroke. Two weeks ago, I had my third cryptogenic stroke. I survived, but my neurologist told me that if I have one more brain bleed, he thinks it will kill me." Now, she was crying and shaking. She said, "He is going to kill me 30 years after he abused me!" And then

she looked right at me and said, "Why didn't someone tell me? I deserved to know and now I am going to die." All I could muster was, "We didn't know 30 years ago. I am so sorry." And I hugged her. She was right though. She deserved to know the potential consequences of being strangled. All victims deserve to know, but very few professionals are telling them.

Whether we meet them at a training on strangulation, during a focus group when developing a Family Justice Center, after getting a protection order at our Legal Clinic, or during an emergency room visit, we have found that victims are unaware of the long-term health consequences of being strangled by their abusers.

In 2011, the Maine Coalition to End Domestic Violence conducted a statewide survey on strangulation.<sup>1</sup> They sought feedback from victims who were strangled by an intimate partner. One hundred fifty-one survivors participated. The survey found 72.8% of the participants had been previously strangled; 79.3% reported being strangled more than once; 66.4% reported being strangled to the point of unconsciousness; 84.1% reported also being physically assaulted other than strangulation; most (75.5%) did not seek, and few received, medical attention. For those who received medical attention, most believed it was not documented in the medical record (48.9% said no and 26.7% did not know). There were 61.5% survivors who reported the incident to law enforcement. For those who reported to law enforcement, 61.4% believed strangulation was documented in their report. But overall, the participants believed most professionals were not asking about strangulation. They also strongly believed (81%) it was important for professionals to understand the impact of strangulation on a victim because the assault had a dramatic impact on their lives. The Maine Coalition found that the survivors who participated wanted their voices to inform change and promote safety for other survivors.

In 2014, the Georgia Coalition Against Domestic Violence conducted a similar assessment with a total of 115 participants with remarkably similar results.<sup>2</sup> Of the 80% of participants who had previously been strangled, 61% had been strangled two to three times; 15% between four and 10 times; and 7% indicated they had been strangled more than 10 times. Additional research notes that victims of multiple strangulation who have experienced more than one strangulation attack, on separate occasions, by the same abuser, reported neck and throat injuries, neurologic disorders and psychological disorders with increased frequency.

Today, it is unequivocally understood that strangulation is one of the most lethal forms of domestic violence. Strangulation can produce minor injuries, serious bodily injury, or death. Yet evidence of the assault can be difficult to detect because many victims may not have visible injuries and/or their symptoms may be nonspecific. In the San Diego City Attorney Study of 300 cases in 1995,<sup>3</sup> the largest study to date, 50% of the victims had no visible injuries at all. Of those cases with reported visible injuries, only 15% of injuries were substantiated with photographs of sufficient quality to be used in court as physical evidence. The other 35% of the cases had minor findings—too minor to photograph; 67% of the victims had no reported symptoms. Of the remaining survivors, 18% had pain only; 7% had other symptoms such as raspy voice, coughing, sore throat, nausea, vomiting, vomiting blood, ear pain, headaches, loss of consciousness, lightheadedness; 5% had breathing difficulty, and 2% had difficulty swallowing.

Strangulation has been defined as pressure placed upon the neck, such that there is a reduction of blood flow through the brain or constriction of breathing through the airway in the

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Information about Gael B. Strack, J.D., and Casey Gwinn appears on page 92.

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throat resulting in disruption of brain function by asphyxiation. The pressure is sustained, not instant, in such a way that the combination of time interval, surface contact area, and quantity of force, creates a sustained obstruction of oxygen delivery. A lack of oxygen to the brain may cause unconsciousness, brain injury, instant death, or delayed death. This distinguishes strangulation from a blunt force neck injury—such as a punch or slap—where the momentary interval of contact is too brief to affect oxygen delivery to the brain. While victims refer to being “choked,” this is

life-threatening strangulation exists if the victim presents petechial bleedings as a result of venous congestion with or without accompanying loss of consciousness. The pathophysiology of manual strangulation by venous obstruction leads to subsequent unconsciousness as a result of stagnant hypoxia. The body then becomes flaccid, muscle tone in the neck decreases and increased pressure on the neck results in arterial occlusion and eventual airway compromise. If the increased pressure is sustained, death results. Unconsciousness usually occurs within 10 to 15 seconds with complete bilateral carotid arterial occlusion whereas consciousness

headaches, anxiety, depression, and/or sleep disorders.

One challenge with strangulation cases is the fact that victims are often not just strangled. Many victims may also be brutally beaten to the head and body, which results in other injuries or exacerbates the trauma to the head and/or brain. The level of injuries and symptoms depends on many different factors including the method of strangulation, the age and health of the victim, whether the victim struggled to break free, whether the victim was under the influence of alcohol and/or drugs, the size and weight of the perpetrator, and the amount of force used.

To determine the level of internal injuries to the brain and/or body, a thorough medical examination of the victim is highly recommended. Properly trained medical personnel can provide not only emergency medical treatment, but careful diagnosis of the victim and documentation of physical signs and symptoms. Laryngoscopy, CAT scans, MRIs, and other medical tools not only document evidence of the strangulation, but also provide life-saving diagnostics. However, the MRI allows for better assessment of the inner structures of the neck, like soft tissue, vessels and larynx that cannot be clinically examined or documented.

As professionals working with victims who have been strangled, it is important to know and explain the list of possible injuries and consequences of strangulation. Victims may have internal injuries, such as laryngotracheal injuries, digestive tract injuries, vascular injuries, neurological system injuries and orthopedic injuries. Clinical symptoms of these internal injuries may include neck and sore-throat pain, voice changes (hoarse or raspy voice or the inability to speak), coughing, swallowing abnormalities, and changes in mental status, consciousness and behavior. Neurological symptoms may include vision changes, dimming, blurring, decrease of peripheral vision and seeing “stars” or “flashing lights.” Post-anoxic encephalopathy, psychosis, seizures, amnesia, cerebrovascular accident and progressive dementia may be indicative of neuropsychiatric effects.

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***Oftentimes, even in fatal cases, there is no external evidence of injury.***

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not an accurate medical term for an intentional strangulation assault. The correct definition of “choking” refers to an object in the upper airway that impedes oxygen intake during inspiration and can occur accidentally or intentionally. There can also be unintentional deaths among youths resulting from the “choking game.”

Suffocation is defined as obstruction or restriction of breathing by external mechanical forces. Suffocation does not require blunt force injury. It can occur by obstructing air from entering the air passages (smothering) or by keeping the lungs from expanding to take in air by external compression of the chest or abdomen (compression). Compressing the ribcage of the chest so that the chest cannot expand to take in air or compressing the abdomen so that the diaphragm is forced up to prevent breathing are both typical examples of suffocation by compression. Suffocation can also occur accidentally or intentionally.

Signs of life-threatening or near-fatal strangulation may include sight impairment, loss of consciousness, urinary or fecal incontinence and petechiae (pinpoint hemorrhages). Strangulation produces evidence of asphyxiation, recognized as petechiae in the skin, conjunctiva of the eyes and deep internal organs. Severe,

may be regained in 10-12 seconds if this pressure is released. However, unconsciousness has also been reported in a matter of a few seconds, depending on the circumstances. Victims are usually considered unconscious if they cannot wake up enough to interact normally with the rescuer. Consciousness is not an all or nothing state, it can mean just lightheadedness. Healthcare providers generally look at levels of consciousness, usually assessing a patient’s ability to follow instructions, communicate verbally and track objects with her eyes.

Symptoms of hypoxia or asphyxia as a result of strangulation or suffocation will likely cause the victim to be restless or hostile at the scene. The victim may appear to be under the influence of drugs or alcohol, or appear to have stroke-like symptoms. The signs and symptoms of anoxic encephalopathy, which is defined as brain damage caused by an absence of oxygen to the brain will depend on the areas of the brain affected and its severity. If the whole brain lacks a supply of oxygen, manifestations will be general. Physical symptoms would include weakness or paralysis. Oftentimes, even in fatal cases, there is no external evidence of injury. Evidence of temporary or permanent brain injury may include problems with memory, inability to concentrate,

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Victims can also suffer serious bodily or life-threatening injuries such as unconsciousness, autonomic nervous system dysfunction, urinary or fecal incontinence, and petechiae. Strangulation and suffocation can produce death by asphyxiation as a result of loss of oxygen and cell death in body organs that are required to sustain life.

Delayed findings of strangulation or suffocation may include bleeding, air way swelling, and internal artery damage (carotid dissection). Trauma may tear a small flap of tissue in the lining of the artery and as the body tries to heal it, a blood clot inside the artery may form and grow (thrombosis). Eventually, blood flow through the artery may decrease or even stop. These developing blood clots can break off and travel to the brain (embolization) and block a distant artery. Neurologic findings may develop from the areas deprived of blood flow. This resembles both the mechanism and clinical findings of a stroke. Some less common findings may include compression of the carotid body, an important neurologic structure in the neck that acts as a switching station for nervous impulses. Compression of the carotid body (sustained for three to four minutes) may stimulate the carotid sinus reflex which results in a slowing of the pulse and may lead to altered consciousness or loss of consciousness. If pressure is sustained or the reflex response is severe, that situation may progress to cardiac arrest. However, carotid reflex is uncommon.

Delayed death has also been reported after strangulation, both with and without survived intervals of lucid behavior. In 1996, the Forensic Science International reported a case of a woman's delayed death seven days after her male partner had strangled the victim. The 44-year old female victim was taken to the hospital after being found on her bed, deeply unconscious, having convulsions when touched or disturbed, and was breathing spontaneously. There were patches of hyperaemia and slight bruising around her neck. The face was not congested, swollen or cyanosed. There were no petechial hemorrhages in the conjunctivae or face. She had signs of anoxic/hypoxic brain damage. She was

put on mechanical ventilation but her condition deteriorated steadily and she died seven days later. Delayed death is also reported regularly in news articles: 27 year old woman died several hours after being strangled; 47 year-old woman died four days after being strangled and taken off life support; and a 15-month old child died from brain injury three weeks after being strangled for more than 10 minutes.

More importantly, many victims who are strangled report being threatened by death and many believe they were going to die while being strangled. Victims have described four stages in their last few moments of alertness: (1) denial, (2) realization,

(3) primal and (4) resignation. Some final thoughts have included: "What is going to happen to my children?" "Will I see my mother in heaven?" "I don't want to die this way." The research clearly shows if a victim is strangled just one time, she is 800% more likely to be later killed by the same man. Abused women in general have more headaches, back pain, sexually transmitted diseases, vaginal bleeding, vaginal infections, pelvic pain, painful intercourse, urinary tract infections, appetite loss, abdominal pain and digestive problems than the never abused women.

Even in the face of all these clear, long-term medical and mental health issues from strangulation assaults and repeated acts of domestic violence, most victims still do not receive necessary care. A recent national Health Survey of survivors of domestic violence conducted by the National Family Justice Center Alliance found that most victims of strangulation assault and domestic violence do not seek medical attention at all for their injuries. Other health needs, such as dental or vision care, are even more neglected and chronic long-term health issues are generally not being treated by a health care professional at all. Only 30% of the survivors even identified seeing a primary health care provider in the previous year.

Given these consequences, it is important for professionals to follow-up with victims, clients, and patients. They should be informed about the consequences of strangulation, encouraged to seek medical treatment, and evaluated for delayed symptoms. *They have a right to know!* Once victims seek medical attention, most experts agree to admit patients with immediate presentation to the hospital, within anywhere from 12, 24, or 36 hours. The health consequences of strangulation assaults are short-term and long-term. Strangulation victims not only live with the trauma planted firmly in their memories, but with the physical, mental, and emotional impacts of this near-fatal

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***Delayed death has also been reported after strangulation, both with and without survival intervals of lucid behaviors.***

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assault long after the threat is gone and the violence has stopped.

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"choking" was mentioned. She found 300 such cases.

The results of Gael Strack's case review were eye opening. The study revealed that on a regular basis victims had

of 300 Attempted Strangulation Cases" in 2001.<sup>11</sup> And the findings launched the most comprehensive effort in the United States to educate criminal and civil justice professionals about strangulation. The San Diego strangulation study from 1995-1996 has spawned research,

- Strangulation is a gendered crime: Virtually all perpetrators are men (299/300).
- Most abusers do not strangle to kill. They strangle to show they *can* kill.
- Victims often suffer major long-term emotional and physical impacts.
- Surviving victims are much more likely to die later if their abuser has strangled them.

***The lack of physical evidence was causing the criminal justice system to treat many "choking" cases as minor incidents, when, in fact, such cases were the most lethal and violent cases in the system.***

reported being choked, and in many of those cases, there was very little visible injury or evidence to corroborate the "choking" incident. The lack of physical evidence was causing the criminal justice system to treat many "choking" cases as minor incidents, when, in fact, such cases were the most lethal and violent cases in the system. The City Attorney's study was later published in an article in the *Journal of Emergency Medicine*, "Review

protocols, policies, and laws across the country and around the world.

The major findings of the San Diego study are now common knowledge:

- Most strangulation cases produce minor or no visible injury.
- Many victims suffer internal injuries, including permanent brain damage.
- Signs and symptoms do exist and can be documented even without visible injury.

Today, it is known unequivocally that strangulation is one of the most lethal forms of domestic violence. *Strangulation is clearly the edge of a homicide.* Unconsciousness may occur within seconds and death within minutes or less. Never again should an allegation of strangulation be ignored or minimized. When the victim says "he choked" me, alarm bells should go off and red flags should be waving for every professional in every case.

Strangulation is, in fact, one of the best predictors for the subsequent homicide of victims of domestic

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of strangulation or suffocation assaults are not “attempts.” They are completed criminal acts and should be prosecuted based on this understanding. The preferred terminology by our national faculty and experts is “strangulation” or “non-fatal strangulation.” When unconsciousness, urination, defecation and/or petechiae is/are present, then near-fatal or near-lethal strangulation would be the appropriate term as the victim suffered a severe, life-threatening injury.

### Lessons Learned From Strangulation Laws Across the Country

It is helpful to understand what is happening across the country as many states implement stand-alone strangulation statutes. Three lessons have already emerged. First, the wording of the statute is very important. Second, implementation plans should be in place (or put in place) to train judges, police officers, prosecutors, advocates, and medical professionals after such statutes are passed. Third, as discussed above, cases should be presumptively handled as felonies or system bias may quickly relegate them to misdemeanors.

### The Wording of the Statute

The statutory themes generally focus on impeding breathing and blood flow to the brain. Whether pressure is applied to the jugular vein(s) or the carotid artery(ies), the life threatening nature of the assault is about the flow of oxygen contained in the blood, and blood trying to get out of the brain and return to the heart. Most statutes understand this truth, although a few fail to properly address the offense. The Texas statute<sup>2</sup> is an excellent model for three reasons. First, it includes a “reckless” mental state, which relieves the state from proving that the defendant specifically intended to cause bodily injury to the victim. As discussed, many batterers use strangulation as a violent tool to gain power and control over their victims; most batterers do not intend to injure their victims. Second, the statute makes strangulation an automatic felony rather than wobbling between a misdemeanor and a felony. The statute emphasizes the gravity

of the crime and sends a strong message to law enforcement agencies and the community that such an offense is taken seriously. Finally, the statute enables the state to increase the penalty for repeat offenders. The Texas legislation embraces the dynamics of domestic violence by holding high-risk and repeat offenders accountable via sentences commensurate with their criminal behavior.

### Implementation Plans

As states have moved forward to pass felony or felony/misdemeanor (wobbler) strangulation statutes, it has become very clear that most states have not developed implementation plans to guide the proper training and handling of these cases by all professionals. The lessons learned from this national trend should challenge

than simple assaults such as pushing, punching, kicking, or slapping. The level of violence and potential for serious bodily injury or death warrants felony arrest and prosecution. Two articles in particular, *Why Strangulation Should Not be Minimized* by Marna Anderson in 2009,<sup>4</sup> and *Why Strangulation Should Be a Felony: Background Information for a California Strangulation Statute in 2011* by Casey Gwinn and Gael Strack,<sup>5</sup> articulate additional reasons why strangulation should be treated as a felony and can serve as a resource tool for professionals seeking to bring awareness, advocating for legal changes, and encouraging felony prosecution.

Bottom line: Strangulation is a unique crime. It has more in common with sexual assault crimes than basic assault or battery crimes. The inability to get oxygen is one of the most

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## *The level of violence and potential for serious bodily injury or death warrants felony arrest and prosecution.*

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all states to: include a directive from the state for prosecutors to treat these cases as presumptive felonies; create an implementation plan; provide ample resources; make prosecutor training immediately available; and enact a concerted effort to create a team of experts to testify in court in all cases. After the California strangulation law was passed in 2011, our Training Institute on Strangulation Prevention and the California District Attorneys Association partnered to develop an implementation plan. The plan included conducting multi-disciplinary trainings in 15 Family Justice Centers across the state, hosting four online video webinars for prosecutors and advocates, sending out a series of statewide *Constant Contact* newsletters to educate professionals about the online resources available through the Training Institute, developing a 30-minute online course for police officers, and publishing a manual.<sup>3</sup>

### Challenge Everyone to View Strangulation First as a Felony

Research confirms that the act of placing hands or ligature around a victim’s neck introduces a different level of lethality, rage, and brain injuries

terrifying events a person can endure. The body has an automatic reaction to being deprived of oxygen and blood to the brain. It knows it is about to die if it does not change the situation immediately, which leads to escalation of the violence by the victim. Domestic violence strangulation is usually about asserting control over the victim, *i.e.*, showing that the offender has the power of life and death over the victim; it is *not* about doing serious bodily injury (as is required by many statutes). Strangulation is far more cruel, inhumane, and dangerous than merely punching a person (battery). Jurors expect to see visible injuries. But the fact that strangulation often leaves no marks, combined with its terror value, makes it a favorite tactic of experienced batterers. Studies are confirming that an offender can strangle someone to death or nearly to death with no visible external injury, resulting in professionals viewing such an offense as a minor misdemeanor or no provable crime at all. When an abuser strangles his intimate partner, he is committing a serious criminal offense, often causing permanent

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brain damage to his victim. He must be held accountable for his conduct through the criminal justice system.

One of the greatest lessons learned since 2005, as strangulation statutes have been passed across the country, is that strangulation assaults should be a presumptive felony. But getting there is the hard part and requires every professional to treat strangulation cases seriously from the time the first 911 call is made all the way through the sentencing hearing. Every professional plays a key role in this effort. Implementation of recent strangulation statutes will take time, planning, training, and perseverance. Without these efforts, most strangulation cases will continue to be filed as misdemeanors. If we continue to treat strangulation as a misdemeanor or fail to prosecute, victims will die. San Diego learned that painful lesson in 1995 when two teenagers were murdered after being “choked” and neither case resulted in prosecution.

Sadly, that painful lesson is being repeated throughout the country as the Training Institute on Strangulation Prevention continues to monitor news story after news story. One recent example is illustrative. In May 2014, a man suspected in the death of a nine year old girl was charged with numerous sex charges with minors. A year prior, the same suspect was arrested by Hillsborough County Sheriff Deputies on charges he had raped his wife at gunpoint. The charges included felony sexual battery, aggravated assault with a deadly weapon, and domestic battery by strangulation. But prosecutors dropped all charges after his wife would not cooperate with the investigation and prosecution.

## Conclusion

Non-fatal strangulation cases are the edge of a homicide. Abusers who strangle are among the most dangerous. All professionals across the country can benefit from understanding the strengths and weaknesses of various strangulation statutes in the United States. It is also time for states to revisit their existing strangulation laws and seek improvement. Suffocation should also be included in

strangulation statutes. Strangulation and suffocation should be considered at the time of bail, issuance of criminal and civil protection orders, and sentencing hearings. Prosecutors must lead the way for the criminal justice system in treating non-fatal strangulation offenses as serious, violent crimes. This leadership will help hold dangerous offenders accountable and, ultimately, save the lives of victims of this vicious crime.

## End Notes

1. The following 37 states have statutes, whether stand-alone strangulation statutes or under an existing assault or battery statute that specifically identifies strangulation as a crime: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland (under sexual assault laws), Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin, and Wyoming. To review the language of most statutes, see Winn S. Collins & Jacqueline Callari Robinson, *Strangulation Statutes: A New Tool in the Criminal Justice Toolbox* (2012); Strangulation and Domestic Violence Joint Resolution, H.R.J. Res. 6, 2010 Gen. Sess. (Utah 2010). Violence Against Women Reauthorization Act of 2013, Pub. L. 113–114, § 906, 127 Stat. 54 (2013) (amending the federal assault statute, 18 U.S.C. § 113).
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*Strangulation of a Household Member: Hearing on SF 132 Before the H. & S. Judiciary Comm.*, 61st Leg., 2011 Gen. Sess. (Wy. 2011) (testimony of Brett Johnson, Sweetwater Cnty. Atty.).

Ellen Taliaferro et al., “Strangulation in Intimate Partner Violence,” in Connie Mitchell & Deidre Anglen, eds. *Intimate Partner Violence: A Health-Based Perspective*, p. 217 (2009).

Lee Wilbur et al., “Survey Results of Women Who Have Been Strangled While in an Abusive Relationship,” 21 *J. Emergency Med.* 297 (2001).

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violence. One study has shown that the odds of becoming a victim of attempted homicide increased by 700%, and the odds of becoming a homicide victim increased by 800%, for women who had been strangled by their partner.<sup>2</sup> The occurrence of strangulation has been reported in 47%-68% of women who were being assessed for intimate partner violence; smothering or strangulation has been identified in 25% of women killed by an intimate partner.<sup>3</sup>

The horrific deaths of Casandra and Tamarain San Diego ultimately changed the course of history and caused us to recruit experts and improve the criminal justice system's response to the handling of "choking" cases. These cases are now properly referred to as "near-fatal strangulation cases."

Thousands of women continue to suffer such assaults without effective prevention and intervention efforts in place in communities across America. But the research is now clear:

Strangulation is the edge of a homicide. Men who strangle are killers and even if they don't kill in the incident under investigation, we know what they are capable of and likely to perpetrate in the future! We are all responsible for getting educated and acting aggressively with the information now available.<sup>4</sup> Responsible professionals

3. J. Stephan Stapczynski, M.D., "Strangulation Injuries," 31(17) *Emergency Medicine Reports* 196 (August 2, 2010).

4. To this end, The Training Institute on Strangulation Prevention's resources available to the public, include a training conference, an iPhone app, and a DVD. Further information on the three-day training conference, to be held August 20-22 in San Diego, CA, is available at [www.strangulationtraininginstitute.com](http://www.strangulationtraininginstitute.com).

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***When the victim says "he choked" me, alarm bells should go off and red flags should be waving for every professional in every case.***

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can prevent major injuries to victims of abuse, facilitate needed treatment and support, and save lives.

**End Notes**

1. Dean Hawley et al., "A Review of 300 Attempted Strangulation Cases, Part 3: Injuries in Fatal Cases," 21 *J. Emergency Med.*, 317 (2001).

2. Nancy Glass et al., "Non-Fatal Strangulation Is an Important Risk Factor for Homicide of Women," 35 *J. Emergency Med.* 329 (2008).

*traininginstitute.com*. The iPhone app for documenting an assault along with all signs and symptoms, that can be used by advocates, law enforcement officers, or survivors, is available through the iTunes Store by searching for "Document It." The DVD, *Strangulation Assaults*, features national experts on the subject of strangulation from detection through prosecution of strangulation cases, and is available for purchase online at the Alliance Store at [www.familyjusticecenter.org](http://www.familyjusticecenter.org). ■

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- Are you having any trouble breathing now? Is your breathing any different than before the incident?
- Do you have asthma or a history of breathing troubles?
- Did you experience any visual changes? What did you see? (Indicators of a lack of oxygenated blood to the brain.)
- How does your throat feel?
- How does it feel to swallow?
- Are you having any drooling problems?
- Does your voice sound any different since the assault?
- Was there any coughing after the assault? Is the coughing still occurring?
- How did you feel during and after the assault? Did you feel any dizziness?
- Did you faint or lose consciousness?
- (If the victim lost consciousness) Explain why you believe you were unconscious? (Gap in time, waking up on the floor, bump on head from unknown cause, etc.)
- Did you lose control of any bodily functions? (Urination or defecation?)

- Is it possible you are pregnant?
- Did you feel nauseated or vomit?

**Evidence Gathering**

Prosecutors need to re-create the scene for the judge or jury. Officers and investigators can help prosecutors immensely by a complete investigation, which may include the following:

- Photograph and sketch the scene. A sketch can provide a visual of the scene layout, especially the locations of people at the scene, distances, and areas of significance.
- Imagine a victim is strangled on the bed and manages to roll off the bed into a small space between the bed and wall where the strangling continues. A visual showing the confined space would provide the court with a gripping sense of how vulnerable the victim felt.
- Was an object used to strangle the victim? Locate, photograph, and collect the object.
- Was there blood on the victim, on the walls, or along or at the bottom of the stairs?

- Clothing that is torn or ripped during the incident would support pulling, dragging, and/or a struggle.
- Collect writings or journals by the victim of past similar events.
- Was any property damaged during the incident? (Photograph and collect if there is anything significant.)
- Was any medical treatment recommended or obtained? (Obtain medical/dental release. Consider obtaining a copy of the emergency medical services response report.)

**Photographs**

As the saying goes, "A picture is worth a thousand words." A responding officer cannot take too many photographs in domestic violence cases, including strangulation cases. Every visible injury should be documented with a photograph. Even areas where there is a complaint of pain but no visible injury should be documented. Later, when the injury does appear, the initial photograph can corroborate that there was not a pre-existing

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condition. For strangulation cases, especially where there are petechiae (small red dots above the strangulation hold that are smooth to the touch), it is recommended that officers also take photos of the victim when the injuries have cleared as well.

### **Medical Examination and Documentation**

As discussed above, the victim may have internal injuries that later cause complete airway obstruction, even 36 hours after an injury.<sup>5</sup> As such, when victims report they were “choked,” dispatchers, patrol officers, investigators, and prosecutors should strongly encourage victims to seek medical attention. If a victim reports symptoms such as difficulty breathing or swallowing, paramedics should be immediately dispatched to scene, without or without victim request, in order to screen the victim for possible internal injuries. Even if the paramedics determine a lack of objective symptoms to support internal injury, their medical examination will prove very helpful to assess the victim’s health and document any visible injuries and/or symptoms.

### **Prior History of Abuse**

Prior history of abuse and strangulation assaults is important for many reasons. It helps professionals assess the risk of future violence, establishes the pattern of abuse, explains whether there is a credible threat, and documents the level of fear. It also helps the prosecutor in charging, sentencing, bail hearings, probation revocation hearings, and for impeachment purposes at trial.

### **Identification of the Dominant Aggressor**

When officers arrive at the scene of a domestic violence call, they may find both parties without visible injuries, both parties with visible injuries, or one party with injuries and the other with no visible injuries. The challenge is determining which party is the dominant aggressor and which is the true victim. In non-fatal strangulation cases, it is more likely that victims will use self-defense to stay alive. Because victims fear for their lives, they may protect themselves by pushing, biting,

scratching, or pulling the suspect’s hair. Depending on the method of strangulation being used, the suspect may be the only individual with visible injuries. Don’t be fooled and end up arresting the victim!

For example, if the suspect is strangling the victim from behind and using a chokehold, the victim may protect herself by biting the suspect in the arm. If the suspect is manually strangling the victim from the front (face to face), she may push him away, scratch him, or pull his hair. If she is fighting for her life, she may inflict major injuries on the suspect in self-defense! Consult our full workshop on dominant aggressor analysis to learn everything you must analyze.

### **Writing Strangulation Investigation Reports**

As in other criminal cases, such as driving under the influence or being under the influence of a controlled substance, patrol officers should note their experience and training concerning domestic violence and strangulation in their police reports. For example:

I have been a patrol officer for five years. During that time, I have investigated 500 domestic violence cases. In many of those cases, victims have reported being strangled. I have also received training in domestic violence and in particular the medical signs and symptoms of strangulation. Based on my experience and training, I know strangulation can cause serious injury. Unconsciousness can occur within seconds. Death can occur within minutes. The symptoms and injuries as reflected in this investigation are consistent with someone being strangled. The elements of a felony (list crime) are present. I further encouraged the victim to seek medical attention and to carefully log her symptoms and injuries.

### **Follow-Up Investigations**

The follow-up investigation by a detective or investigator is critical in strangulation assaults.

At a minimum, the follow-up investigation should verify the inclusion of all investigative steps described above for on-scene investigation. In addition, the

most important pieces of evidence at trial are often follow-up photographs taken two to three days after the incident. Follow-up photographs can provide far more powerful evidence of the true violence than initial on-scene photographs. Since most bruises are not visible for days after a violent assault, follow-up photographs must be central to every investigation.

Re-interviewing the victim and witnesses is as important as taking follow-up photos. Victims often give more detailed statements after they have had a chance to calm down and reflect on what occurred. On the other hand, it will be very clear in the follow-up investigation if the victim is still with, or reluctant to testify against, her abuser.

In addition to follow-up photos and interviews, the following evidence is very useful in prosecuting batterers and should be collected in a thorough follow-up investigation:

- The name, address, and phone number of two close friends or relatives of the victim who will know her whereabouts six to 12 months from the time of the investigation;
- Statements of family members for corroboration and/or history of the relationship;
- Records check for documented domestic violence history;
- Interview with the victim regarding all prior domestic violence incidents including dates, locations, witnesses, injury, and corroborating evidence;
- Statements by the victim regarding prior admissions and apologies from the defendant, especially those documented in any letters, notes, or cards;
- An interview with the suspect if he was not interviewed by responding officers;
- The defendant’s phone records to show his contact with the victim, including threatening and intimidating calls from jail;
- Notes, cards, emails, faxes, and letters (including those sent from jail); and
- A victim diary or a log of history of abuse by the defendant.

Remember, victims experience voice changes in 45%–80% of non-fatal strangulation cases.<sup>6</sup> Based on this anecdotal evidence and the medical

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literature, it is important to tape record or videotape your follow-up investigation to document voice changes for later evaluation by medical experts and to corroborate the victim's allegations. Many digital cameras today also have a video feature; use this feature to capture a raspy voice, difficulty swallowing, coughing, pain exhibited by the victim, and/or drooling. The Training Institute's new iPhone application (see page 93, note 2) is an excellent tool for this purpose for law enforcement officers and for advocates.

## II. Use Forensic Investigators and/or Nurses

Forensic investigators and nurses are specially trained to gather evidence using various techniques and photographic equipment. They are proficient in follow-up examinations, taking photographs, and interpreting medical records. The Maricopa County (Arizona) Strangulation Assault Protocol has established the "gold standard." Every victim should receive a forensic exam after the initial on-scene investigation. This will dramatically increase felony filings and felony convictions.

## III. Developing the Expertise of Police Officers and Investigators

Within the last 15 years, police officers have been routinely used as experts in domestic violence cases to explain why victims recant, why victims stay, power and control dynamics, the identification of the dominant aggressor, and the impact on children witnessing domestic violence. Given the extent to which strangulation training is being incorporated at all levels of law enforcement, prosecutors should not be shy about asking police officers or investigators if they have been trained in strangulation and can or are using that training and experience as part of their testimony in strangulation cases. And if prosecutors don't ask law enforcement about that training and experience, officers are encouraged to speak up and let the prosecutor know that they can provide more information about strangulation as part of the foundation of their testimony and investigation. Our Training Institute provides

a specialized course to train officers to testify as powerful experts.

## IV. Pre-Filing Contact With the Victim

Victims often recant, minimize, and avoid coming to court. Early victim contact can limit this behavior. Still, prosecutors should not assume the victim will be available and willing to cooperate with the prosecution of the case. In situations with living victims, prosecutors should approach the case as if the defendant had been successful in killing the victim, because homicide cases are always prosecuted without a victim. If you can prove your case independent of the victim coming to court to testify about what occurred, then you have a very solid case. However, this emphasis on evidence-based prosecution should not limit your desire to obtain information from the victim and maintain a close relationship.

## V. Forensic and Medical Examinations

One of the best methods of collecting evidence for the prosecution is through a medical examination of the victim.<sup>7</sup> Properly trained medical personnel can provide not only emergency medical treatment, but careful diagnosis of the victim and documentation of physical signs and symptoms. Alternate light sources, laryngoscopy, CAT scans, MRIs, and other medical tools not only document evidence of the strangulation, but also provide life-saving diagnostics. Prosecutors should work closely with their medical providers to develop effective protocols to document and treat strangulation victims. The medical examination may yield some potentially exculpatory evidence. Part of the treatment and documentation process may reveal the victim has used intoxicants. It may also indicate the victim inflicted some of her own injuries in an effort to stop the abuser. *The importance of the victim receiving proper treatment and documentation of injuries outweighs any concern of obtaining potentially exculpatory evidence.*<sup>8</sup> Whether an item of evidence is favorable to the prosecution or to the defense turns on the argument of the lawyers and not the evidence itself.

## VI. Victim Advocacy

Advocacy is an important part of the victim follow-up process. This is

the opportunity to inform the victim about safety options and to assess the danger to the victim. This article does not focus on the crucial advocacy piece, but advocates should be involved in every case handled by law enforcement or prosecution agencies.

## VII. Identification of Other Witnesses

After the initial chaos of the crime has subsided, the victim may be in a better position to recount what occurred. She may have already done so with a neighbor, a close friend, or a relative, or she may have reported the incident as a justification for missing employment. The initial statement may not accurately reflect the incident. She may experience stroke-like symptoms that inhibit speech function. Reviewing the report of the incident with the victim may be helpful. Document persons the victim has seen since the incident. Follow-up interviews with those individuals may provide evidence that the victim was acting or speaking differently after the incident than she normally behaves.

If emergency personnel transported the victim to a medical facility, obtain the records of paramedics and interview the involved personnel. The victim may make statements in the course of the emergency that are later admissible at trial, even over the defendant's right of confrontation.

## VIII. Protocols/Policies

A case should not be filed unless there is a reasonable likelihood of conviction based upon the state of the evidence.<sup>9</sup> Nothing in this article should override that guideline. There are a number of factors to consider in making the determination of filing. Recognize that the lack of injuries may cause prosecutors to minimize the severity of the incident. Also recognize that the existence of injury does not necessarily identify the abuser or victim. Identifying the dominant aggressor is an important aspect of strangulation-case evaluation. The batterer may have numerous cuts, scratches, bite marks, or other injuries that were inflicted by the victim as a direct response to being strangled by the abuser. This creates a misperception that the party

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with the visible injury must be the victim. This oversimplification can lead to the filing of charges against actual victims, leaving them unprotected against their abuser.

### IX. Victim Cooperation

Can you prove the case without the victim? Utilize the theme of “treat the case like a homicide so it doesn’t become a homicide.” If the defendant was successful in efforts to strangle the victim to death, there would be no victim in court. Assume you do not have a victim. The victim may go into hiding, become uncooperative, or come to court and be held in contempt

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*We recommend the strangulation charge in domestic violence cases be filed separately from other appropriate assault or battery offenses (e.g., punching, slapping, kicking, etc.).*

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for refusing to testify. If any of these things occur, consider how you will establish the case. A solid investigation can allow you to proceed without the victim. All victims experience intimidation from the abuser. Examine the physical evidence and any statements made by the batterer. Look for pieces of non-testimonial hearsay evidence that might be admissible as a spontaneous statement or otherwise admissible hearsay.<sup>10</sup> If the victim is being coerced into not cooperating, this may give rise to a claim of forfeiture by wrongdoing.<sup>11</sup> Be sure to look for it. Remember that all victims experience intimidation from their abusers.

### X. Choice of Charges

If your state has a specialized strangulation statute, use it. If there is other violence, be sure to charge each offense under the appropriate statute. We recommend the filing of strangulation charges along with sexual assault if the perpetrator strangles the victim during the rape. Likewise, we recommend the strangulation charge in domestic violence cases be filed separately from other appropriate assault or battery offenses (e.g., punching,

slapping, kicking, etc.). We strongly recommend strangulation assaults be handled as presumptive felonies.

### XI. Setting Bail and Other Safety Measures

Bail provides several opportunities for the prosecution to impact the batterer. The bail hearing provides an excellent opportunity to educate the bench regarding the lethality of this type of violence. Consider calling a strangulation expert at this stage of the proceedings. If your office is in the process of developing experts in strangulation, the bail hearing can serve as a testing ground for assessing the strength of your expert. Prosecutors should also consider other protective

measures such as Criminal Protective Orders.

### XII. Preliminary Hearing

The preliminary hearing, if used in your jurisdiction, provides another opportunity to break the power and control of the abuser. The lower standard of evidence and the use of hearsay evidence at a preliminary hearing make it relatively easy for the prosecution to present its case and obtain a bind over order. This may be sufficient to demonstrate to the victim that the batterer is being held accountable. It can demonstrate to the abuser that there will be a consequence for the incident.

### XIII. Case Preparation

Electronic evidence is prevalent today. Prosecutors can gain valuable evidence through the collection of cell phone data, text messages, social media, and other forms of electronic data. If the defendant is in custody, jail calls and jail mail should be monitored and obtained. This process becomes especially critical as trial approaches and the batterer’s need to dissuade the victim increases.

### XIV. Eliminating Defenses

Strangulation cases have a series of potential defenses that typically arise. Adequate case preparation involves being able to address these defenses:

- **The Victim Self-Inflicted.** This is usually a result of the victim acting in self-defense during the assault. Use your expert to explain this dynamic to the jury.
- **The Victim Likes to Be Strangled.** There is no research to support this defense. Asphyxia to heighten sexual pleasure is a “guy thing” in all the research. If the couple is into consensual rough sex, it is highly unlikely one of them will call 911 in the first place.
- **The Injury Was an Accident.** This is nearly impossible to do. External pressure to the neck that occludes blood flow is an intentional act.
- **The Defendant Acted in Self-Defense/Mutual Combat/Dominant Aggressor.** Training, such as our dominant aggressor course, helps to address this defense. Most experienced abusers use this defense in domestic violence and strangulation cases. Don’t be fooled.

### XV. Voir Dire

Jury selection in a strangulation case involves many of the same issues as in other forms of domestic violence. You need to reflect on how potential jurors will react to issues in the case. Verbalize jury bias and attitude that may exist about domestic violence. These biases may include things such as:

- Absence of the victim means there is no case. Prepare the jury if the victim will not testify for you.
- Absence of victim cooperation with prosecution means the crime did not occur.
- If the victim minimizes or recants, the crime did not occur.
- Two different versions from the victim means there is reasonable doubt.
- Victims who stay in a relationship deserve what they get.
- Same sex victims are not entitled to protection of “domestic violence” laws.

### XVI. Trial Strategies

Evidence-based prosecution strategies work. Prosecutors can minimize the impact of the abuser’s power and

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control over the victim by presenting a case that proves guilt independent of the victim's testimony. A typical case might consist of the introduction of the 911 call, followed by the observations of a law enforcement officer, followed by an expert witness in strangulation, and concluding with the introduction of admissions from the defendant. We urge prosecutors in strangulation assaults to use the best-practices techniques we advocate for evidence-based prosecution of domestic violence cases. Many of these cases can be proven even without the testimony of the victim if a thorough investigation has been done at the scene and on follow up.

### Just a Few More Trial Tips

First, don't waste your opening statement. By the end of opening statement, the jury should fully understand the prosecutor's case and believe the defendant is guilty. You should be as long as necessary to explain the strength of your case and preemptively counter any perceived weakness in the case. Your goal is to provide a compelling story that moves the jury to convict. The opening statement allows you to educate the jurors about strangulation by telling them, in summary fashion, what your expert will testify about regarding the seriousness of the crime.

Second, don't attack the victim if she recants. Remember she is a traumatized crime victim facing powerful intimidation and pressure from her partner. He nearly killed her. She knows what he is capable of and she is more afraid of him than of you.

Third, be passionate. If you don't care, the jury (and judge) won't care.

Fourth, prepare well to cross-examine the defendant. Be prepared for his self-defense claim. See if he describes being afraid of his partner. Most abusers are not afraid of their partner and it is tough to fake it.

Finally, use your closing argument to drive home the violent and potentially fatal nature of this type of attack. The batterer who strangles his victim holds her life in his bare hands. Help the jury feel the intimacy and violence of such an assault.

### End Notes

1. See *Domestic Violence and Children Exposed to Domestic Violence Law Enforcement Protocol*, San Diego County. (2008). See also Robert T. Jarvis, "Symposium on Integrating Responses to Domestic Violence: A Proposal for a Model Domestic Violence Protocol," 47 *Loyola L. Rev.* 513 (Spring 2001). See also the International Association of Chiefs of Police, Domestic Violence Model Policy at [www.iacp.org](http://www.iacp.org)
2. The Lethality Assessment Program-Maryland Model (LAP), created by the Maryland Network Against Domestic Violence (MNADV) in 2005, is an innovative prevention strategy to reduce domestic violence

homicides and serious injuries. It provides an easy and effective method for law enforcement and other community professionals to identify victims of domestic violence who are at the highest potential for being seriously injured or killed by their intimate partners and immediately connect them to the domestic violence service provider in their area. Available at [http://mnadv.org/\\_mnadvweb/wp-content/uploads/2011/10/LAP\\_Info\\_Packet-as\\_of\\_12-8-10.pdf](http://mnadv.org/_mnadvweb/wp-content/uploads/2011/10/LAP_Info_Packet-as_of_12-8-10.pdf).

3. Marna L. Anderson, *The Impact of Minnesota's Felony Strangulation Law*, WATCH Report Part II, p. 3 (May 2009). Available at [http://www.storvaw.org/uploads/strangulation\\_report\\_ii\\_resource.pdf](http://www.storvaw.org/uploads/strangulation_report_ii_resource.pdf)

4. Petechiae is defined as a "minute reddish or purplish spot containing blood that appears in skin or mucous membrane as a result of localized hemorrhage." *Merriam-Webster Dictionary*. Accessed March 24, 2013 at <http://www.merriam-webster.com/dictionary/petechiae>

5. Donald J. Smith, Jr. et al., "Frequency and Relationship of Reported Symptomology in Victims of Intimate Partner Violence: The Effect of Multiple Strangulation Attacks," 21(3) *J. Emergency Med.*, 323 (2001).

6. Lee Wilbur et al., "Survey Results of Women Who Have Been Strangled While in an Abusive Relationship," 21(3) *J. Emergency Med.* 297; Interviews with detectives from the San Diego Police Department.

7. The leading forensic protocol in the country is in Maricopa County, Arizona. For more information, view our online webinar on the Maricopa County Strangulation Assault Protocol at [www.strangulationtraininginstitute.com/index.php/library/viewcategory/846-webinars.html](http://www.strangulationtraininginstitute.com/index.php/library/viewcategory/846-webinars.html).

8. *Brady v. Maryland*, 373 U.S. 83 (1963). ■

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were found with only a public records act check and newspaper articles.

More research is needed, and a comprehensive relationship history of the killers, including interviews with prior partners, would be extremely important. But the evidence is clearly building to conclude that a majority of law enforcement officers killed in this country are killed by men with a history of domestic violence and by men with a history of strangulation assault against women. The next time you hear the phrase, "He choked me," make sure it gets your attention. The victim's abuser has just raised his hand and said, "I'm a killer." We can and must start treating strangulation

assaults more seriously. If we do, we have the opportunity to save the lives of women, children, and law enforcement officers. It has become a passion for me. Indeed, I am convinced that

### End Notes

1. See [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=2378&issue\\_id=52011](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2378&issue_id=52011). Retrieved May 20, 2014.

***The next time you hear the phrase, "He choked me," make sure it gets your attention. The victim's abuser has just raised his hand and said, "I'm a killer."***

even if we never prosecuted another man who punched or slapped a woman and instead went after every man who strangles a woman, we would reduce domestic violence homicides and officer-involved deaths in this country by more than 50%.

2. Nancy Glass et al., "Non-Fatal Strangulation Is an Important Risk Factor for Homicide of Women," 35 *J. Emergency Med.* 329 (2008).

3. See <http://strangulationtraininginstitute.com/index.php/library/viewcategory/843-scholarly-works-and-reports.html>. Retrieved May 20, 2014. ■

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trial, the police officer testified that based on his experience, strangulation often leaves no visible injuries, to which Defendant objected. The trial court found that the officer's experience in investigating strangulation rendered his testimony relevant and helpful to the jury. The appellate court found that the testimony was relevant and the trial court did not err in admitting the testimony. **State v. Supino, No. A08-64, 2009 WL 1515255, \*1 (Minn. Ct. App. 2009).**

*Editor's Note: This case clearly demonstrates the importance of police officers receiving specific training on the signs and symptoms of strangulation and how their training and experience can help prosecu-*

### Doctor Without Formal Strangulation Training Was Qualified to Opine About Strangulation Injuries

Defendant appealed from his convictions for aggravated assault and simple assault for strangling his girlfriend because the trial court erred in allowing the testimony of a "strangulation expert," among other issues raised on appeal. Specifically, Defendant argued that Dr. Salik, although a physician, had no specialized training on strangulation, suggesting his experience was insufficient to qualify him as an expert. The trial court found, and the appellate court confirmed, that Dr. Salik, as a medical doctor with extensive experience working in emergency medicine,

### Detective Qualified to Testify About Bruising in the Context of Strangulation Even If Not Medical Expert

Defendant appealed from his conviction of second-degree domestic assault for strangling his partner. Defendant argued that the trial court abused its discretion by admitting, over defense counsel's objection, testimony from the detective about bruising appearing after strangulation assaults because the detective did not have medical training or experience. The trial court found, and the appellate court affirmed, that the detective's testimony did not purport to be expert medical testimony but instead it was the detective's opinion and personal observations based upon her extensive law enforcement experience to be able to testify to this matter. **State v. Battle, 415 S.W.3d 783 (Mo. Ct. App. 2013).**

*Editor's Note: The ordinary juror does not have the same ability as a trained law enforcement officer to assess injuries and histories of victims who have been strangled. This case shows that police officers who regularly respond to domestic violence cases or forensic nurses and emergency room physicians who regularly evaluate and treat trauma patients can be important witnesses and experts for prosecutors in strangulation cases even without having some specialized certification in strangulation assaults.*

## People v. Figueroa, 968 N.Y.S.2d 866 (N.Y. City Ct. 2013), provides an in-depth explanation of the history of strangulation crimes in the context of the criminal justice system.

tors prove strangulation even without visible injury. This case also opens the door for more professionals to testify as experts based on their specialized expertise even in the absence of any specific degree or certification.

### Detailed Case Law Example Noting Strangulation Lethality and Injuries and Legislative Intent

This case provides an in-depth explanation of the history of strangulation crimes in the context of the criminal justice system. The case thoroughly details the lethality of strangulation and also the common signs and symptoms observed in strangulation assaults. In addition, the case provides a thorough analysis of the legislative intent and importance of strangulation legislation. **People v. Figueroa, 968 N.Y.S.2d 866 (N.Y. City Ct. 2013).**

*Editor's Note: Case law is finally starting to catch up with strangulation research. Prosecutors and civil attorneys should make good use of this case to educate judges and other professionals in criminal, civil and family courts about the lethality of strangulation cases. This case will support the felony prosecution of more strangulation cases.*

had sufficient expertise "on the physical process a body undergoes during strangulation," and therefore was qualified as an expert. **State v. Delgado, 303 P.3d 76 (Ariz. Ct. App. 2013).**

*Editor's Note: As police and prosecutors begin to pursue more felony strangulation prosecutions, the defense bar will become more aggressive in opposing expert testimony. Here, the Defense filed a pre-trial motion to exclude the expert's testimony. Prosecutors should anticipate this approach and file trial briefs to provide all necessary case law on each charge, educate the judge on the facts, and make the case for expert testimony. Experts can help judges and jurors not only understand strangulation but also domestic violence dynamics, the identification of the dominant aggressor, and the impact of children witnessing domestic violence, depending on the facts and charges in the case. This case also points out that it may not be necessary to qualify experts in the area of strangulation but simply in their field of expertise, such as general emergency medicine or the investigation of domestic violence cases, which includes strangulation.*

### Evidence of Bruising, Scratch Marks, and Swelling Sufficient to Find Defendant Strangled Victim

Defendant was convicted of assault inflicting physical injury by strangulation. Defendant appealed, arguing that the evidence was insufficient to sustain the conviction. At trial, the victim testified how she was strangled by the Defendant and that she "couldn't breathe for a while." She also testified she felt like she was losing consciousness and called out to a man walking nearby, asking him to call 911.

Officer B.R. Anderson of the Winston-Salem Police Department testified that when he arrived, the victim was lying on the ground, in a fetal position in front of an apartment. Officer Anderson testified that the victim was crying and very upset. He observed that she vomited blood and

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stomach acid twice. He also described her as having panic attacks. The officer testified further that the victim's clothing was ripped, her face was swollen and bruised, she had scratch marks on her, bruises on her body, and a bite mark on her shoulder. The victim was transported by ambulance to the hospital emergency department.

At trial, a physician's assistant testified to her observation of the victim: multiple abrasions, swelling to her face and neck, and "[e]cchymosis, which is bruising, the purplish color ... over her collar bone areas." Santiago was tendered and accepted as an expert "in the area of diagnosing patients, assault victims, in terms of the possibility of strangulation."

The appellate court affirmed the conviction, noting that there was sufficient evidence to allow a reasonable juror to find Defendant guilty, such as the victim's testimony; testimony of the police officer who found the victim after she had been attacked; and testimony from a medical representative who treated the victim and took photos of her injuries, opining that the injuries were consistent with someone who had been strangled. **State v. Lowery, 743 S.E.2d 696 (N.C. Ct. App. 2013).**

*Editor's Note: We strongly recommend that all officers call for paramedics if the victim has symptoms of a strangulation assault. Many victims of domestic violence often refuse an officer's request to call the paramedics and be transported to the hospital for medical attention. Although this case did not mention how the victim got to the hospital, it appears the officer may have simply called the paramedics or did a great job in convincing the victim she needed immediate medical attention. This case could have had a different result without the officer's actions which then allowed the testimony of the physician's assistant who corroborated the officer's description of the victim's injuries and ultimately her testimony as an expert witness that bruising, swelling and scratch marks are consistent with strangulation.*

### **Defendant's Self-Defense Argument Not Warranted**

Defendant was convicted of first-degree domestic assault and felonious restraint. Defendant argued that he was entitled to a self-defense instruc-

tion; he only strangled the victim to the point of unconsciousness because she would not stop hitting him. The appellate court found that Defendant's argument was without merit. Defendant was not entitled to this defense because there was no evidence that Defendant was ever in fear of serious bodily injury or death. Defendant testified that he strangled her to get her to stop hitting him, not that he feared injury, even minor, from her. Therefore, the court found that applying deadly force by strangling her was not in self-defense and therefore not justified. **State v. Crudup, 415 S.W.3d 170 (Mo. Ct. App. 2013).**

*Editor's Note: Both the trial court and the appellate court understood the lethality of strangulation and how strangulation can lead to death. Although the Defendant testified that the victim slapped him multiple times and bit him, he was not entitled to strangle the victim to unconsciousness (deadly force) and therefore not automatically entitled to a self-defense instruction.*

*Editor's Note: Case law has supported the liberal interpretation of whether a witness is qualified as an expert. If an expert meets the "liberal minimum qualifications," his/her level of expertise generally goes to credibility and weight, not admissibility. However, the use of law enforcement officers in domestic violence cases, especially in strangulation cases, is relatively new. Expert testimony from a law enforcement officer carries tremendous weight in a strangulation assault. This case should encourage prosecutors to lean on police officers as experts and give officers confidence to use medical terminology in their reports and in court.*

### **Evidence of "Sore Throat" Due to Strangulation Assault Is Circumstantial Evidence That Supports a Finding of "Traumatic Condition"**

Defendant appealed from his conviction of corporal injury to a spouse, among other convictions. He contended that he was denied due process

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## ***We strongly recommend that all officers call for paramedics if the victim has symptoms of a strangulation assault.***

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*Victims will instinctively fight for their lives in a strangulation assault. In some situations, the predominant aggressor may even have more visible injuries than the victim who was strangled. This case sends a strong message that batterers cannot use the victim's alleged use of simple battery as an excuse to use deadly force in retaliation.*

### **Officer's Testimony Was Admissible Regarding Strangulation Signs and Symptoms**

Defendant was convicted of second-degree assault and interfering with a report of domestic violence. Defendant appealed. The Court of Appeals held that the officer's testimony that fresh scratches on victim's neck and lower face were indications that she had been strangled was admissible lay opinion. Further, the court held that the officer was qualified to give expert testimony as to petechiae and delayed bruising in strangulation victims. **Carter v. State, 235 P.3d 221 (Alaska Ct. App. 2010).**

as the result of the prosecutor alleging a legally incorrect theory of circumstantial evidence proving traumatic condition as it pertains to corporal injury. On the contrary, the appellate court held that the prosecutor's reference to a "sore throat" was a reference to the symptoms of internal injuries caused by strangulation (*i.e.*, a traumatic condition), as the medical expert described it. Therefore, it was proper, and constituted circumstantial evidence that Defendant's acts caused a "traumatic condition" by considering the victim's own statements of pain, combined with the doctor's testimony about the signs and symptoms of strangulation, including a sore throat. **People v. Romero, No. B217891, 2011 WL 322393, \*1 (Cal. Ct. App. 2011) (Unpublished).**

*Editor's Note: For years, prosecutors believed we had to show external visible injury in order to prove a felony strangulation*

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*case. The prosecutor's theory of the case in Romero is an excellent road map for others. A sore throat is evidence of an internal injury in a strangulation assault.*

\* \* \*

The Training Institute on Strangulation Prevention has been monitoring how courts are ruling on new strangulation laws that have passed

nurses and doctors are being qualified as experts in strangulation cases; judges are finding the testimony of experts helpful especially where there is no visible injury; prosecutors are winning their cases even when victims recant or present with limited visible injuries; and sufficient evidence of strangulation can be based on the victim's subjective symptoms, officer observations, and/or expert testimony.

We salute police officers, prosecutors, medical professionals and judges for doing their job so well.

***Successful non-fatal strangulation case prosecutions will hold some of the most dangerous and violent men accountable for their violence and abuse.***

across the United States. While not all states have weighed in, the trends are clear: Strangulation statutes are being upheld as constitutional; police officers are being permitted to testify about their observations and experience in handling strangulation cases;

Successful non-fatal strangulation case prosecutions will hold some of the most dangerous and violent men accountable for their violence and abuse and, in the long-run, save the lives of police officers, women, men, and children. ■

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