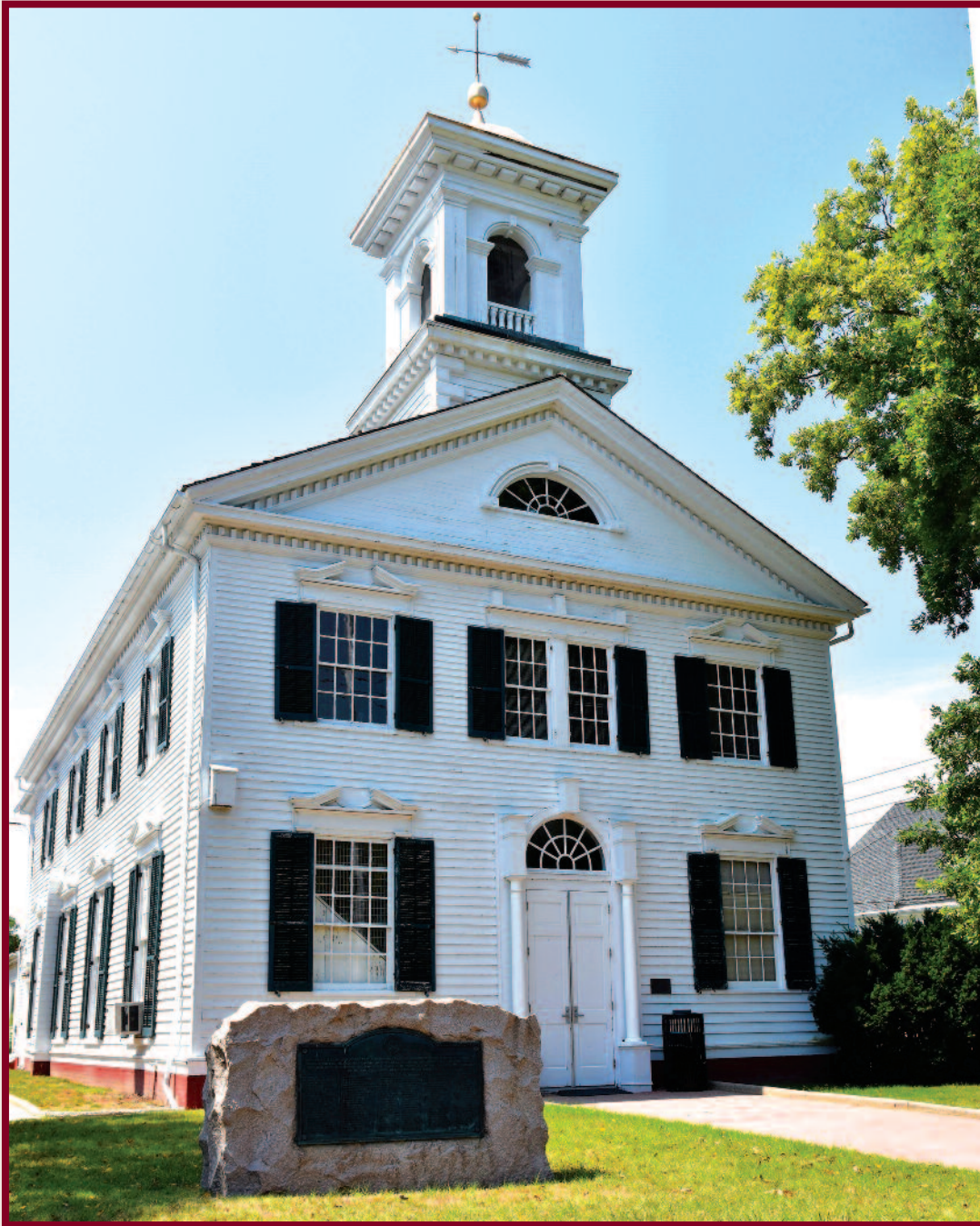


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The PROSECUTOR



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SPECIAL ISSUE DEVOTED TO DOMESTIC VIOLENCE AWARENESS
AND BULLYING PREVENTION

WAYNE A. JORDON & JUDGE SANDRA GRISHAM

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Mental Health

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ABOUT THE COVER

The old Cape May County Courthouse Building is located in Cape May Court House, Cape May County, New Jersey. The building was built in 1848 and added to the National Register of Historic Places on December 22, 1981. It was replaced by the new Cape May County Courthouse in 1927.

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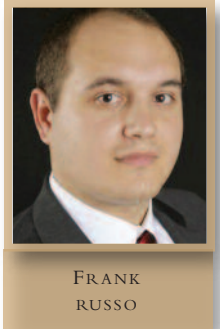
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VIEW

From the Hill

By Frank Russo
Director of Government
and Legislative Affairs



FRANK
RUSSO

CAPITOL HILL WAS BUZZING as Congress returned from an unusual August Recess that saw the Senate handle a slew of nominees to administration positions and the federal judicial bench. The Supreme Court nomination dominated the headlines as the Senate Judiciary went through a week of contentious hearings. While the Senate dealt with the confirmation drama, members of the House were focused on passing a series of spending bills that would keep the government funded past the September 30th deadline. Notably, both Congress and the White House have agreed to table discussions on criminal justice reform until after the November elections.

NDAA members are encouraged to contact Frank Russo, Director of Government and Legislative Affairs, on any policy or legislative issues that arise. He can be reached at frusso@ndaajustice.org or at 703-519-1655.

Below is a snapshot and update on recent issues:

COMMUNITY SAFETY

- Members of the House recently passed the Community Safety & Security Act, which specifies circumstances when a criminal offense should be deemed a “crime of violence.” The change to the clause in Title 18 of the U.S. Code comes on the heels of *U.S. v. Dimaya*, where the Supreme Court ruled the current “crime of violence” definition is unconstitutionally vague. NDAA is monitoring the legislation as it is expected to face opposition in the Senate.
- NDAA has worked alongside Rep. Renacci (R-OH) to potentially introduce the Protecting Our Prosecutors Act which would provide prosecutors with the authority to carry a concealed firearm, subject to state rules and regulations. The bill closes a loophole in the current LEOSA law that prohibits prosecutors from carrying concealed weapons because they do not have statutory powers of arrest or apprehension.

Questions or feedback: Please contact Frank Russo at frusso@ndaajustice.org or at 703-519-1655.

CHILD ABUSE ISSUES

- After working with Sen. Schatz's (D-HI) staff, NDAA has chosen to support the END Network Abuse Act. The amendment improves the training and technical capacity of military law enforcement to confront the misuse of the Department of Defense's computers, facilities, and online network to access child pornography.

ELECTRONIC PRIVACY

- While the Committee opposes the Email Privacy Act passed through the House earlier this year, NDAA has worked alongside Senate Judiciary staff to promote an ECPA bill that assists law enforcement and prosecutors in handling investigations in the digital era. The bill would ensure access to digital evidence is not withheld from law enforcement, based on misinformation and misguided privacy concerns.

FORENSIC SCIENCE

- After the House passed the Justice Served Act on a 377-1 bipartisan vote, the Senate approved the bill. An original piece of legislation co-authored by NDAA, the legislation authorizes a carve-out of 5-7 percent of funding from a portion of the Debbie Smith DNA Backlog Elimination Act to enhance the capacity of State and local prosecution offices to address the backlog of violent crime cases in which suspects have been identified through DNA evidence. The legislation now awaits the President's signature.

VIOLENCE AGAINST WOMEN ACT (VAWA)

- VAWA is set to expire on September 30th, but each chamber has a very different approach to the legislation. However, funding for current VAWA grants and programs was extended through December 7th in the most recent Congressional spending bill. As a result, both chambers are working towards releasing a bi-partisan re-authorization bill before the new

deadline. NDAA is monitoring the legislative effort to ensure it does not include numerous problematic provisions from the law enforcement perspective, including grant restrictions if jurisdictions use bench warrants for failure to appear situations.

- While both chambers of Congress attempt to reach a bi-partisan compromise on VAWA, NDAA has played a significant role in the legislative effort. Recently, Lisa Tingle of the Office of the Commonwealth's Attorney for Arlington and the City of Falls Church, provided key insight to members of Congress at the Bipartisan Task Force to End Sexual Violence's roundtable discussion.
- The roundtable hosted by Rep. Kuster (D-NH) and Rep. Joyce (R-OH), included a panel of victim advocates, survivors of abuse, and representatives of the law enforcement community. "The Violence Against Women Act is a groundbreaking piece of legislation that has received strong support from Members of Congress across the political spectrum," said the Task Force Co-Chairs. "The programs, grants, and guidance contained in VAWA have helped survivors following traumatic sexual violence and have helped law enforcement and healthcare providers address and respond to incidents of such violence."
- Lisa Tingle and NDAA made members aware of our concerns with the current re-authorization efforts and discussed possible solutions to improve VAWA to benefit prosecutors nationwide. "As prosecutors, we greatly value the Violence Against Women Act and believe it is an important vehicle to combat domestic violence by providing services and resources to victims," said Lisa Tingle. "The law enforcement and advocate communities must continue a dialogue to identify the best tools to end domestic violence in our country. Today's roundtable provided an opportunity to address the challenges facing prosecutors as we work to provide justice for victims of abuse. We look forward to working with all stakeholders, as NDAA has in past VAWA efforts, to achieve reauthorization."

The PROSECUTOR

DOMESTIC VIOLENCE

Safer Homes, Safer Community



BARRY P.
STAUBUS

BY BARRY P. STAUBUS

IN THE SPRING OF 2016, I decided that the prolific domestic violence and sex crime rate in Sullivan County could not stand. I could easily attribute 40 percent of all of my office's cases to domestic violence. The sex-crime-rate per population in the jurisdiction was three times the average of the rest of upper East Tennessee, rivaling the rate in urban areas across the state. The county averaged law enforcement reports of five domestic violence related crimes a day and five sex crimes a week.

Through Tennessee Governor Haslam's safety initiative to open family justice centers across the state, I applied for funding from the Office of Criminal Justice Programs (OCJP) to plan a family justice center (FJC). My vision was for one safe place that victims and survivors of interpersonal violence could go and access any service they needed to move away from a life of fear and violence and toward a life of safety and freedom.

My Assistant District Attorney, Kaylin Render, helped write a grant request for funding to hire a full-time employee to plan the center. Render, who tries all of the felony domestic violence cases in Sullivan

County, was well aware of the need for a new way to address the domestic violence epidemic in the jurisdiction. OCJP awarded Sullivan County the \$240,000.00, three-year planning grant requested. I hired Karen Boyd, a local attorney, to plan and oversee the center, which would be the 8th family justice center to open in the state.

Quickly, essential family justice center partners got on board with the plan for this new center. Two local domestic violence shelters, the children's advocacy center, all three local law enforcement agencies, and civil legal service providers joined the DA's office, representing the core partner agencies that would make up the family justice center.

The work had just begun for this Sullivan County team. The grant, which funded training and planning for the center, did not cover money for purchase of a building. Traditionally across the state, local governments provided the physical space for family justice centers, but the Sullivan County government was unable to provide a building or funding. The team didn't give up on their dream of a family justice center. Believing in the inherent generosity and goodness of the

Barry P. Staubus is District Attorney General for the 2nd Judicial District of Tennessee.



Over 100 people came to celebrate the grand opening of Branch House Family Center. Tennessee Governor Bill Haslam cuts the ribbon while the board of directors cheer. All photos courtesy of the Bristol Herald Courier

people in the community, we decided to do something no other FJC in Tennessee had tried.

The existing partner agencies rallied a team of leaders from the community and opened a 501(c)(3) non-profit corporation to encourage donations so that the FJC could have a home. In spite of their own busy work schedules, these agency and community leaders committed to helping to start this entirely new agency. They did this knowing that if the family justice center project succeeded, it would mean extra work and changing how things had been done for decades in Sullivan County domestic violence and sexual assault cases. However, they all shared a vision for the long-term improvement that this new system would provide.

For six months, the board worked to identify an

appropriate location for the family justice center and convince someone to donate property. We were certain that someone would step up and provide the building for this much needed facility. On February 14, 2017, someone did. After hearing about the need and the plans for the center, local business owner James A. Street handed over the key to a 4400 square foot building, agreeing to lease the space to the nonprofit for \$1 a month.

The building, located less than two miles from the county courthouse, was off the beaten path, offering privacy to clients and visitors without sacrificing easy access to other agencies. It needed to be remodeled to become the warm, welcoming center for victims that the non-profit board envisioned. The next 14 months were a flurry of planning, fundraising, meetings, tiling,

killing snakes, training, painting, and landscaping. The community that the family justice center planners had counted on came through in a stunning way. Piece by piece, the community put together the building that would serve as a place of hope and healing for survivors of domestic violence.

In the midst of planning the physical center and building the infrastructure for this new agency, the FJC partner agencies discussed existing needs in the community for crime victims. The number one service that was missing was access to Sexual Assault Nurse Examiners (SANE). Even with three major hospitals in the area, there wasn't a single SANE available for victims of sexual assault in Sullivan County. The FJC raised awareness of this need and partnered with East Tennessee State University, organizing the intensive SANE training for local nurses. On January 1, 2018 there were zero SANEs in the jurisdiction and surrounding counties. As of April 29, 2018, there are 15 SANEs in the area and pediatric SANE training has been planned and scheduled for early fall.

On May 18, 2018, over 100 people came together to celebrate the grand opening of Branch House Family Center. The event was attended by volunteers, community leaders, law enforcement officers, board members, and representatives from partner agencies. Tennessee Governor Bill Haslam addressed the proud community before cutting the ribbon.

During the three months since officially opening, Branch House has provided services to 98 victims of domestic violence and sexual assault. The agency has received over 450 phone calls and provided over 100 hours of training on interpersonal violence in the community. In addition to the grant funding Boyd's position, the non-profit has successfully received funding from OCJP for three full time employees. Services offered at Branch House include assisting victims in obtaining orders of protection, connecting children



Entrance to Branch House Family Center.

who witness violence between parents with therapy, and providing courtroom advocacy. Over the next three months, four additional agencies will hire full time staff to provide additional services at the family justice center including on-site medical care.

My office is buckling down, anticipating an up-tick in domestic violence related cases, which often happens in the two years after a community opens a family justice center. It will be worth it, though, as long-term proven outcomes of family justice centers include reduced homicides, increased community support, and lower levels of stress and anxiety on the part of victims and their children.

The family justice center model requires existing agencies to be willing to adapt and change. I applaud and thank our local law enforcement agencies (Bristol TN Police Department, Kingsport Police Department, and Sullivan County Sheriff's Office) for their willingness to devote resources to this project and to investigate and handle cases in new ways.

The Branch House board believes that the work on the family justice center will pay off in the long run, making homes safer throughout the jurisdiction. After only three months, the family justice center is already impacting lives. When asked about her experience at



District Attorney General Staubus, at right, and Governor Haslam toured the facility after the grand opening. Pictured above is the children's playroom.

Branch House, a domestic violence survivor had the following to say:

“I am truly humbled every day I come here, by the love and compassion and dedication to service that I see poured into this organization by all of the people who have worked to get this place to where it is.

In the eyes of a survivor, this place represents hope that had previously been lost. It represents love that had previously felt undeserved. It represents the transformation to be made. And most importantly, it repre-

sents a safe place to seek help from people who care about them. This can make the difference between a survivor leaving or staying. Fighting or accepting. Surviving or not.”

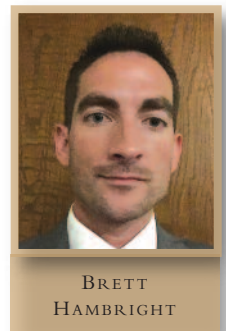
The programs run daily at Branch House are based on the agency’s values of excellence, integrity, and determination. Every day Branch House and her partner agencies work to move Sullivan County one step closer to being an empowered, compassionate community where everyone is safe at home.

The PROSECUTOR

DOMESTIC VIOLENCE

Lancaster County's Domestic Violence Court Moving Cases Faster While Protecting Victims

BY BRETT HAMBRIGHT



OVER 800 CASES have been placed in Lancaster County's Domestic Violence Court since its launch a year ago, and officials say those cases are getting immediate attention leading to quicker accountability of the offender and enhanced protection of the victims.

The specialty court was a long-planned project of the Lancaster County District Attorney's Office and became operational in August 2017 with the cooperation of President Judge Dennis E. Reinaker, the Officer of the Public Defender, Domestic Violence Services of Lancaster County, and the Office of Probation and Parole. Funding to create a Central Preliminary Hearing Court for Domestic Violence was awarded to Lancaster County through a Byrne JAG grant administered by the Pennsylvania Commission on Crime and Delinquency.

Domestic Violence Center Court (DVCC) is held every other Thursday in the Lancaster County Court of Common Pleas. All misdemeanor and felony DV preliminary hearings (absent homicides and serious bodily-injury cases) are held in this forum, so that every DV case is brought before the court within two weeks of the defendant's arraignment.

"Domestic violence creates ripples of trauma and consequences which can ruin, and/or take, the lives of

the victim as well as their children," Lancaster County District Attorney Craig Stedman said. "This court is designed so we can have a resolution much earlier in these important cases than before. We have, in essence, front-loaded the process to the benefit of everyone involved."

Under the new court model, district attorney victim/witness advocates contact every victim to inform them of the court process, and to get the victim's input on case resolution before any plea negotiations are discussed as required by the Pennsylvania Crime Victims' Bill of Rights.

This information is especially critical for prosecutors to know if the defendant's rehabilitative needs will require specific directives for substance abuse or mental-health issues, as well as necessary contact restrictions for the victim's protection.

The DA's office employs a DV paralegal who not only compiles discovery on the new pending case, but also gathers any prior criminal charges/investigations (whether convicted or not) and any prior Protection from Abuse (PFA) action. That background provides the prosecutor with a documented history of the couple and the defendant's criminal behavior. This discovery is available for the defendant and counsel to review

Brett A. Hambricht is a media specialist with the District Attorney's Office in Lancaster, Pennsylvania.

at the preliminary hearing, so the defendant's due process rights are respected if he or she elects to enter a fact-track guilty plea in the case.

All the prosecutors who handle cases in DVCC are trained in domestic-violence issues, including stalking, strangulation, PFA, and related family-court issues. This provides a clearer assessment of the available evidence at the outset to ensure the defendant is facing the appropriate criminal charges. It also ensures the victim's concerns for his or her safety, the safety of his or her family/friends/co-workers, and his or her ability to understand the criminal and civil-justice remedies available.

Lancaster County DVCC is not a treatment court; it is an accountability court. This project offers offenders the opportunity to take responsibility and resolve their cases so they can access appropriate rehabilitative services in a prompt manner. To that end, most cases charged against first-time offenders will be eligible for a suitable fast-track disposition, with the goal of getting the offender into rehabilitative treatment within a few weeks of the offense.

Adult Probation and Parole DV officers are available in DV Central Court days to process cases for DV counseling, drug and alcohol treatment, and/or mental-health assistance.

If an offender chooses to accept a negotiated guilty plea before the Court of Common Pleas, the case can be fast-tracked to be scheduled within about one month's time before a specially-convened Common Pleas Court session. In those cases, any pending protection order action can be scheduled along with the plea, minimizing court appearances for the victim.

Previously, DV preliminary hearings were scheduled in court sessions with other types of criminal offenses at one of 19 minor judiciary offices across the county. The attending prosecutor may not have been a specialized DV prosecutor. Prosecutors usually met the victim and discussed the case with the officer for the first time immediately prior to the preliminary hearing.

Prior to the inception of DVCC, DV cases were referred generally from police agencies to the DA's DV Unit. Over the past decade, the DV Unit generally

received 500 to 600 cases annually for prosecution. With the inception of DVCC in 2017, and with the routine filing of DV cases through Court Administration, the number of DV cases prosecuted by the DA's Office last year increased to 789.

In the first half of 2018, the DA's Office has prosecuted 402 cases through DVCC. Of those cases, 42 percent have been resolved by a guilty plea or Accelerated Rehabilitative Disposition (ARD). Most were resolved within two months of the offense. Thirty-seven percent of the caseload are pending preliminary hearing, or trial, at the Court of Common Pleas.

Led by Assistant District Attorney Susan Ellison, a group of specialized prosecutors familiar with the intricacies of domestic violence cases handle the DVCC caseload. Also instrumental in the project are: Assistant Public Defender Patricia Spotts along with other Assistant Public Defenders and private attorneys, Probation Supervisor Justin Chimics, Assistant District Court Administrator Daniel Scarberry, Deputy Court Administrator Russell Glass, and Sheriff Christopher Leppler.

Domestic-violence cases can be some of the most difficult to prosecute due to the variety of influences facing a victim. Victims must deal with the confusion of participating in the criminal justice system and/or a concurrent protection-order civil process, while navigating changes in their home life which can include pressures from the offender or his/her family.

Unfortunately, victims sometimes stay under an alleged abuser's influence and the criminal case stalls. Under the DVCC model, prior to dismissal of any charges, a prosecutor has reviewed all available evidence to ensure that the Commonwealth cannot go forward with other witnesses or evidence. If the Commonwealth can pursue the case with such other evidence or testimony, there will be prosecution.

"The sooner we can deal with the issues related to domestic violence the sooner we can get the victim the protections and help he or she needs," District Attorney Stedman said, "and the sooner the offender can get whatever sentence and/or treatment is appropriate."

The PROSECUTOR

DOMESTIC VIOLENCE

San Diego County's Strangulation Protocol: Improving Evidence Collection to Win the War



TRACY
PRIOR

BY TRACY PRIOR

ANA'S STORY — “My former boyfriend was constantly jealous, controlling, and isolated me from the world. He would beat me, threaten me with weapons, destroy my property, and abuse my children. He would often strangle me to the point that I would lose consciousness. In a final set of incidents, he ended up strangling me with a television cord and he lifted me by my hair, breaking my neck, and causing me to be quadriplegic. I now require around-the-clock care. I wish someone had realized sooner that I needed help. I feel fortunate to be alive today.”

PROSECUTING STRANGULATION TAKES A TEAM

Every minute after a domestic violence incident matters and the skills and resources of local law enforcement and healthcare providers can help us win the battle in holding offenders accountable in the courtroom. Strangulation is a serious warning sign in domestic violence relationships that should never be ignored.

With over 17,000 domestic violence incidents in San Diego County and an increase of 63 percent in defendants charged for domestic violence over the past two years, the San Diego County District Attorney's Office has been working hard to put into place new strategies for prosecuting smarter. A few years back, we began delv-

ing into our crime data to see where we could make a difference. What leaped out was that few strangulation cases were being filed on and even less were being filed as felonies. We also started educating ourselves about the complexities of strangulation cases and thinking differently about how we filed, negotiated, argued, and proved these cases.

Strangulation is an important indicator for future lethal domestic violence. During strangulation, external pressure put on the neck can result in a lack of oxygen to the brain. Loss of consciousness may result, and if continued, ultimately death. Female survivors of non-fatal strangulation are 600 percent more likely to become a victim of attempted homicide and more than 700 percent more likely to become a victim

Tracy M. Prior is a Deputy District Attorney and Chief of the Family Protection Division for the San Diego District Attorney's Office.

of homicide.¹ Fifteen percent of the DV homicides in our county are the result of strangulation or suffocation and strangulation accounts for about 10 percent of all violent deaths in the U.S.²

Improved detection and documentation of strangulation is critical for holding domestic violence offenders accountable for these serious criminal acts. Through collaborative efforts across the twelve law enforcement agencies in our county and prosecution, we have been able to move the mark. The San Diego County DA's Office has experienced a 34 percent increase in felony filings for strangulation in the past four years. This was accomplished through a major overhaul to how our criminal justice system responds to strangulation.

An important fact to understand is that strangulation often leaves no visible signs of injury. Detection of non-visible symptoms such as a raspy voice, difficulty swallowing and hearing changes and referral medical personnel can save lives. We implemented a new countywide Strangulation Protocol, documentation forms, and training across the twelve law enforcement agencies in our county and prosecution offices. Dispatchers and 911 operators were asked to inquire with callers whether they were choked or strangled and to call for emergency medical aid if warranted. First responding officers complete a domestic violence supplemental form with questions for screening for strangulation. If the domestic violence victim indicates that he/she was strangled, they then complete a Strangulation Documentation form. Follow-up investigators take photographs and, when possible, have the victim demonstrate the strangulation on a mannequin. Law enforcement submits cases of strangulation for felony review, instead of misdemeanor review. We've collaborated with the Medical Examiner's office and other physicians in the community and whenever possible, elicit testimony from medical professionals at both the preliminary hearing and in jury trials to prove necessary elements such as the "traumatic condition" or "force likely to produce great bodily injury or death" elements required by our state Penal Code sections.

WHEN INJURIES ARE VISIBLE DON'T LOSE THEM TO BAD PHOTOGRAPHS

Quality photographs of victims for improved documentation of domestic violence injuries at the scene can provide the pivotal evidence needed in strangulation cases. Clear, high resolution photos make a difference in the evidence needed to submit these cases as felonies. For that reason, we utilized grant funds and provided every law enforcement agency cameras along with a training video on how to best capture and document injuries.

TRAINED FORENSIC NURSES PLAY AN IMPORTANT ROLE

Another step in our initiative involved increasing documentation of domestic violence strangulation by trained forensic nurses. Last year, we implemented a grant program with Palomar Forensic Services through the California Office of Emergency Services for the provision of no cost Domestic Assault Forensic Examinations (DAFE) for domestic violence victims who have been strangled. These services are offered at Palomar Health and the San Diego Family Justice in downtown San Diego, however, the nurses can travel anywhere needed including hospital emergency rooms. There have been over 200 of these exams already conducted and funding was approved for another 600 exams over the next eighteen months. Since this program began, we have found that cases with the DAFE submitted are 40 percent more likely to be filed than cases without DAFE's.

Domestic violence offenders who strangle are like ticking bombs. We don't know exactly when they will go off, harming or killing their current or future partners, but eventually they will. More times than not, left without criminal justice intervention, it's simply a matter of time. San Diego's coordinated community response has proven crucial in our battle to win the war against domestic violence.

¹ Glass, N., Laughon, K., Campnell, J., Chair, A., Block, C., Hanson, G., Sharps, P. Taliaferro, E. (2009, Oct). Non-fatal strangulation is an important risk factor for homicide of women. *Journal of Emergency Medicine*, 35(3).

² Funk, M., & Schuppel, J., (2003). Strangulation injuries. *Wisconsin Medical Journal*, 102(3), 41-45.

DOMESTIC VIOLENCE

Cape & Islands (MA) District Attorney's Office

RELATIVE TO OUR ROLE within the criminal justice system, the Cape & Islands District Attorney's Office is committed to aggressive prosecution of DV cases.

- Special Domestic Violence Unit created in 1992
- Specially trained Chief Domestic Violence Prosecutor who handles all Superior Court DV cases, and more serious cases pending in the Barnstable District Court
 - Seasoned ADAs prosecute DV cases in other four District Courts under direct supervision of Chief Domestic Violence Prosecutor
- Provide ongoing training to local police departments as well as District Court ADAs regarding evidence-based prosecution.
 - When corroborating evidence permits, the C&I DAO prosecutes DV cases irrespective of a DV victim's willingness or ability to participate in the case

The Cape & Islands District Attorney's Office is also committed to a coordinated community response to reduce the recurrence of domestic violence and provide services to survivors and those affected by it.

- Facilitator of local Domestic Violence High-Risk Task Force
 - Utilizes research-driven evaluations to identify abusers and victims associated with increased risk of lethality
 - Comprised of police departments, prosecutors, victim advocates, probation, house of corrections, and community service providers
- Member of Cape & Islands Regional Domestic Violence Council
 - Meet quarterly
 - Comprised of community service organizations, law enforcement, and concerned individuals who meet for the purpose of collaborating regarding the issues that surround domestic violence in our communities
- Support and collaborate with local community-based organizations who serve survivors of, and those affected by domestic violence, such as Independence House, WE-CAN, ManKind Project
- Engage in public awareness and engagement campaigns such as:
 - "No More" Project campaign
 - White Ribbon Day

DOMESTIC VIOLENCE

Pulling an Abusive Rabbit Out of the Hat

BY SHANNON ARCHER



IT'S MONDAY MORNING at the Polk County Courthouse in Des Moines, Iowa. At 8:00 a.m., I walk into the courtroom where I'm scheduled to begin a domestic abuse jury trial. The victim was served, in person, with a subpoena to appear at 8:00 a.m. sharp. She is nowhere to be found. Defense counsel, realizing the victim is not present, asks when I will be filing the dismissal. While it is not unusual to dismiss a domestic abuse case when a victim does not appear for trial, this is not one of those times.

I inform defense counsel that I will be proceeding to trial without the victim. Counsel looks at me with a slack jaw and a blank stare and says, "You can't do that." Overhearing our conversation, the judge chimes in, with a smidgeon of condescension, "How exactly are you planning on proving your case, Ms. County Attorney, without calling the victim as a witness?" I hand him a copy of a Motion to Admit (the victim's) Statements under the Doctrine of Forfeiture by Wrongdoing and explain that the State is ready to proceed with an evidentiary hearing to establish the defendant's wrongdoing.

Obviously, this is not a strategy for every case. An evidence-based prosecution requires a special set of circumstances to justify admission of the victim's statements under a hearsay exception and even more unique circumstances to pierce the defendant's consti-

tutional right to confront his accuser. With the support and assistance of law enforcement, however, it is possible to hold some offenders accountable even without victim cooperation. By working together with law enforcement, prosecutors can help officers plan to investigate with an evidence-based prosecution in mind. If every case investigation begins with the assumption that the victim will recant or refuse testify for the prosecution, then the investigation will yield a more versatile case with more evidence and more opportunities to hold a controlling and abusive offender accountable.

It's not about telling the law enforcement officers how to do their job. It's about working towards a common goal as a team. Prosecutors understand, for example, that 911 calls are often admissible even without the testimony of the 911 caller. Establish a classic hearsay exception such as the Excited Utterance Exception or Present Sense Impression, and a caller's statement will likely be considered a non-testimonial Confrontation Clause Exception under *Crawford v. Washington*, 541 U.S. 36 (2004), as held in *Davis v. Washington*, 547 U.S. 813 (2006). Training dispatchers about the importance of gathering certain specific information from the caller can result in recorded victim statements that can often be presented to the jury in absence of a cooperative victim. Information like the identity of the caller and

Shannon Archer is an Assistant Polk County Attorney in Des Moines, Iowa.

the assailant, the circumstances of the assault, and the associated timeline of events can provide a strong foundation for an evidence-based prosecution.

Similarly, if responding officers know to ask key questions of the suspect, questions that lock down the domestic relationship for example, the defendant's statements are likely to be admissible as admissions of a party opponent. Admissions on body camera and photographs of a victim's injuries can establish elements of a prosecution independent of a victim's cooperation. Similarly, astute officers are now routinely asking a simple question of victims, "Who else have you talked to about this situation besides the 911 operator?" With this simple tactic, officers may well identify additional witnesses who heard a victim's excited utterances — utterances to lay witnesses that are non-testimonial by definition — who may testify at trial to the victim's statements. Sharing tactics like this has the potential to strengthen innumerable prosecutions. Likewise, officers who document extra details — such as what they smelled or the demeanor of the parties — allow the prosecutor to tell a story of the domestic abuse which is rich with details that a cooperative victim might otherwise provide.

Later investigators too can win cases with their actions. Detectives who secure a Medical Release of Information and retrieve a victim's medical records often uncover non-testimonial statements made by the victim to medical professionals. Such statements are generally admissible as hearsay exceptions since they are statements made for purposes of medical diagnosis and treatment. Some jurisdictions even admit a victim's statements to medical professionals identifying the assailant. Medical professionals would need to lay sufficient foundation that the victim's out-of-court statements identifying the assailant are necessary to ensure that a patient is safe upon discharge. The medical professional may testify that if the patient's abuser lives in the same home, then part of the treatment is for medical staff to provide resources for temporary housing at a domestic abuse shelter.

Detectives who follow-up with a victim and take additional photographs of healing injuries can help to establish that the appearance of the injuries has changed

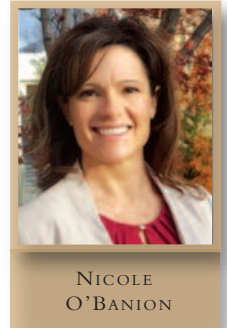
and hence, that the injuries were fresh when the abuse was first reported. The follow-up interaction with victims also strengthens the relationship between victims and law enforcement officers. Even if a victim does not cooperate with the current prosecution, the victim will be more likely to call the police in the future for help if the victim is treated with respect during the investigation and prosecution.

Furthermore, detectives who ask a victim about after-the-arrest contacts by the defendant can help uncover Contempt of Court charges for No Contact Order violations. More importantly, such contacts often involve manipulation by the defendant. A defendant may tell a victim not to show up for trial or to evade service of a subpoena, or make threats of further assaults if the victim cooperates with the prosecution. Because the purpose of such manipulation is to prevent the victim from testifying in court, a missing victim's earlier statements may be admissible under the Forfeiture by Wrongdoing exception to the defendant's Sixth Amendment right to confrontation. If established, the same wrongdoing also constitutes an exception to hearsay under Federal Rule of Evidence 804(b)(6). Often times, such manipulation may be found in phone calls made while the defendant is incarcerated pending trial. A detective who monitors jail phone calls may establish the wrongdoing necessary to overcome the Confrontation Clause and provide a useable hearsay exception. The recorded calls can also illustrate the dynamics of domestic violence, like power and control, which will help explain the relationship and remind the jury why they should care about holding the offender accountable, even if the victim does testify.

Appreciating the dynamics of domestic violence means understanding, expecting and planning for the fact that some victims cannot testify against their offenders. A victim's lack of cooperation that forces dismissal of a case against a dangerous offender is both frustrating and unjust. We, as prosecutors, can minimize that frustration and injustice by actively considering prosecutions that are not dependent on the victim and by helping to train law enforcement with regard to the tactics that make such prosecutions possible.

DOMESTIC VIOLENCE

Domestic Violence Awareness Month



BY NICOLE O'BANION

SINCE 1987, OCTOBER has been dubbed Domestic Violence Awareness Month, and each October, there is an influx of events and media coverage dedicated to raising awareness about the alarming numbers of people who are affected by violence in their homes. For many people, home is their refuge: a safe place where they can escape the worries of the day and receive unconditional love and support. For victims of domestic violence however, home is anything but a safe place to retire.

Domestic abuse, or intimate partner violence, is not limited to any socioeconomic group or particular month: it can take place at any time in any environment. Domestic violence occurs in households across the globe every day, and a large number of these incidents go unreported. Violence in the home affects everyone within the household, whether or not family members are the targeted victims of abuse themselves. And the effects of domestic violence can extend well beyond the home, to neighbors, family, friends, coworkers, and the

community as a whole.

The Office of the Nevada Attorney General is committed to taking a stand against domestic violence not only this October, but year-round. Attorney General Adam Paul Laxalt chairs the Committee on Domestic Violence established to increase awareness of the existence and unacceptability of domestic violence in Nevada. This committee also reviews programs for the treatment of persons who commit domestic violence, fatalities of victims of domestic violence as well as evaluating the criminal justice system with respect to domestic violence offenses statewide.

In addition to this committee, the Office of the Nevada Attorney General is the administrator for Nevada Victim Information and Notification Everyday (VINE), a free service for victims of crime or members of the public that allows users to register and receive automated notifications of changes to an offender's custody status. In July 2017, Attorney General Adam Laxalt took the initiative to

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make Nevada the first state in the country to implement a new and enhanced version of VINE to better serve victims of violent crime in our state. This new version offers users innovative features and the ability to gain immediate access to statewide service

Legislative Session. The bill would create additional protections for victims and law enforcement responding to domestic violence incidents. While many states already have a statewide protection order registry, Nevada does not. Attorney General

While many states already have a statewide protection order registry, Nevada does not.

providers specializing in crisis response, counseling, housing, financial or legal assistance even when their offender is not under supervision. To access the Nevada's VINE service, visit www.vinelink.com or download the VINELink mobile app from iTunes or GooglePlay.

In an effort to make a permanent impact in the lives of survivors of domestic violence, Attorney General Laxalt has submitted a domestic violence bill proposal for consideration in the upcoming

Laxalt's proposed domestic violence prevention bill would create a Statewide Protection Order Repository in the Central Repository for Nevada Records of Criminal History that contains protection order history to aid victims, prosecutors and law enforcement when temporary and extended protection orders are issued against perpetrators of domestic violence and stalking. In particular, this Repository will provide greater protection for victims and for law enforcement when responding to domestic violence calls, and aid prosecutors in their pursuit of justice.

Addressing domestic violence requires a threefold approach: raising awareness and providing education about domestic violence within our communities, ensuring those who are victimized by this crime receive the services they need, and pursuing perpetrators to the fullest extent of the law to deter repeated offenses. The month of October serves as an extra reminder of the effect domestic violence has on our communities. Start a conversation with a family member, friend or coworker; use VINE to find a local service provider and volunteer your time or make a donation to support the organization; and most importantly, if you encounter a victim of domestic violence, reassure him or her that help and support is available. The month of October should serve as a reminder to all Nevadans that each one of us can play a part in combatting domestic violence in our communities.



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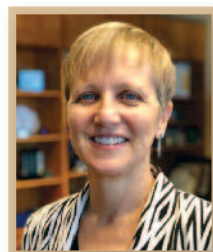
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The PROSECUTOR

DOMESTIC VIOLENCE

How Arizona Prosecutors Implemented a Statewide Domestic Violence Risk Assessment



AMELIA
CRAMER



JON
ELIASON



ELIZABETH
ORTIZ

BY AMELIA CRAMER, JON ELIASON AND ELIZABETH ORTIZ

ARIZONA RECENTLY IMPLEMENTED a statewide domestic violence risk assessment tool for intimate partners that measures the perpetrator's likelihood to commit a severe re-assault within seven months that would result in serious physical injury or death to the victim.

How did Arizona develop and implement this tool, known as the APRAIS (Arizona intimate Partner Risk Assessment Instrument System), which is approved by the Arizona Supreme Court and mandated to be considered by judges when setting bond in DV cases?

Arizona's new APRAIS intimate partner risk assessment tool is the product of two years of work by a multi-disciplinary group of judges, prosecutors, law enforcement officers, victim advocates, defense attorneys, and academics. It combines pioneering risk

assessment work by Dr. Jacquelyn Campbell of Johns Hopkins University and her colleagues with updated empirical data, and balances that with legal and logistical considerations. Although the end product is tailor made for Arizona, the development process reads like a playbook for other states.

The challenges Arizona faced in developing this tool are not uncommon to those of other states. Arizona is home to 7 million people in 15 counties. The majority of the counties are rural, and every jurisdiction has multiple law enforcement agencies. As in many jurisdictions across the United States, domestic violence cases are among the most frequent and potentially dangerous calls facing law enforcement. It is not unusual in a city the size of Phoenix for the police to respond to more than 40,000 domestic

Amelia Cramer is the Deputy Pima County Attorney. Jon Eliason is the Deputy Maricopa County Attorney. Elizabeth Ortiz, is the Executive Director of APAAC.

violence related calls a year.

In 2009, the Phoenix Police Department began looking for ways to approach domestic violence calls more efficiently. The agency developed four “Course of Conduct” interview questions to identify whether or not it appeared violence was escalating and the case took the form of more serious or “coercively controlling” violence and abuse.

In seeming cases of intimate terrorism or coercive control, the police tried to approach the cases differ-

In 2010, the Pima County Attorney’s Office Victim Services Program piloted a rubric utilizing the Lethality Assessment Protocol previously developed in Maryland based on research from Dr. Campbell and her colleagues.

ently. Intimate terrorism or coercive control is rarely not a one-time event (situational couple violence as opposed to intimate terrorism or coercive control, indeed can be, in a significant number of cases, a one-time event!), and these questions encouraged officers and prosecutors to consider violence and abuse outside of the charged instance. Prosecutors from the Maricopa County Attorney’s Office and Phoenix used the victims’ answers to the Course of Conduct interview questions to seek higher bonds and to help determine which cases needed more attention and resources.

In 2010, the Pima County Attorney’s Office Victim Services Program piloted a rubric utilizing the Lethality Assessment Protocol previously developed in Maryland based on research from Dr. Campbell and her colleagues. Prosecutors from the Pima County Attorney’s Office began to reference the results of this domestic violence lethality assessment in court when advocating for release conditions such as significant bail, no-victim-contact orders, prohibition on firearm possession, and abstaining from alcohol. A task force comprised of Pima County domestic violence prosecutors, victim advocates, and high-ranking representatives from all the local law enforcement agencies worked together to develop what became known as the “Form IV Lethality Assessment,” which contained the Maryland model questionnaire. In Arizona, a Form IV is the document used when police book a suspect into jail which gives a brief summary of the charges against a suspect and the suspect’s biographical information. Judges use the Form IV to determine whether there is sufficient evidence to hold a suspect in custody pending the filing of formal charges and also to determine an appropriate bond. The Pima County Superior Court Presiding Judge then issued an administrative order requiring that this new form be used if a domestic violence lethality assessment were to be presented to the court.

Meanwhile, prosecutors from the Maricopa County Attorney’s Office worked in collaboration with local law enforcement from nearly ten different police departments to create their own domestic violence risk assessments. These assessments were refined based on the known literature, assistance from Dr. Neil Websdale of Northern Arizona University, and other experts. However, there was no uniform way to get the assessment information to the court when it set bail. Further, judges expressed frustration with having little direction regarding what weight to give the information.

In 2015, to ensure that judges statewide would consider the results of the lethality assessment in determining terms and conditions of an arrestee’s release

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DOMESTIC VIOLENCE

Update: Forfeiture by Wrongdoing

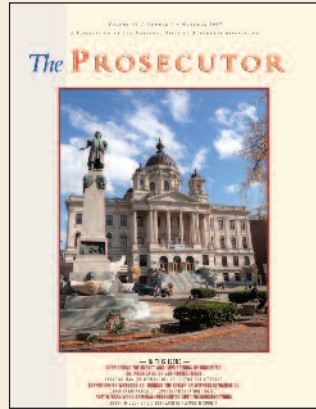
By Joshua P. Steward and Donald P. Goodman, III

IN THE OCTOBER 2017 ISSUE of this journal, we discussed the doctrine of forfeiture by wrongdoing. In April 2018, the Virginia Court of Appeals decided *Cody v. Commonwealth*, 68 Va. App. 638, 812 S.E.2d 466 (2018), which entirely vindicated the doctrine.

In *Cody*, the victim had been abused for years by her live-in boyfriend, Kevin Cody. Cody had beaten her savagely, including strangulation to near unconsciousness. The victim seized an opportunity and fled with her two boys, calling the police; the recording of that call exposed her fear and panic and provided valuable evidence of the background of abuse. She was referred immediately for a forensic nurse exam, which extensively documented her injuries, treated those injuries, and provided another valuable account of both her ordeal and Cody's prior abuse.

However, Cody called the victim repeatedly from jail, begging her to give him another chance to show her how "magical" their relationship could be. He also told her that she did not need to testify or appear for court. At first, the victim resisted; but over time, the years of abuse that Cody had inflicted on her had their desired effect, and by the time of the preliminary hearing she declared that she would plead the Fifth. We offered her immunity; she refused.

The victim appeared at trial, and as anticipated pleaded the Fifth. As a result, the Commonwealth moved to have her out-of-court statements admitted under the doctrine of forfeiture



by wrongdoing. The case involved all the issues we discussed in our 2017 article:

- the standard of proof being a preponderance of the evidence;
- the admissibility of hearsay, including the hearsay the admission of which is being sought, in determining the applicability of forfeiture by wrongdoing;

- the admissibility of prior abuse and its relevance for the defendant's intention to prevent the victim's cooperation (as explained in *Giles v. California*, 554 U.S. 353, 377 (2008)).

Further, the Court decided a case of first impression: while invocation of a privilege clearly makes a witness unavailable, can that invocation be ascribed to a third party? Cody argued that the victim "was unavailable of her own accord." *Id.* at 481. However, we presented evidence that the victim was offered immunity for all crimes but for lying, and refused it; that none of the victim's accounts of events had implicated her in criminal activity; and that there was a long history of abuse. We then argued that the Defendant's wrongdoing need not be the only cause of the victim's unavailability, but need merely be a cause. The Court of Appeals agreed, *id.* at 669-70, even holding that "forfeiture by wrongdoing may be established regardless of whether the witness already decided on her own not to testify." *Id.* (citations and internal quotation marks omitted).

All in all, the *Cody* decision indeed, as we argued that forfeiture by wrongdoing should, gives a defendant "just enough rope to hang himself."

from jail, the Pima County Attorney's Office successfully lobbied the Arizona State Legislature to adopt a statute requiring judges to consider the results of a risk or lethality assessment in a domestic violence charge that is presented to the court. This statute was enacted in 2015 as A.R.S. §13-3967(B)(5). Arizona is one of the only states to have such a statute.

However, there was no uniformity or shared language among the various domestic violence risk or lethality assessments being used across Arizona.

Further, although the different domestic violence assessments that arose during these years were designed after reviewing relevant literature and consulting with experts like Dr. Neil Websdale, Director of the National Domestic Violence Review Initiative, and Arizona State University's Dr. Jill Messing, there was little validation or empirical follow-up. Between 2014-2016, Yavapai County prosecutors

worked with a wide variety of county stakeholders including Drs. Websdale and Messing, to create their own domestic violence risk assessment. The assessment tool created used seven Tier 1 mandatory questions and nine Tier 2 optional questions. The assessment came with a detailed protocol for police and others to follow. Dr. Websdale worked with law enforcement agencies in Yavapai County on a pilot project to utilize a slightly-modified set of the Maryland Model assessment questions, based upon research done by Dr. Messing in Oklahoma.

Meanwhile, concerns were raised regarding the inconsistency of the various domestic violence risk or lethality assessments being submitted to courts around Arizona. In response, the Arizona Supreme Court requested a briefing from the Maricopa County

Attorney's Office and the Pima County Attorney's Office, as well as Dr. Websdale and others. Following that briefing, the Supreme Court requested that the Arizona Prosecuting Attorneys' Advisory Council (APAAC) create a multidisciplinary working group to explore the possibility of developing a uniform domestic violence risk assessment that could be adopted for use statewide.

APAAC established the working group, which was led by both Pima and Maricopa County prosecutors.

The group consisted of prosecutors, victim service providers, law enforcement officers, judges, and academics, including Drs. Websdale and Messing. In 2017, the working group recommended to the APAAC Council, and the APAAC Council in turn recommended to the Arizona Supreme Court that it approve a new Form IV containing an agreed-upon, evidence-based, statistically-validated intimate partner risk

assessment instrument consisting of seven questions, as well as a second tier of 11 questions that may be predictive of future violence, but that have not yet been statistically validated. This instrument, known by the researchers as the Arizona intimate Partner Risk Assessment Instrument System (APRAIS), evaluates whether a victim is at elevated risk or high risk for future severe re-assault from her abuser within seven months of the presenting offense.

The Arizona Supreme Court accepted the recommendation of APAAC and in December 2017 adopted the Form IV APRAIS questionnaire for implementation statewide beginning April 2018. The Form IV APRAIS questionnaire contains the seven validated Tier 1 questions:

1. Has physical violence increased in frequency or

Between 2014-2016, Yavapai County prosecutors worked with a wide variety of county stakeholders including Drs. Websdale and Messing, to create their own domestic violence risk assessment.

severity over the past six months?

2. Is he/she violently and constantly jealous of you?
3. Do you believe he/she is capable of killing you?
4. Have he/she ever beaten you while you were pregnant?
5. Has he/she ever used a weapon or object to hurt or threaten you?
6. Has he/she ever tried to kill you?
7. Has he/she ever choked/strangled/suffocated you?
 - a. Has this happened more than once?

The new Form IV also has the 11 additional questions that are suspected to be significant. These 11 questions are as follows:

8. Does he/she control most or all of your daily activities?
9. Is he/she known to carry or possess a gun?
10. Has he/she ever forced you to have sex when you did not wish to do so?
11. Does he/she use illegal drugs or misuse prescription drugs?
12. Has he/she threatened to harm people you care about?
13. Did you end your relationship with him/her within the past six months? Does he/she know or sense you are planning on ending your relationship?
14. Has he/she experienced significant financial loss in the last six months?
15. Is he/she unemployed?
16. Has he/she ever threatened or tried to commit suicide?
17. Has he/she threatened to kill you?
18. Has he/she threatened or abused your pets?

Now there is a single domestic violence risk assessment available to all law enforcement officers throughout Arizona, and the results of the assessment are easily available to every judicial officer in Arizona setting bond and other conditions of release. Arizona is committed to continually striving for a more effective assessment tool; to that end, Drs. Websdale and Messing will review the data after two or three years to assess the predictive value of the Tier 2 questions.

With the new Form IV in place, the next step to implement APRAIS was training the professionals on how to use it. Drawing on the professional bridges built during APAAC's multi-disciplinary working group, specialized trainings were created for judges, prosecutors, and law enforcement. The Arizona Police Officers Standards and Training agency developed a three-hour video training for law enforcement officers statewide on how to utilize the Form IV. Law enforcement officers are directed to ask all Tier 1 questions

Although each state will face its unique challenges regarding developing a domestic violence lethality risk assessment, the problem of effectively and efficiently addressing domestic violence calls is universal.

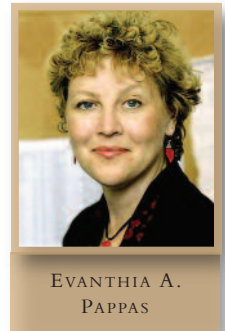
and, time permitting, may also include Tier 2 questions. Dr. Websdale and his team also developed and began to provide in-person, live law enforcement training in locations throughout Arizona. Additionally, the Administrative Office of the Courts developed judicial training on how to utilize the Form IV in court. Finally, APAAC has coordinated prosecutor training on the new Form IV.

Although each state will face its unique challenges regarding developing a domestic violence lethality risk assessment, the problem of effectively and efficiently addressing domestic violence calls is universal. Equally universal is the need to bring together a multi-disciplinary group to address the legal, administrative, and logistical issues in order to identify what steps can be taken to increase community safety.

The PROSECUTOR

DOMESTIC VIOLENCE

Forfeiture by Wrongdoing After *Crawford* and *Giles*: An Effective Tool for Prosecutors with an Absent Victim at Trial



BY EVANTHIA A. PAPPAS

THE SIXTH AMENDMENT'S confrontation clause of the United States Constitution gives a defendant the right to cross-examine witnesses who offer testimony or make out-of-court testimonial statements against them. Depending on the defendant's actions and circumstances, however, that right may be revoked using the forfeiture by wrongdoing doctrine.

Forfeiture by wrongdoing is an exception to a defendant's Sixth Amendment confrontation right. The theory behind the doctrine is that a defendant should not profit from his or her own misconduct if the defendant is the reason the witness is unavailable. A defendant who wrongfully procures the absence of a witness cannot complain about his or her inability to cross-examine that witness.¹

For example, if a defendant in a domestic violence case has murdered, or simply persuaded the victim not to attend a hearing, and yet is still permitted to invoke

his or her confrontation right to exclude hearsay statements from the victim, it unfairly rewards that defendant for procuring the victim's absence.

When considering whether the forfeiture by wrongdoing doctrine is applicable, focus on the defendant's own misconduct. There is a difference between "waiver" and "forfeiture by wrongdoing." Waiver is "an intentional relinquishment or abandonment of a known right or privilege."² Forfeiture by wrongdoing "results in the loss of a right regardless of the defendant's knowledge thereof and irrespective of whether the defendant intended to relinquish the right."³

HISTORY OF THE DOCTRINE

In 1878, the U.S. Supreme Court adopted the forfeiture by wrongdoing doctrine in *Reynolds v. United States*, holding that "if a witness is kept away by the

¹ *Reynolds v. United States* (1878) 98 U.S. 145, 158.

² *Johnson v. Zerbst* (1938) 304 U.S. 458, 464.

³ *United States v. Goldberg* (3d Cir. 1995) 67 F.3d 1092, 1100.

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adverse party, his testimony, taken on a former trial between the same parties upon the same issues, may be given as evidence.”⁴ Thus, the Court in *Reynolds* maintained a broad view of the doctrine of forfeiture and did not depend on the defendant’s purpose or motivation in keeping the witness away in order for the rule to apply. *Reynolds* relied on 17th and 19th century English and American cases discussing the historical application of the equitable principles of the common law doctrine of forfeiture, which recognize the maxim that a defendant may not complain about the inability to confront and cross-examine a witness whose absence is a result of the defendant’s own wrongful act.⁵

Nevertheless, the forfeiture by wrongdoing doctrine remained essentially dormant for more than a century until *Crawford v. Washington* in 2004.⁶ In *Crawford*, the U.S. Supreme Court held that the confrontation clause bars the “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.”⁷

Since *Crawford*, there has been a resurgence in the application of the forfeiture by wrongdoing doctrine, and the U.S. Supreme Court has endeavored to explain how and under what circumstances it is applicable. Of significance to modern application of the doctrine, *Crawford* held that while firmly rooted hearsay exceptions or out-of-court testimonies do not necessarily satisfy a defendant’s Sixth Amendment right to confrontation, the equitable principle of forfeiture by wrongdoing remains a valid exception to the confrontation clause.⁸ The forfeiture by wrongdoing doctrine survives *Crawford* because it is based on the equitable consequences of the defendant’s misconduct, not the reliability of a declarant’s statements.

In 2006, the U.S. Supreme Court reinforced its

acceptance of forfeiture by wrongdoing in *Davis v. Washington*, stating:

We reiterate what we said in *Crawford*: that “the rule of forfeiture by wrongdoing ... extinguishes confrontation claims on essentially equitable grounds.” [Citation.] That is, one who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation.⁹

Accordingly, *Davis* clarified that testimonial statements as defined in *Crawford* and its progeny do not affect the applicability of the forfeiture by wrongdoing doctrine. However, the Court provided no further guidelines for application of the doctrine or any standard of proof applicable to a finding of forfeiture by wrongdoing. The late Justice Antonin Scalia only referenced Federal Rules of Evidence section 804(b)(6), which codifies the forfeiture doctrine and “holds the Government to the preponderance-of-the evidence standard.”¹⁰

DEVELOPING THE FORFEITURE BY WRONGDOING DOCTRINE

While the Court recognized the equitable principle of forfeiture by wrongdoing in *Crawford*, it gave no comprehensive guidelines as to what type of wrongdoing is sufficient to trigger application of the exception and thus prevent the defendant from asserting his or her Sixth Amendment confrontation clause right.

People v. Giles (Giles I)

In *People v. Giles (Giles I)* in 2007, the California Court of Appeal took a broad view of the forfeiture by wrongdoing doctrine, holding that it applied regardless of whether the defendant “intended to prevent the

⁴ *Reynolds, supra*, at 158–159.

⁵ *Id.* [If by his or her wrongdoing, a defendant procures the unavailability of a witness at trial, he or she forfeits the Sixth Amendment right to confrontation.] See also *Lord Morley’s Case*, 6 How. St. Tr. 769, 771 [H. L. 1666] and *Williams v. State* (1856) 19 Ga. 402.

⁶ *Crawford v. Washington* (2004) 541 U.S. 36.

⁷ *Id.* at 53–54.

⁸ *Id.* at 62.

⁹ *Davis v. Washington* (2006) 547 U.S. 813, 833.

¹⁰ *Id.* at 833–834. The Supreme Court remanded the companion case *Hammon v. State* (2005) 829 N.E.2d 444, back to the Indiana courts to examine Hammon’s claims in light of the forfeiture by wrongdoing exception.

witness from testifying at the time he committed the act that rendered the witness unavailable.”¹¹ Therefore, applying the doctrine did not “hinge” on a defendant’s “purpose or motivation in committing the wrongful act.”¹²

In *Giles I*, the defendant was charged with murder of his former girlfriend and claimed it was self-defense. The trial court found admission of the victim’s statement to the police after an earlier domestic violence incident did not violate the confrontation clause as defined by *Crawford*, finding *Giles* had forfeited his right to confrontation because (1) he committed the murder for which he was on trial, and (2) his intentional criminal act ultimately rendered the victim/witness unavailable to testify. The Court of Appeal affirmed and *Giles* appealed. The California Supreme Court granted *Giles*’ petition for review to decide whether the Court of Appeal properly applied the forfeiture by wrongdoing doctrine and affirmed the lower court’s decision.

Giles v. California (Giles II)

In 2008, the U.S. Supreme Court re-examined the application of forfeiture by wrongdoing in *Giles II* and granted review on the issue of the defendant’s “intent.”¹³ Ultimately, the Court more narrowly construed the forfeiture by wrongdoing exception and its availability for use by prosecutors at trial.

On appeal, *Giles* claimed that he did not murder the victim for the purpose of rendering her unavailable as a witness, but rather in self-defense, which he claimed was essential for the forfeiture by wrongdoing doctrine to apply. The majority agreed with *Giles* and held that if a batterer kills his victim, he can still keep her past statement out of the trial pursuant to his right of confrontation, unless he intended to silence her testimony when he killed her.

In reviewing *Giles I*, the Court discussed that the defendant’s actions causing the victim’s absence at trial

were undertaken for the purpose of preventing the witness from testifying. Thus, a defendant’s intent must be examined when using the forfeiture by wrongdoing doctrine.¹⁴

In *Giles II*, the Court decided that the purpose or motive behind the defendant’s wrongful act that caused the witness’ unavailability was relevant and

*In 2008, the U.S. Supreme Court re-examined the application of forfeiture by wrongdoing in Giles II and granted review on the issue of the defendant’s “intent.”*¹³

vacated the judgment, directing the state court to consider the defendant’s intent on remand and to apply the exception only when a defendant is engaged in conduct designed to prevent the witness from testifying.¹⁵ Notably, the Court made no decision on any requirement that the defendant’s desire to silence the witness be the sole or primary motivation for his or her misconduct. Further, when considering whether a defendant has forfeited his or her confrontation rights, the Court declined to consider a defendant’s intent to silence the victim.

Giles II did acknowledge that intent can be shown by a defendant’s pattern of conduct before and during criminal proceedings, and that domestic violence is

¹¹ *People v. Giles* (2007) 40 Cal.4th 833, 849 (*Giles I*).

¹² *Id.* at 842, citing *Reynolds*, *supra*, at 158–159. *Giles I* also established that the standard of proof was by a preponderance of the evidence.

¹³ *Giles v. California* (2008) 554 U.S. 353, 359 (*Giles II*).

¹⁴ *Id.* at 377.

¹⁵ *Id.* at 359–360.

often about silencing the victim and preventing the abuse from being reported. A history of abuse is relevant as to whether the defendant intended to silence the victim sufficiently to forfeit his or her confrontation rights.¹⁶ If it is for personal reasons, then the defendant has not forfeited his or her right to object to the introduction of the victim's prior testimonial statement.

However, while the Court re-affirmed its acceptance of the forfeiture by wrongdoing doctrine, it failed to clarify what constituted sufficient intent to trigger forfeiture by wrongdoing, remanding the issue to the state to re-analyze. It was not until 2009 that clear guidelines were established regarding intent in *People v. Banos*.¹⁷

THE IMPORTANCE OF BANOS AND APPLYING FORFEITURE BY WRONGDOING AFTER GILES II

The California Supreme Court has taken a broader view of the application of forfeiture by wrongdoing and has criticized the holding by the U.S. Supreme Court in *Giles II*. The 2009 decision in *People v. Banos* is—in this author's opinion—directly on-point and instructive on the issue of when and how to apply the forfeiture by wrongdoing doctrine.

People v. Banos

In *Banos*, the defendant was convicted of second-degree murder of his ex-girlfriend, Cortez, and two counts of residential burglary. On April 11, 2004—nine days before a scheduled hearing on a restraining order violation—the defendant called the victim's apartment three times at approximately 3:00 a.m. The victim's new boyfriend hung up the first two times, but on the third, he gave the phone to the victim who stated that the defendant threatened to kill her. At about 4:00 a.m., the victim heard noises and saw the

defendant climbing through a window. The victim's new boyfriend ran out the back door, and the defendant bludgeoned the victim with a hammer. When the police arrived, the defendant was kneeling by the body. He then got up and slammed the door on the police.

On appeal, the defendant claimed the admission of Cortez's out-of-court statements to police during prior domestic violence investigations violated his Sixth Amendment right to confront and cross-examine witnesses as defined in *Crawford*. However, the court rejected the defendant's claims and held that "preventing the victim from reporting abuse or testifying need not be the sole motive for the killing."¹⁸

The *Banos* court found Cortez's earlier statements to officers Armendariz and Neufeld regarding domestic violence were testimonial statements, but nevertheless admissible under the forfeiture by wrongdoing doctrine.¹⁹ On June 7, 2003, Cortez told Armendariz that the defendant attacked her at a laundromat, and that he continued the attack inside a taxicab. After she returned home, the defendant left, so Cortez felt she was in a place of ostensible safety. Cortez was not describing an ongoing assault when she made her first statement to Armendariz. Cortez was described as "excited and upset but not distraught."²⁰

Cortez's second statement to Armendariz has both elements of formal interrogation and a response to an ongoing emergency. While Cortez's second statement came almost immediately after Armendariz had interrupted the attack in progress, by the time the police interviewed Cortez, the defendant was in custody and the ongoing emergency was over. Cortez was describing past criminal conduct, and the court decided that description was testimonial. On December 30, 2003, when Cortez spoke to officer Neufeld, the defendant had been detained by the police while leaving Cortez's apartment, and there was no ongoing emergency. Thus, the court decided Cortez was again describing

¹⁶ *Id.* at 376–377.

¹⁷ *People v. Banos* (2009) 178 Cal.App.4th 483.

¹⁸ *Id.* at 493.

¹⁹ *Id.* at 499.

²⁰ *Id.* at 498.

past criminal conduct (i.e., the defendant's violation of the restraining order and threats to kill her). Therefore, statements to Neufeld were testimonial.

While *Banos* was being decided, however, the U.S. Supreme Court was deciding *Giles II* on the issue of intent. Accordingly, the Court vacated the first judgment in *Banos* and transferred the case back for reconsideration in light of its decision in *Giles II*. As discussed earlier, the Court in *Giles II* concluded that the forfeiture by wrongdoing doctrine applies only upon a showing that the defendant killed the witness for the purpose of making him or her unavailable as a witness at trial.

After applying *Giles II*, however, the *Banos* court reaffirmed its original judgment and stated:

We have now considered defendant's appeal in light of *Giles II* and again affirm the judgment. Certain of Cortez's statements are not testimonial and are admissible under *Crawford v. Washington* [citation] and *Davis v. Washington* [citation]. The balance is admissible under the forfeiture by wrongdoing exception, as formulated in *Giles II*.^[21]

The *Banos* court further concluded that there was substantial evidence of the defendant's intent to kill his victim in order to prevent her from reporting his prior conduct to police and from testifying against him. "That the defendant may have also had other motives for the killing (e.g., retribution for infidelity) does not preclude application of the exception."²² Thus, *Banos* broadened the application of forfeiture by wrongdoing by holding that the exception "is implicated not only when the defendant intends to prevent a witness from testifying in court but also when the defendant's efforts were designed to dissuade the witness from

cooperating with the police or other law enforcement authorities."²³

Even though the U.S. Supreme Court narrowed the forfeiture exception in *Giles II* by requiring an intent to prevent the witness from acting in a certain manner, the Court also broadened the type of act that triggered the exception within the context of domestic violence relationships/ cases.²⁴

Banos recognized this broadening and gives prosecutors a general test for when to apply the forfeiture by wrongdoing doctrine and what the standard of proof should be. Specifically, the prosecutor must provide evidence that the defendant "(1) intended to stop the witness from reporting abuse to the authorities; or (2)

While Banos was being decided, however, the U.S. Supreme Court was deciding Giles II on the issue of intent.

intended to stop the witness from testifying in a criminal proceeding."²⁵

Banos also observed that the burden of proof that governs the determination of forfeiture by wrongdoing, which was expressed by the California Supreme Court in *Giles I* as a preponderance of the evidence, was not rejected by the U.S. Supreme Court in *Giles II*. Therefore, the *Giles I* burden of proof analysis,

²¹ *Id.* at 486.

²² *Id.*

²³ *Id.* at 501.

²⁴ *Giles II*, *supra*, at 356–357.

²⁵ *Banos*, *supra*, at 502. At the time of Cortez's death, there was a pending hearing for the defendant violating the restraining order. That the defendant killed Cortez to stop her from testifying against him at the hearing is supported by evidence that he was arrested multiple times at Cortez's apartment by police responding to calls about him violating the court order and domestic violence.

which the *Banos* court followed, was still the law in California.²⁶ The court further opined:

Our final observation is that nothing in *Crawford*, *Davis*, *Giles I* or *Giles II* suggests that the defendant's sole purpose in killing the victim must be to stop the victim from cooperating with authorities or testifying against the defendant. It strikes us as illogical and inconsistent with the equitable nature of the doctrine to hold that a defendant who otherwise would forfeit confrontation rights by his wrongdoing (intent to dissuade a witness) suddenly regains those confrontation rights if he can demonstrate another evil motive for his conduct. In the absence of clear directions on this point from the United States Supreme Court or our Supreme Court, we decline to create such a rule.^[27]

CALIFORNIA EVIDENCE CODE SECTION 1390

On January 1, 2011, the Legislature codified the requirements and standard of proof needed for a showing of forfeiture by wrongdoing in Evidence Code section 1390 to reflect the broader preponderance of the evidence standard view taken by the California Supreme Court in *Giles I*. Under section 1390, a statement is admissible against a party if the unavailability of the declarant is due to the wrongdoing of that party for the purpose of preventing the witness from attending or testifying. The state courts have enacted—under section 1390 and/or application of common law principles—forfeiture by wrongdoing as an exception to the Sixth Amendment right of confrontation.

Under section 1390(a):

[A] statement is not made inadmissible by the hearsay rule if the statement is offered against a

party that has engaged, or aided and abetted, in the wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

At a foundational hearing, the party seeking to introduce a statement must establish by a preponderance of the evidence that the defendant engaged in wrongdoing intended, at least in part, to procure the unavailability of the witness.²⁸

At the hearing, hearsay evidence is admissible, but there must also be independent corroborative evidence such as jail calls from the defendant to the victim, or statements made by the victim to a family member, co-worker, or friend regarding fear of the defendant.²⁹ Finally, section 1390(b)(3) requires the hearing to take place “outside the presence of the jury. However, if the hearing is conducted after a jury trial has begun, the judge presiding at the hearing may consider evidence already presented to the jury in deciding whether the elements of subdivision (a) have been met.”

Practice Note: When seeking to admit testimonial evidence under the forfeiture by wrongdoing exception, a foundational hearing should be held outside the presence of the jury. At the hearing, the prosecutor has the burden of proving by a preponderance of the evidence that the defendant—at least in part—intentionally procured the unavailability of a witness or victim. The hearing is governed by section 1390. Hearsay is admissible, including statements sought to be admitted. At the conclusion of the hearing, the judge should make a factual finding of whether there has been sufficient wrongdoing by the defendant to forfeit his or her confrontation rights and admit the hearsay/ testimonial statements by the unavailable declarant.

²⁶ *Banos*, *supra*, at 503–504, fn. 12. See Evid. Code § 1390.

²⁷ *Banos*, *supra*, at 504 [emphasis in original].

²⁸ Evid. Code § 1390(b)(1).

²⁹ Evid. Code § 1390(b)(2).

CRITICAL RULINGS AFTER GILES II AND BANOS

In 2012, the forfeiture by wrongdoing exception was upheld by the Second Appellate District Court of Appeal in *People v. Jones*.³⁰ In *Jones*, the court held that statements made by the victim were testimonial and properly admitted under the forfeiture by wrongdoing doctrine, despite the confrontation rights recognized in *Crauford*. Prior to trial, prosecution witnesses made two inculpatory statements to the police, and the defendant made phone calls to one witness while incarcerated. These jail calls revealed that the defendant was attempting to dissuade the witness from appearing in court. Despite being subpoenaed, the witness never appeared.

The *Jones* court held that if a defendant makes a witness “unavailable,” the inculpatory/testimonial statements can be admitted under the forfeiture by wrongdoing doctrine set forth in Evidence Code section 1390 and *Giles II*. Generally, since *Banos*, courts in California have interpreted the forfeiture by wrongdoing exception to apply even when a defendant has multiple motivations for harming a witness, coinciding with other circuit courts and state courts.

In *United States v. Jackson*, a 2013 Fourth Circuit case, the trial court admitted the victim’s (Greene) statement after making a factual finding that the defendant’s (Jackson) desire to prevent the victim from testifying was a “precipitating” and “substantial” reason why Jackson murdered the victim.³¹ In *Jackson*, the defendant relied on *Giles II* and argued the forfeiture by wrongdoing exception to the confrontation clause did not apply unless the defendant’s sole motive in making the witness unavailable was to prevent the witness’ testimony. However, the Fourth Circuit rejected Jackson’s argument and upheld the trial court’s judgment by relying on cases “in accord with our sister circuits and with several state courts,” including *Banos*.³²

*The Jackson court criticized the U.S. Supreme Court’s decision in Giles II, which held that forfeiture applies only “when the defendant engaged in conduct designed to prevent the witness from testifying.”*³⁵

The court held “that so long as a defendant intends to prevent a witness from testifying, the forfeiture-by-wrongdoing exception applies even if the defendant also had other motivations for harming the witness.”³³

Jackson recognized that the forfeiture by wrongdoing doctrine is often applied to situations in which the defendant committed the wrongdoing with the intent “at least in part” to procure the unavailability of the declarant as a witness.³⁴ State and federal courts have recognized physical unavailability is not the only way to find forfeiture by wrongdoing—intimidation is also a well-recognized basis for using the exception.

The *Jackson* court criticized the U.S. Supreme Court’s decision in *Giles II*, which held that forfeiture applies only “when the defendant engaged in conduct designed to prevent the witness from testifying.”³⁵ The *Jackson* court concluded that the Court said nothing about whether a party must intend only that result in order for the forfeiture by wrongdoing exception to apply, noting that precedent did not support Jackson’s position. Further, the *Jackson* court found *Giles II*

³⁰ *People v. Jones* (2012) 207 Cal.App.4th 1392 [cert. for part. pub.].

³¹ *United States v. Jackson* (4th Cir. 2013) 706 F.3d 264, 268.

³² *Id.* at 269.

³³ *Id.* at 265.

³⁴ *Id.* at 266.

³⁵ *Id.* at 268, citing *Giles II*, *supra*, at 359 [emphasis in original].

“did not materially alter application of the forfeiture-by-wrongdoing exception” but merely clarified existing precedent and affirmed that the intent requirement of [Evidence Code] Rule 804(b)(6) is sufficient to prevent any violation of the Confrontation Clause.^[36]

The Fourth Circuit concluded that under *Giles II*, the district court’s finding was sufficient to permit the admission of Greene’s statement pursuant to the forfeiture by wrongdoing exception to the confrontation clause.³⁷ The court reasoned that the U.S. Constitution does not guarantee an accused person against the legitimate consequences of his or her own wrongful acts.³⁸ Therefore, it does not support *Jackson’s* or a defendant’s narrow view of the forfeiture by wrongdoing exception.

In 2012, the Fourth Circuit endorsed a broad understanding of the forfeiture by wrongdoing exception in *United States v. Dinkins*, construing it to apply even when a defendant has multiple motivations for harming a witness.³⁹ Several circuit and state courts are in accordance with this broad view. For example,

the First Circuit has explicitly stated “it is sufficient ... to show that the evildoer was motivated in part by a desire to silence the witness; the intent to deprive the prosecution of testimony need not be the actor’s sole motivation.”^[40]

PREPARING FOR A FORFEITURE BY WRONGDOING HEARING

The forfeiture by wrongdoing doctrine can provide for the admission of statements obtained early in the

investigation even if the victim later disappears and/or becomes unavailable. Preparing for a forfeiture by wrongdoing hearing should begin from the moment the case is charged and the prosecutor suspects there may be harassment of a witness.

In California, based on *Banos*, there is a three-prong test required for forfeiture by wrongdoing to apply:

1. The witness is unavailable.
2. The defendant acted wrongfully or acquiesced in wrongful acts that resulted in the witness’ unavailability at trial.
3. The defendant intended (at least in part) to prevent the witness from testifying or procure the witness’ unavailability.

If a defendant is harassing a victim/witness prior to testimony, or if the victim has already been rendered unavailable due to the defendant’s actions, a prosecutor should prepare for a forfeiture by wrongdoing hearing by:

- reading the police report and note statements made by the victim/witness to the police;
- ordering any prior police reports involving the same victim or similar victims, including ones from other counties;
- talking to the victim and developing a relationship;
- listening to jail calls during the pendency of the case, especially right after a court appearance;
- using due diligence to locate the witness for trial and establish his or her unavailability pursuant to Evidence Code sections 1370 and 240;
- attempting personal service of subpoenas to the victim and recording/ documenting any state-

³⁶ *Jackson*, *supra*, at 268, citing *United States v. Dinkins* (4th Cir. 2012) 691 F.3d 358, 383.

³⁷ *Jackson*, *supra*, at 269.

³⁸ *Reynolds*, *supra*, at 158.

³⁹ *Dinkins*, *supra*.

⁴⁰ *Jackson*, *supra*, at 269, quoting *United States v. Houlihan* (1st Cir. 1996) 92 F.3d 1271, 1279 [emphasis in original]. See *United States v. Martinez* (D.D.C. 2007) 476 F.3d 961, 967 [imposing exclusive-intent requirement before allowing forfeiture exception to apply would be a “perverse consequence, moreover, of allowing criminals to murder informants and thereby prevent

admission of the informants’ statements—just so long as the criminal could show that the intent was retaliation (which the criminal almost always could do).”]. See also, *Banos*, *supra*, at 504: “It strikes us as illogical and inconsistent with the equitable nature of the doctrine to hold that a defendant who otherwise would forfeit confrontation rights by his wrongdoing (intent to dissuade a witness) suddenly regains those confrontation rights if he can demonstrate another evil motive for his conduct. In the absence of clear directions on this point from the United States Supreme Court or our Supreme Court, we decline to create such a rule.”

ments the victim makes to any district attorney investigators when personal service is made;

- subpoenaing medical records and/or paramedic notes to find any statements made to doctors, nurses, or other medical personnel; and
- obtaining any prior violations of restraining orders in family court.

A forfeiture foundational hearing is similar to an evidentiary hearing under Evidence Code section 402 and often overlaps with evidentiary hearings for Evidence Code sections 1109 and 1108. At forfeiture hearings, prosecutors may include some of the same witnesses to establish the defendant's intent to dissuade a witness from cooperating with law enforcement or testifying at trial. Remember, the standard of proof is preponderance of the evidence, and hearsay is admissible at a forfeiture hearing. To prove by a preponderance that the witness is unavailable, a prosecutor should:

- Have the investigator testify that he or she has made multiple attempts to serve and/or locate the witness through phone calls, emails, etc.
- Call other witnesses and produce any emails, social media postings, or previous protective orders that show how the defendant has harassed the victim/witness.
- Have an officer who can testify that he or she served the defendant with an emergency protective order (EPO).
- Have the defendant's previous criminal history, 1109/1108 reports, other witnesses, and information on what jail calls were made as well as the relevant content of the jail calls.

The prosecutor should present evidence during a hearing conducted outside of the presence of the jury and show that the defendant intended to wrongfully prevent the declarant from testifying at trial. Witness

unavailability is frequently seen in domestic violence, gang, homicide, and human trafficking cases.

If the prosecutor can present evidence of intent to procure the unavailability of a witness to testify, by the preponderance of evidence standard as detailed in Evidence Code section 1390, then he or she should ask the court to make a factual finding (like the judges did in *Dinkins* and *Jackson*) that the defendant's wrongdoing procured the witness' unavailability, and therefore, has forfeited his or her Sixth Amendment confrontation rights. Remember, the forfeiture by wrongdoing doctrine requires the court to find the defendant acted, at least in part, with the intent to silence the witness, to make the declarant unavailable, or to deprive the criminal justice system of evidence.

Wrongful acts may include murder, assault, threats, or other forms of intimidation, but declarations of love and promises to marry or change also apply when they are intended as inducements for the victim not to testify. While relationships involving domestic violence typically involve behavior that may result in forfeiture (such as threats, intimidation, actual violence, or loving contrition), the availability of forfeiture should not be overlooked in other cases involving human trafficking and gangs.

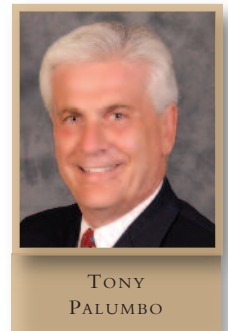
The abuser or gang member may threaten to retaliate against the victims or their families if they report to the police. Such victims may be too fearful to testify or may go into hiding to escape, not trusting the ability of law enforcement to protect them. Hence, the forfeiture by wrongdoing doctrine can allow the admission of statements obtained early in the investigation even if the victim later disappears.⁴¹

⁴¹ "The Prosecutors' Resource: Forfeiture by Wrongdoing," AEQUITAS (Oct. 2012) http://www.aequitasresource.org/The_Prosecutors_Resource_Forefeiture_by_Wrongdoing.pdf (accessed Sep. 9, 2016).

The PROSECUTOR

DOMESTIC VIOLENCE

Collaborative Anti-Lethality Program Reduces Domestic Homicides in Anoka County, Minn.



TONY
PALUMBO

BY TONY PALUMBO

“I AM SCARED that the next time he gets mad and hits me that it could be the last time.”

After more than 20 years of abuse, Patti* finally made a police report in August 2009. She had reached her “breaking point.” She sought support from a battered women’s shelter, she obtained an order for protection, and she filed for divorce.

But her abuser was released from jail with no conditions, no supervision, and no accountability.

Patti was dead two months later — shot and killed in her home by her estranged husband.

“She was trying to do it by herself, without any information. And at the time, we didn’t have a system. We were just saying, ‘Hey this is bad.’ But there was no research showing what would happen,” said former Chief Deputy Anoka County Sheriff Loni Payne. “She would say, ‘No, I can handle it; I don’t want him to get in trouble.’ And she ended up dead.”

The next year, Payne and representatives from other Anoka County criminal justice and advocacy agencies pulled together to create a program to end domestic violence homicides.

The Anoka County Attorney’s Office obtained a federal grant to fund the effort, which resulted in what is known as the Lethality Assessment Program (LAP). The LAP screening tool is used by every law enforcement department in the county, and the overall program involves a working partnership with prosecutors, courts, corrections, and service providers.

The program is designed to identify cases where there is a high risk for lethality and to immediately connect a victim with supportive services. The abuser is placed under pre-trial supervision when appropriate and the case is fast-tracked through the courts.

“If this system had been in place at the time (of

**A pseudonym is being used to protect the privacy of the victim’s family.*

Tony Palumbo is the Anoka County Attorney, Anoka, Minnesota.

Patti's death), I think the results could have been different," said Payne, who retired from the sheriff's office and now manages the LAP grant and program from the Anoka County Attorney's Office.

From the start, the program was a multi-disciplinary, collaborative endeavor. Cross-agency partnerships have been historically strong in Anoka County, and this program really highlights the importance and impact of those relationships.

Alexandra House, which provides services and shelter to victims of domestic and sexual abuse, has played an enormous role in the success of the lethality program. Alexandra House provides on-the-scene advocacy and continued assistance to victims throughout the entire court process. The agency has also taken on additional grants specifically to hold large-scale training for anyone working with victims.

"They offer things that we in government agencies don't or can't provide," said Emily Douglas, head of the Anoka County Attorney's Office Victim/Witness Services unit. "When we have a domestic violence case, we always offer Alexandra House as a resource. And we really ramped up our partnership with the creation of the Lethality Assessment Program. We're operating as a team instead of two separate silos of services."

Douglas, who has been in the Victim/Witness Services unit for 13 years, said the program "changed everything." Not only the procedural elements of handling cases of domestic violence, but it changed the philosophy of every agency that is involved. "Because it's about accountability. Not just the defendants, but the agencies. There's value in learning from each other and being accountable to each other."

When designing the Lethality Assessment Program, the team discovered a startling statistic: In cases of intimate partner homicides, there had been previous law enforcement contact 50 percent

of the time, but the victim only accessed services four percent of the time.

Now, when an officer arrives at the scene of a domestic violence incident, the lethality assessment questionnaire is used to determine the risk level. If a victim is flagged as high risk, the officer calls the 24-hour victim advocacy service from the scene and gets the victim on the phone with an advocate right there.

Once officers began providing the assessments and the advocate calls, "Our stats for ongoing services went way up," Payne said. The average rate is currently 75 percent of high-risk victims who access ongoing supportive services.

But the victim piece is only one part. The other crucial element is offender accountability — and it's this piece that really sets Anoka County apart from other lethality programs in the state.

Anoka County created what's called the Intensive Domestic Assault Pre-Trial Program (IDAPP). This intensive supervision program is unique to Anoka County and is different from traditional supervision, in that it begins at the time of a defendant's first court appearance — before a trial or conviction. Typical probation supervision doesn't start until there's a conviction.

It's a free and voluntary program for high-risk defendants, who are required to sign a contract and follow strict conditions. It allows them to get out of custody pending trial, so they can work and continue to support their family and see their kids, while engaging in programming. For victims, it offers a sense of security to know that someone is watching their abusers and holding them accountable.

The program is zero-tolerance, so if an IDAPP participant fails, he or she goes back to jail immediately.

The prosecutor keeps close watch on the defendant's participation in IDAPP and takes that into consideration for negotiation purposes.

Prosecutors also use the lethality assessment results to inform their requests for conditions, bail, and sentencing.

“They want to not only hold the defendant accountable, but they want the safety for the victim too,” Payne said of the prosecutors. “Without them, we’d be spinning our wheels. They’re part of the accountability arm. Law enforcement and advocates can do their pieces, but there has to be

were deemed high risk.

Victims are connected to an advocate at the scene more than 80 percent of the time. The goal is to get that number to 100 percent.

This year, the LAP committee is working on a new and innovative project: an online resource center for victims. The website will feature video vignettes from agencies involved in the LAP process, from the initial 911 call to the judge. The

The Anoka County Attorney’s Office adopted an expedited process for all domestic cases — regardless of high-risk flags — which is now also used by city attorneys.

follow through. And the prosecutors provide that.”

The Anoka County Attorney’s Office adopted an expedited process for all domestic cases — regardless of high-risk flags — which is now also used by city attorneys. Misdemeanor and gross misdemeanor cases are set for a 60-day timeline from arrest to trial, where felony cases follow a 90-day timeline and include one additional hearing.

The accelerated timeline is useful for several reasons: memories of the incident are fresh, available programming can begin right away, resolutions are quick, and victim recantations are less likely.

Now in its seventh year, Anoka County’s Lethality Assessment Program is as strong and impactful as ever.

From 2006 to 2011, there were 14 domestic homicides in Anoka County. Since the implementation of the program, there have been six.

Since law enforcement began using the assessment tool in September 2010, 2,733 screens have been conducted. Of those, 2,037 (75 percent)

hope is to further close the gap of information and services for victims, offering one more place to turn for help.

The group will also provide a new round of training for law enforcement and service providers. Organizers want to keep the positive momentum and empower more victims to break the cycle.

“When I was in law enforcement in the 1970s, the attitude was just starting to change, but it was mostly, ‘If she wants to get out she can.’ There was no training or trying to understand. It’s been a long road,” Payne said. “Now it’s just routine. When we rolled out the LAP protocol there was grumbling. The culture has changed along with attitudes. There’s a better understanding of what domestic abuse is for a victim; that this is what we want to do so they don’t end up the victim of a homicide.”

The PROSECUTOR

DOMESTIC VIOLENCE

Denver's "Unstoppable" Commitment to Realizing a Dream: The Rose Aodom Center for Domestic Violence



BY KENNETH D. BOYD

"UNSTOPPABLE". Defined as "impossible to stop or prevent". It was a term used by the Family Justice Center Alliance Director Gael Strack to describe the communities that were denied Federal funding, but who persevered in their commitment to making their dream of opening a Family Justice Center in their community a reality.¹ Fortunately, for the survivors of domestic violence and their families, the drive to build a single center that provides comprehensive services for victims of domestic violence and their families, stakeholders in Denver were unstoppable.

The opening of the Rose Aodom building itself was the culmination of a decade of collaborative efforts by volunteers, philanthropists, and community advocates in Denver. If you ask the people working inside the building today on a day to day basis, it is those relationships that are the foundation of its ultimate success as a Family Justice Center.

Before we get to the issue of why relationships mat-



ter most, a bit of history. Many people who have been in and around domestic violence work in Colorado will point to a seminal event that they believe laid the groundwork for Denver's success in building cross-agency relationships and working collaboratively on the issues surrounding domestic violence. That event was the creation of the Colorado Coalition for Justice

¹ See Casey Gwinn, Gael Strack, Susan Adams, Rebecca Lovelace, and Deborah Norman, *The Family Justice Center Collaborative Model*, 25 St. Louis U. L.J. 79, 92 (2007).

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Photos courtesy of Milender White

for Abused Women (CCJAWS) in 1981. The CCJAWS spent the 80's fighting for reforms within the criminal justice system, such as advocating for the development of pro-arrest policies and the creation of one of the country's first domestic violence coordinated community responses. When police agencies resisted, CCJAWS threatened suit. In turn, CCJAWS paved the way for additional reforms around the state and the country. If the arc of the moral universe is long, the formation of CCJAWS in Colorado certainly bent it towards justice for survivors of domestic violence. Margaret Abrams, the Rose Andom Center's Executive Director reflected on those days, "CCJAWS efforts at suing the police department really laid the foundation for the community advocates to work side by side with law enforcement."

"In Denver," she continues, "from then on, we just believed in bringing everyone to the table to talk. It wasn't really an intentional thing; it was more a common sense thing about answering the question of why we all weren't talking."

Other milestones became foundational to the success of Denver's vision, including the creation of the Denver Domestic Violence Triage Team. Ms. Abrams, working for then Denver District Attorney Mitchell R. Morrissey, helped create the team in January 2006 with a simple goal: to assemble all of the stakeholders around one table to discuss the domestic violence cases as soon as possible after a domestic violence occurrence.

This collaborative, multi-disciplinary team sought to identify and assess risk factors for continuing domestic



Photos courtesy of Milender White

violence in order to provide immediate outreach and personalized support to victims and their families. What was unique about this model at the time, was that it was able to overcome historical tensions between those working with domestic violence victims in the government and those working in the community.

What the DV community in Denver discovered, was that the face-to-face collaboration and problem solv-

in the Rose Adom Center.

Once the various agencies moved past historical perceptions, they began to understand the roles, the resources, the unique expertise, the limitations, and the varied motivations for each agency's work. The process brought forth mutual trust and a deeper understanding of each partner agency's shared vision for ending the cycle of domestic violence in Denver. It is work that continues every day as agency partners sit in an unas-

During the first full year the Center has been opened, it has served more than 2,600 adult victims and over 650 children, and 76 percent of those victims utilized more than one of the 20 partner agencies at the Rose Adom Center.

ing amongst the multiple agencies allowed itself to develop a foundation equally as important as the bricks holding up the Rose Adom Center, a foundation centered on trust. The trust that developed during the triage meetings amongst the various partners is critical to the success of the Center itself and allowed for the seamless transition from working across the table to working at the same table and under one roof

suming conference room on the third floor of the Rose Adom Center reviewing each case being handled by the detectives in the Denver Police Department's Domestic Violence Unit.

During the first full year the Center has been opened, it has served more than 2,600 adult victims and over 650 children, and 76 percent of those victims utilized more than one of the 20 partner agencies at



the Rose Arom Center. Many have applauded the personal and professional investments and never-before-seen collaboration needed to build the Rose Arom Center. We see every day the continued evo-

lution of cooperation between its partners in triage. But, for those of us who work directly with the survivors of domestic violence, we know that the statistics are never as important as the stories they have to tell. The relief on the faces of victims provided by the safety of a secure building built just for them, the smiles on a child's face as he or she exits a counseling session, and the sight of the onsite daycare providers playing with kids or cuddling a newborn while the parent is receiving services is what sustains the efforts of those working under this roof. The success of the Family Justice Model is sometimes solely focused on the idea of getting various services together under one roof. I say, equally important in the success of the model are the relationships that hold the building together. If your community is building a Family Justice Center or contemplating building a Family Justice Center, I encourage the prosecutors reading this article to start with an examination of the relationships amongst the various stakeholders and what you can do to strengthen them.

The PROSECUTOR

DOMESTIC VIOLENCE

The Ethical Dilemmas and Professional Responsibilities of Prosecuting Domestic and Dating Violence



MELANIE S.
FIELDS

BY MELANIE S. FIELDS

ATTORNEYS CHARGED with law enforcement responsibilities must conduct themselves at all times in a manner that promotes public confidence in the justice system. We hold prosecutors to a high standard of ethical conduct; however, prosecutors of domestic and dating violence more often than not find themselves in ethical dilemmas created by the very victims they are tasked with protecting from further harm—the victims who recant.

Jacques Derrida (1930–2004) was a French philosopher who criticized literary and philosophical texts and political institutions. He deconstructed thought and words in an attempt to prompt us to re-conceive the difference that divides self-reflection—working toward preventing the worst kind of human violence. His work was a relentless pursuit of justice, which today seems impossible to achieve. As prosecutors, professionalism and civility are simply not optional behaviors to be displayed only when one is having a good day. As Justice Sutherland famously observed in *United States v. Berger*, 295 U.S. 78 (1935), “a prosecutor’s interest in a criminal case is not that he or she ‘shall win a case, but that justice shall be done.’”

A prosecutor’s daily work is never boring. We see, hear, and read about situations that we just “couldn’t make up!” Our days are filled with stories that are more entertaining

than television. When we *voir dire*, we tell potential jurors that we expect to prove each element “beyond a reasonable doubt,” but that we may still leave a lingering question or two that would not be an element of the charged indictment or bill of information. Each day, we as prosecutors much catch ourselves, as we silently question “why?”—when there are lingering questions that will never be answered. But in doing so, we must maintain our civility. We cannot eye-roll; we cannot exude a dramatic sigh or other expression of displeasure because our victim has returned to her abuser. We cannot let loose vulgar speech and abusive conduct when the abuser is re-arrested for similar conduct. And, all of these situations occur daily for the prosecutor that handles domestic and dating violence!

The ethical dilemma begins with the victim who recants. ABA Model Rule 3.3(a)(3) charges that “A lawyer shall not knowingly... (3) Offer evidence that the lawyer knows to be false. If a lawyer... has material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.” Although perjury would seem logical for addressing false statements for a prosecutor, the issue becomes murky when addressing false statements

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in domestic and dating violence cases. Recanting is the act of trying to take back or withdraw a prior statement, while perjury is deliberately making false or misleading statements while under oath.¹ Not all instances of recanting will rise to the level of perjury. Perjury only becomes an issue when the original statement or recanted statement was sworn. However, as prosecutors we must always be aware of *Brady* obligations! Even if no perjury existed, there may be *Brady* disclosures that must be provided.

Establishing a rapport with a victim of intimate partner violence is perhaps the most successful means of obtaining cooperation. Timing matters—touching base is crucial to encourage cooperation and to building trust. However, persons qualified to give expert testimony at trial on domestic violence, including psychologists, counselors, police detectives, directors of women's shelters, and victim advocates consistently testify that, in their experience, it is commonplace for domestic and dating violence victims to recant or minimize initial reports of abuse.

Recantation may occur at any time during the case—including at trial. But it is often done early on in an attempt to get the charges dropped against the abuser. A victim's statements to the police about domestic violence will be used both to charge the attacker with crimes and as evidence for the prosecution, thus adding pressure on this vulnerable victim to maintain consistency each time the statement is repeated. Many district attorneys' offices have policies in place to listen to jail calls immediately upon arrest, as often they are very valuable in bolstering the victim's initial statement to the police. It is not uncommon to hear a victim crying into the phone about the bruising, injuries, and shame to go into public immediately after the attack. However, it is just as common for that same victim to show up at the District Attorney's Office one week later begging for the charges to be dropped with a signed affidavit in hand recanting the entire incident.

Is a perjury prosecution the best response to false statements in domestic violence cases? Should domestic violence victims be allowed to commit perjury without consequences? How are domestic violence victims different from other defendants who commit perjury? Looking at the "why" behind the lie is essential. The reasons for lying are particularly complex and involve considering a number of different issues, including psychological trauma, external pressures from the abuser, and self-motivated objectives.

When the victim is safe and wrapped in services and support, she does not recant her original statement to the police nor does she view the criminal justice system as a terrifying, dangerous place to seek assistance and safety. Arguably, a victim who takes the witness stand and testifies truthfully could feel empowered because in standing up to her abuser, she is transformed into a survivor. However, this transformation only happens for those who have a really strong support system in place. For those who do not, it is empowering to refuse to testify—or even to recant or minimize. That little bit of refusal or minimizing is giving them a bit of power and control, and subsequently—empowering. Understanding that context will sometimes get the prosecutor past the recantation and back to truthful testimony.

Common motivations for false statements of victims of domestic and dating violence are psychological trauma, external pressure or coercion, self-motivated objectives. When interviewing or speaking with a victim, prosecutors must walk a fine line between encouraging a victim to proceed truthfully and making a victim feel coerced. Threatening to put a victim in jail is re-victimizing someone who has already experienced trauma and making it much less likely they will seek assistance again. While we as prosecutors cannot win all of our cases, we can hope to positively influence them. So, if a victim of intimate partner violence walks away with her abuser, and there was no conviction, we can only hope that her experience was positive—that when it happens again, and it will, she will seek help before it becomes a homicide. She will walk away and seek community help. Or she will call law enforcement again. Or, on some very rare occasions, the criminal justice system does impact the abuser enough to seek counseling and make behavioral changes—himself.

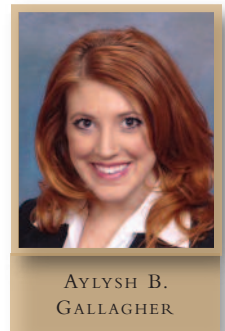
Domestic violence victims are one of the few instances in which the victim of violent crime may be at odds with the prosecutor. Because recanting has become so prevalent, more law enforcement agencies are taking aggressive steps to capture the victim's original statement for fear she will back out later. Evidence based prosecution allows the prosecutor to proceed without a victim—thus lessening the chance of a victim committing perjury and placing the prosecutor in the uncomfortable position of having the ethical dilemma of dealing with whether or not to proceed against an already traumatized victim of violent crime.

¹ Black's Law Dictionary 1295 (8th ed. 2004).

The PROSECUTOR

DOMESTIC VIOLENCE

A Shift in Focus & Responsibility: Moving Toward Offender-Focused, Victim- Centered Prosecution to Hold Offenders Accountable and Reduce Domestic Violence



BY AYLYSH B. GALLAGHER

“WHY DIDN’T YOU LEAVE?” This question, and other questions like it, is routinely and exclusively asked of victims that have survived intimate partner violence. The question I do not hear is, “why did the offender continue to repeatedly assault their intimate partner?” The assumptions underlying these questions must be understood to meaningfully reduce intimate partner violence.

The “why didn’t you leave?” question puts emphasis on what the victim did or did not do in order to make the violence stop. These types of questions are frequently asked by the victim’s friends and family, society, police agencies and prosecutor’s offices alike. Focusing on the victim’s actions is a subtle, and all too often recurring, theme that hinders the prosecution of intimate partner violence. It assumes that the victim is to blame for the pattern of violence or, at the very least, that we must exclude the victim as a potential cause.¹ Instead, the blame should be placed squarely on

the person responsible for the violence — the offender.

In recent years, there has been much progress made with regards to prosecuting intimate partner violence. Despite this, the trend in the criminal justice system is to put the victim’s choices under significant scrutiny. The victim’s actions and reactions to the violence are routinely highlighted and questioned. Ultimately, scrutinizing the victim’s actions is counterproductive to prosecution and often makes the victim less willing to participate, not as likely to come forward, and reduces trust in the criminal justice system. On top of all that, the victim must also carry the burden of prosecuting the offender. There is a noticeable need for change in our approach to prosecution.

For the past two years, under the leadership of Prosecuting Attorney Carol Siemon, I have had the privilege of working with hundreds of victims while exclusively prosecuting domestic violence cases. In an effort to address domestic violence, the Ingham

¹ The underlying subtext of these “why” questions, that are directed at the victim, suggest that someone who stays in an abusive relationship is not *really* being abused, or implies that if someone is being abused they can ensure their own safety just by leaving a violent partner. These types of

questions at a minimum suggest that the victim is *allowing* the violence to continue by not removing themselves from the relationship. These implications share one common theme: the victim, to some extent, is to blame for the continued violence.

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County Prosecutor's Office in Lansing, Michigan is committed to prosecuting domestic violence cases in an offender-focused, victim-centered manner. Shifting to an offender-focused approach helps hold violent offenders accountable while keeping the victim's choices, safety, and wellbeing at the center of all decisions.

Traditionally, the justice system focuses on the victim's actions, and tends to overlook the offender's conduct. Often the system seeks to help the victim by providing recommendations for how to avoid patterns of repeated violence or ways to escape the violent situations.² Focusing on the victim's actions allows offenders to maneuver the victim into a position of greater vulnerability. This makes it easier for the offender to further exploit the victim and use the criminal justice system itself to do so, which reduces the likelihood of successful prosecution. Furthermore, if the focus is on the victim's actions, then important aspects of the offender's conduct may be overlooked and important legal arguments for prosecution are potentially missed.³

The responsibility of addressing offender behavior should not be placed on the victim. Typically, offenders see law enforcement as being mostly random and largely in the victim's control. Offenders believe they can manipulate the victim into not coming to court; and, therefore, not face any consequences for their actions. Offenders often deliberately select individuals

to victimize that they know are unable or unwilling to hold them accountable. Placing the burden of prosecution on the victim allows the offender even more control of the situation. But, shifting the responsibility to law enforcement and the State takes control away from the offender, and decreases the offender's ability to further manipulate the victim in order to avoid consequences. Instead of showing offenders they can get away with this behavior, this new approach demonstrates to offenders that domestic violence is not acceptable, regardless of whether the victim wants to participate in prosecution or not.⁴

As part of this shift in focus and increased collaborative efforts, the Ingham County Prosecutor's Office, Lansing Police Department, and Capital Area Response Effort⁵ have created a task force to implement a new approach to improve the prosecution of domestic violence offenders — focused on deterrence and offender accountability.

The concept of focused deterrence is not a new one, but applying it to domestic violence offenders is relatively new.⁶ The goal is to minimize the risk to victims, while holding the most violent offenders accountable, by dedicating resources and targeting the most dangerous-repeat offenders in an effort to deter future violence.

In any community, there are a limited number of offenders that commit most of the violent crime in

² This traditional approach makes little sense, and that becomes even more apparent when comparing it to approaches commonly used to combat any other type of crime. For example, when prosecutors take action to prevent impaired driving related fatalities, the approach is not to reach out to all potential victims and recommend that they not walk on sidewalks, avoid driving their cars at certain times and instead take public transportation. We do not provide recommendations in an attempt to help potential victims avoid the dangerous situation; instead, the approach is to target the offending population of drivers, hold them accountable by making the consequences meaningful and consistent, and deter them from driving impaired in the future.

³ For instance, when reviewing a warrant, if the main focus is on how the victim did not report right away and how she will appear to a jury when testifying, then important micro-corroborating facts that support the victim's experience and highlight the offender's predatory conduct are often overlooked. While reviewing cases, the question to continually ask is: What actions did the offender take to make the victim more vulnerable, less credible, and more accessible to them?

⁴ This approach includes dedicating resources and time to fully support "victimless" prosecutions and putting a priority on prosecuting crimes that protect a victim while a criminal case is pending, such as witness intimidation.

⁵ Capital Area Response Effort (C.A.R.E.) is a domestic violence post arrest response team in Lansing, Michigan. Advocates at C.A.R.E. respond to domestic violence victims after incidents of reported abuse and provide crisis intervention, safety planning, and information about area resources.

⁶ Recently, the Ingham County Prosecutor's Office, Lansing Police Department, and Capital Area Response Effort were involved in a peer exchange that was hosted by High Point Police Department. The High Point Police Department developed, implemented, and evaluated a focused deterrence initiative targeted at chronic domestic violence offenders known as "The High Point Model." The purpose of the peer exchange was to learn from High Point's experience in implementing a focused deterrence model. See also, Marty A. Summer, *High Point, NC Focuses on Offenders to Deter Domestic Violence, Battered Women's Justice Project*, available at <https://www.bwjp.org/resource-results/north-carolina-offender-focused-deterrence.html> (published July 2015).

that community. Many offenders are essentially rational in their decision to abuse victims. And in the past, the criminal justice system has made domestic violence almost consequence free. The focused deterrence initiative puts predictable consequences in place for offenders.

Once identified, offenders are categorized according to a set of predetermined criteria. These categories range from first time offenders of intimate partner violence to the most violent and repeat offenders. The categories take into account the offender's criminal history, the severity of the current offense, and other lethality factors present in the current situation or past instances of intimate partner violence. The categorization of an offender then correlates to the response by our office and the notification given to the offender. Of course, if an extremely violent crime is committed, the offender would simply be prosecuted to the fullest extent of the law.

Initially, the focus will be on the most violent offenders within our jurisdiction. These offenders' cases will be handled by a designated assistant prosecuting attorney, and plea offers to this category of offenders will be minimal. These dangerous and repeat offenders will be prosecuted and used as an example for lower level offenders. Consistent outcomes can provide lower level offenders a clearer understanding of the consequences of their actions should they continue.

The notifications given to offenders will provide clear consequences to future violence and remind them that they are now a top priority to police and prosecution. Offenders will receive a customized notification letter that is personalized to the specific offender and that offender's current or past crime. This tailored notice will provide clear consequences for any future violence. For example, if the offender has assaulted past victims by strangulation, then the notification will be tailored to show the offender exactly

how much jail or prison time they can expect to receive if they commit another felony assault of that nature. The letter will also put the offender on notice that in the future even other crimes, not domestic related, will be aggressively pursued. Offenders in other lower categories will receive notifications from the police agency. There will be a face-to-face deterrence message to some offenders, while other offenders will receive a letter notifying them of the category they are in and the associated response.

This initiative will also improve the victim's safety and well-being. For example, setting up predictable consequences and enforcing them, not only helps deter violence, but also helps advocates safety plan with victims. The more consistency there is, the easier it is for safety planning because the advocates know what to expect and therefore are better able to assist the victim in a variety of ways. The victim will also receive notifications throughout the process explaining the criminal justice system, services available, and options that they have moving forward.

This shift away from traditional models positively impacts how victims experience the justice system and holds more offenders accountable. Instead of concentrating on the victim in the traditional sense, the focus becomes how to improve the victim's experience while navigating the criminal justice system.

It has been almost four years since #WhyIStayed trended nationally on social media and thousands of survivors attempted to combat the "victim-blaming" culture by publicly answering the question that, unfortunately, we still hear today — "why didn't you leave?"⁷ Moving forward, we need to stop questioning the victim's actions, and start asking the harder questions to offenders — why won't you stop the violence? The responsibility is ours to hold offenders accountable; we can do better.

⁷ In November of 2014, Beverly Gooden published on her social media account a string of tweets using the hashtag #whyistayed and publically shared why just leaving is not that easy. This tweet became nationally recognized in mainstream media and thousands of survivors joined in to shared their

testimonials ending the tweet always with #whyistayed. Beverly Gooden, *Why I Stayed*, BEV, available at <http://www.beverlygooden.com/whyistayed> (last updated 2018).

BULLYING PREVENTION

Bullying: It's Serious Business

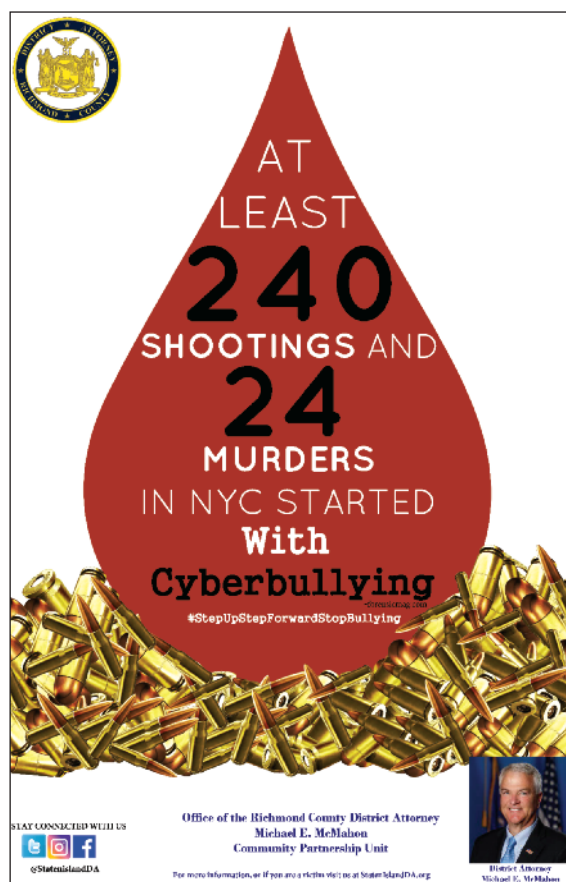
BY MICHAEL E. McMAHON



MICHAEL E.
McMAHON

WHILE “BULLYING” may not be found within the sections of the New York State Penal Law, we know the many devastating forms bullying can take, and the life-altering impacts on those who are victimized. Through our community outreach efforts led by our Community Partnerships Unit, we have been made aware of many incidents of bullying involving students of all ages and the toll it takes on them and their families.

We know that bullying behavior among children can all too often lead to more serious criminal behavior when these children become adults. In 2017, 240 shooting incidents and 24 homicides that took place in New York City had their roots in cyberbullying, not to mention hundreds of assaults



Poster for the “Step Up. Step Forward. Stop Bullying” public awareness campaign.

and other violent and life-altering crimes committed with a direct link to bullying behavior. Further, in a recent community survey of Staten Island conducted by the Staten Island Partnership for Community Wellness, Islanders overwhelmingly stated that violence was their primary public health concern, despite the fact that crime continues to drop across the borough. With the advent of social media, acts of violence committed by adults and children are broadcast widely for all to see, furthering the perception that these incidents are happening with greater frequency.

It is our duty as members of the chief law enforcement agency in the borough to not only prosecute crime, but to prevent crime as well. We recognized

Michael E. McMahon is the District Attorney for Richmond County, New York.

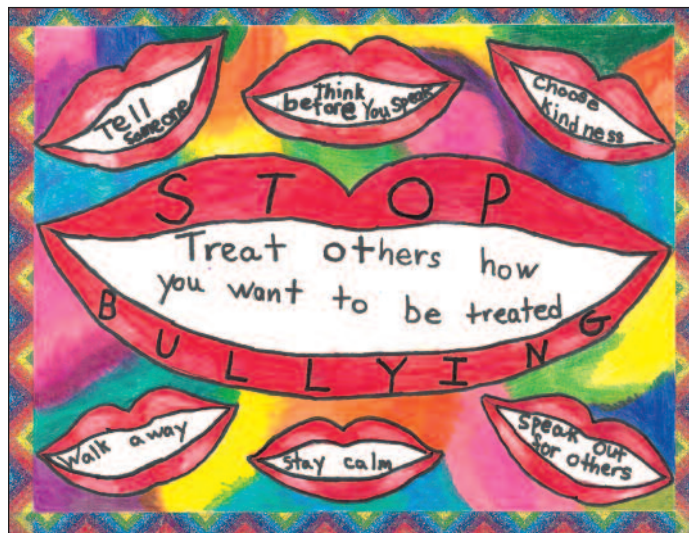
that the opportunity to bring the message of respect and tolerance for all directly to Staten Island's schoolchildren would yield dividends for years to come.

Here on Staten Island, we recently met with the family of a 12 year old boy who committed suicide due in part to incessant cyber-bullying. His parents were unaware their son was being bullied; to them he did not exhibit stress, depression, or any of the tell-tale signs that something was wrong. It was not until after his death that his parents discovered he was being bullied in school.

Studies have shown bullying impacts approximately 1 in 7 students nationwide either as the victim or as the bully themselves. According to the National Education Association, more than 160,000 children nationwide miss school every day due to the fear of an attack or intimidation from bullies. Not only does bullying have immediate impacts on the health and safety of our children, it can have a long-term impact on a child's educational development if they miss extended time in the classroom.

Children who are the victims of bullying often blame themselves for what they are experiencing. They often feel alone, and are frequently embarrassed to admit anything is happening at all. While well intentioned, parents, teachers, and other school staff may miss the signs of bullying and the children are left to suffer in silence. Simply put, we knew there was more to be done to protect Staten Island's students and promote a culture of respect for all.

In early 2017, we launched our "Step Up. Step Forward. Stop Bullying" campaign, which features an artwork and writing contest directed toward Elementary and Middle School students. The goal was simple: ask all of Staten Island's kindergarten through fifth grade students to submit artwork that expresses



Artwork from Staten Island's kindergarten through fifth grade students submitted to Step Up. Step Forward. Stop Bullying art/writing contest about their feelings toward bullying behavior.

their feelings toward bullying behavior and invite them and their families to an awards ceremony to thank each of them for their work. The ceremony would feature a Certificate of Recognition for each of the participants, some personal remarks about my own experiences with bullying, the students' art showcased in the auditorium for all to see, and special recognition for outstanding submissions from select students from



An awards ceremony featured a Certificate of Recognition for each of the 500 participants submitting artwork to the Step Up, Step Forward, Stop Bullying art/writing contest.



each grade. In addition, the families would be treated to a performance by Illuminart, a local theatre group that focuses on real-life issues facing Staten Island school children including isolation, physical violence, gun violence, and cyber bullying.

The contest drew over 500 submissions from more than 20 Island schools. Hundreds attended the ceremony, and the contest was such a success that this year we expanded to include middle-school students and a writing contest as well. That drew over 700 entries

from thirty schools, with over 400 Staten Islanders attending the ceremony. We expect an even bigger number next year.

Expanding on the success of “Step Up, Step Forward, Stop Bullying”, we are currently working to launch a wide-ranging public-awareness campaign featuring posters that show the harsh facts and figures around bullying among our youth. These posters are being printed and distributed to pediatricians, local grocery stores, recreation centers, and even on MTA buses and trains. We will heavily promote the Hashtag #StepUpStepForwardStopBullying, and use it as a repository for motivational stories, shared experiences with bullying, and a place to find resources for victims and their families to find assistance.

Further, we are finalizing our Richmond County District Attorney Anti-Bullying Manual, which contains policies and procedures for school staff, a review of the laws that protect children from this behavior, warning signs that a child may be being bullied, and the real-life consequences for students who commit

these offenses. This will be distributed during our Annual Educator's Breakfast where principals, counselors, and parent coordinators from all Island schools gather to meet with RCDA staff and foster relationships to make certain no child falls through the cracks.

Although we know that far more remains to be done to stop bullying in its tracks, we will continue to take a proactive role in combating bullying among our Island's schoolchildren. We will continue to offer support and provide guidance to any family or student that has been the victim of bullying, and will work with our partners in Island schools to ensure justice is being done. Our #StepUpStepForwardStopBullying

Campaign will continue to serve as a way for kids to showcase their commitment to ending bullying in their schools, and the hashtag will serve as a resource for any family dealing with the impact and lasting repercussion that bullying can leave in its wake.

In the case of the 12 year old boy who tragically committed suicide, through our efforts we were able to connect the family with resources to support them through their tragedy, including further investigation of exactly what happened, family counseling, and legal services. This is the type of difference we will continue to make on behalf of the people of Staten Island.

BULLYING PREVENTION

Maricopa County (AZ) Attorney's Office

- The Maricopa County Attorney's Office created a bullying awareness program for parents called "Stand Up to Put Downs" at the end of 2017.
- Despite numerous anti-bullying programs being offered in schools, the Office saw a lack of educational opportunities for parents being offered.
- The program is divided into three (3) sections to provide an overall picture of the impact and consequences of bullying and cyberbullying and its potential impact on children and families.
- Each section of the program is taught by a member of MCAO with a specialized background.
- The first presenter is from MCAO Community Affairs and covers an overview of what bullying is, what parents should watch out for and how parents can engage their children on the topic.
- The second presenter is an MCAO Detective and discusses how police departments investigate juvenile crimes, what types of crimes and consequences are associated with bullying and what actions parents can take if their child is a bully or the target of a bully.
- The third presenter is a Deputy County Attorney who focuses on the juvenile prosecution of crimes that are a direct result of bullying. Prosecutors discuss timelines, charging guidelines, court proceedings and victim rights. There is a considerable focus on electronic crimes, such as sexting and social media
- The program includes outside partners, such as local nonprofits, who can connect parents to resources when they have additional questions or need information on what to do when bullying may not rise to the criminal level. By making parents aware of available outside resources, the program tries to ensure parents do not feel helpless when dealing with the difficult issues surrounding bullying.

BULLYING PREVENTION

School Threats: A San Diego County Approach to Protocol and Threat Assessment

BY ANDRIJA LOPEZ

FEBRUARY 14, 2018 marked a defining moment in the San Diego County District Attorney's Office for threats of targeted violence on school grounds. In the wake of the Marjory Stoneman Douglas High School tragedy in Parkland, Florida, there was a distinct shift from preliminary attempts to address threats made by juvenile offenders to an imperative need as the number of threats of a mass shooting on school campuses surged. From November 2014-February 14, 2018 (thirty-nine months), law enforcement agencies submitted approximately thirty-two school threat cases. From February 15, 2018 (post-Parkland)- September 11, 2018 (seven months), the San Diego County District Attorney's Office Juvenile Branch received thirty-five school threat cases accounting for nearly 53 percent of all submitted school threat cases. As a new reality unfolded in our county with this spike in school threat cases, it forced us to re-examine our approach.

In the past, we worked from essentially one-dimensional spaces. On one end of the spectrum, we recognized the important intersection between incidents of

bullying or perceived bullying and subsequent school attacks as noted in the 2004 findings of the *Safe School Initiative: Implications for the Prevention of School Attacks in the United States*.¹ Teams of trained deputy district attorneys presented at schools to students, parents, and staff to educate them about bullying and cyberbullying. At the other end of the spectrum, deputy district attorneys drafted legislation in 2015 (California Senate Bill 456) and 2016 (California Senate Bill 821) to amend the antiquated language of California Penal Code Section 422 Criminal Threats to accurately reflect how juveniles were currently using anonymous social media platforms to communicate a threat of violence to a school at large. Although well-intentioned, these siloed approaches did not provide an integrated blueprint for proactively protecting our schools.

In April of 2018, The San Diego County District Attorney's Office, in collaboration with local law enforcement agencies and the San Diego County Office of Education, formalized a School Threat Protocol which is a comprehensive approach to address threats of targeted violence on school grounds.

¹ United States Secret Service And United States Department of Education. *The Final Report and Findings Of The Safe School Initiative: Implications For The Prevention Of School Attacks In The United States*. Washington D.C., June 2004.

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The protocol is comprised of three distinct yet complementary pieces– the school response, the law enforcement response, and the prosecution response. District Attorney Summer Stephan created the foundation for this protocol in 2014 when she brought together a multi-disciplinary group to draft a cyber transmitted threats of violence protocol. The revised protocol is specific to school threats and focuses on prevention. Accordingly, all three pieces recognize the effect that bullying and social isolation can have on future acts of targeted violence on school grounds. The school response encourages each of the forty-two San Diego County school districts to avail themselves of the evidence-based Sandy Hook Promise Know the Signs programs which directly address social isolation and warning signs (specifically programs Start With Hello and Say Something). The school response also calls for staff to thoroughly document incidents of bullying in both the aggressor's and their target's school disciplinary records. These detailed school records allow law enforcement and the prosecution to better assess the nature of a subsequent school threat and determine next steps. Both the law enforcement and the prosecution responses emphasize the importance of consistent outreach to parents and students regarding the impact bullying and cyberbullying has on others (be it the aggressor, the target of the bullying, a bystander, or on the school climate as a whole).

A critical component to the School Threat Protocol is the creation of the School Threat Assessment Team ("STAT"). This team is a multi-disciplinary group comprised of deputy district attorneys, district attorney investigators, law enforcement officers, representatives from the San Diego County Office of Education, and mental health professionals. STAT convenes monthly to discuss cases where legal challenges prevent the filing of formal charges, but the individual presents a heightened risk to public safety and requires intervention. The team does a deep dive of the juvenile, examining school records, available psychological records, prior California Welfare & Institution Code Section 5150 mental health holds, any history of suicidal ideation, any prior criminal history, social media

content, access to guns, known grievances, triggering events, etc. Utilizing each disciplines' expertise in the meeting allows the team to actively problem solve around limitations imposed by privacy rights associated with mental health records or the ability of a school district to transfer the juvenile to another school site.

STAT members formulate a detailed case plan to address public safety as well as the juvenile's needs. The plan may include utilizing gun violence restraining orders (as codified in the California Penal Code sections 18100-18197) to prevent access to or possession of firearms, ensuring a juvenile's school records documenting the threatening behavior is shared with their new school even if it is out of the district, or communicating with the juvenile's current treating mental health professional to ensure they are apprised of the facts surrounding the threat.

How threats of targeted violence on school grounds are reported also changed in the wake of Parkland. The protocol directs law enforcement officers to cross-report a school threat to the San Diego Law Enforcement Coordination Center (SD-LECC), a local fusion center. Historically, SD-LECC has received Suspicious Activity Reports (SARS) on their website. Due to the rapid increase in school threats after the school shootings in Parkland, Florida, and Santa Fe, Texas, SD-LECC created a SAR specific to school threats. The purpose in cross-reporting a school threat to SD-LECC is threefold; 1) to track school threats from every school district in the county, 2) to enhance the information for the law enforcement agency that is investigating the threat, and 3) to help coordinate the efforts between the schools, law enforcement, and mental health services.

Although the protocol was implemented only five months ago, the impact has been significant. From a law enforcement perspective, San Diego Police Department Detective Sergeant Wes Albers notes that "prior to the protocol, there seemed to be no single best practice, procedure, guidance, or direction in San Diego County for an officer or detective faced with the frightening possibility that they might be dealing with the next person intent on delivering targeted

violence on a vulnerable community. Agencies and institutions seemed to be dealing with a common problem from relatively disconnected perspectives. This protocol has provided a path to detectives, officers, and supervisors throughout the county that will allow them to navigate largely uncharted waters. It provides a procedural opportunity to identify potential problematic behaviors and disrupt a juvenile's movement down a pathway to violence."

From an educational standpoint, the superintendent of a school district in San Diego County that experienced a high number of school threat incidents recognized the impact the protocol had on their district post-Parkland; "Threats of violence towards schools in the aftermath of the Parkland incident have raised anxiety among our parents and students... The District Attorney's Office has sent a strong message that all threats against schools will be taken seriously and that severe consequences can result, whether or not the person making the threat intended to carry out the act or not."

Multi-disciplinary threat assessment teams such as STAT have garnered national attention as evidenced by a bill introduced into Congress on August 10, 2018 by Representative Brian Babin- HR 6664- The Threat Assessment, Prevention, and Safety Act of 2018 ("TAPS" Act). The TAPS Act calls for a collaborative, multi-disciplinary, and multi-jurisdictional threat assessment and management process to prevent targeted violence in communities with standardized guidelines and practices. The TAPS Act specifically addresses school violence prevention through the creation of multi-disciplinary threat assessment programs at the school level with an emphasis on information sharing.

The San Diego County School Threat Protocol is a living document that will continue to evolve over time as best practices are further defined. Looking forward, the protocol will include a restorative justice component for cases that are carefully vetted by the District Attorney's Office. Additionally, the protocol will be expanded to incorporate colleges and universities in San Diego County.

BULLYING PREVENTION

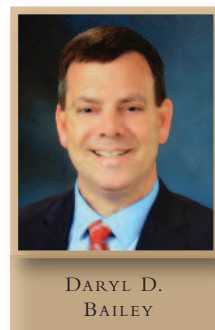
Cape & Islands (MA) District Attorney's Office

- Reached approximately 15,000-16,000 students in the last 7 years with a presentation on cyber awareness/bullying
- Previously aired a public service announcement related to bullying which featured the local district attorney, a local police chief and the Truro Superintendent of Schools
- Hosted a seminar on bullying at 4C's for school administrators. The guest speaker was Dr. Elizabeth Englander from Massachusetts Aggression Reduction Center at Bridgewater State University, who is an expert in bullying and cyberbullying
- District Attorney's office staff attends a training each year at Bridgewater State University to keep current on latest trends and approaches to addressing bullying and other cyber issues
- District Attorney's office has made several presentations to parents at local schools, which includes an assistant district attorney and other community outreach coordinators

The PROSECUTOR

BULLYING PREVENTION

Bullying Stops With Me: Montgomery County DA's Office Aims to Combat Bullying Through Texting Initiative



BY DARYL D. BAILEY

THERE IS NO SUBSTITUTE for the value of a good education. When our children are attending school daily, they have an opportunity to learn, flourish and realize their dreams.

However, students cannot learn when they do not feel safe. Far too many of our young people have fears about their personal safety in and outside of the classroom due to bullying.

The National Center for Education Statistics reports that a child is bullied at school every seven minutes. When this serious issue is not addressed, it severely impacts the well-being of all youth involved — both the vic-



tim and the alleged bully — and can lead to excessive absences or other damaging behaviors.

Sadly, I know this all too well. I have talked to many truant students who have told me the reason they are not going to school is because they are being bullied by their classmates.

I have also met with families whose children have committed suicide as a result of bullying at school or on social media who are seeking justice for their loved ones.

These alarming patterns led my office to work with the Helping Montgomery Families Initiative (HMFI) and Montgomery Public

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Schools (MPS) in developing the “Bullying Stops With Me” program. By texting “nobully” to 444999, students will receive a message asking for their information, the bully's information, and what school they attend.

The texting format allows young people to use a medium they are comfortable with to reach out about troubling situations. The messages are sent straight to me, reviewed, and are then shared with the staff at HMFI, who follow up with the child and their parents or guardians to begin addressing the issue immediately.

When launching this initiative, my office worked closely with the Central Alabama Community Foundation to create informational posters about the “Bullying Stops With Me” program to hang in all Montgomery Public Schools. This initiative is so important to me that I also commissioned a series of educational materials featuring the words “nobully” and the “444999” number that are shared with students when my staff and I go to speak at schools and community outreach programs geared toward our youth.

But perhaps one of the most effective avenues for getting the word out about the “Bullying Stops With Me” initiative and decreasing incidences of bullying in our schools is the I-LEAD Program. A collaboration between the Montgomery County District Attorney’s Office, along with the Montgomery Police Department and the Alabama Attorney General’s Office, I-LEAD uses an evidenced-based curriculum to teach fifth-graders in Montgomery Public Schools a variety of academic and life skills.

These hands-on, interactive courses are taught once every other week at nearly a dozen elementary schools, with the goal of helping our children understand the importance of getting a good education and making the right decisions.

In addition to bullying, the students and their mentors discuss subjects such as peer pressure and positive alternatives for handling bad activities/situations. Guest speakers from the community often visit I-LEAD classes to talk about financial literacy, the importance of taking care of their health and the environment, and to share personal success stories.

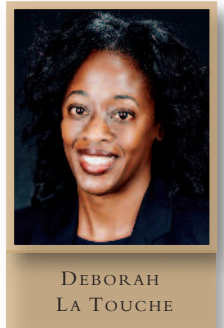
As District Attorneys, we know first-hand the role education plays in our young people’s ability to flourish not only in school, but in life. Each year, I, like so many of you, see way too many youth enter the criminal justice system. One thing they have in common is that they were truant, suspended, or had dropped out of school at the time they committed a crime.

I truly believe the “Bullying Stops With Me” and I-LEAD programs are aiding in the Montgomery County community’s efforts to make it easier for children to go to school in a safe environment and learn. I am reminded of that each time I read a note from a student or parent thanking me or a member of my staff for helping them to overcome barriers to learning so that they can set goals and achieve them.

I encourage you this October, which is National Bullying Prevention Month, to work with your schools to create a community-wide bullying prevention strategy. Let’s all work toward ending bullying in our schools once and for all.

BULLYING PREVENTION

Bullying – Can Restorative Justice be the Right Approach?



DEBORAH
LA TOUCHE

BY DEBORAH LA TOUCHE

FOR AS LONG AS I CAN REMEMBER, I was taught to follow the ‘Golden Rule’—treat others as you would like to be treated. That’s what we teach our children at home and in school. It sounds simple enough, right? Yet the concept seems to be lost on just about every generation. Most will agree there seems to always be a mean kid in school or a crew of them that makes life miserable for the others. Pushing, name calling and spreading rumors are almost passé now with the advent of social media; bullying has now evolved to the next level garnering immediate support for the bully and their bad behavior through likes, shares and retweets giving rise to a “piling on” effect which occurs when pundits add to an already negative situation. With that kind of instantaneous support, it is of course no surprise that we are hearing about more and more incidents of bullying in our schools across the

nation. What is unfortunately clear, is that the bullying culture is alive and well—and not just in schools. Quite frankly the bullying culture can develop in any context from school, family, to the workplace, and even politics. Once considered inevitable and in some cases even a rite of passage, bullying is now the subject of mass media attention, pundits and hundreds of state laws.

Bullying is a form of violence among children which encompasses a variety of negative acts that are carried out repeatedly over time. It involves a real or perceived imbalance of power, with the more powerful child or group attacking those who are less powerful. There are also several different types of bullying to include physical (taking belongings, spitting, kicking or hitting); verbal (name calling, taunting); and psychological (intimidation, spreading rumors, or engaging in social exclusion).¹ The effects of bullying can be emo-

¹ Nels Ericson, *Addressing the Problem of Juvenile Bullying*, Office of Juvenile Justice and Delinquency Prevention. U.S. Department of Justice.

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tional and have long range effects on the person bullied. The direct impacts can be as minor as simply acting out in class and skipping school to the more serious effects of depression, and in rare cases, the affected person may even commit suicide. Regarding the bully, studies show that they are more likely to drop out of school and engage in delinquent and criminal behavior.²

Bullying at school causes enormous stress, not only for the person being bullied, but also their families. It is a growing problem among kids and teens and research indicates that more than half of all school-aged children in the United States will be involved in bullying this year as a victim or a perpetrator.³ This

Are you kidding me? I know I'm not alone here. I imagine my fellow prosecutors collectively screaming right now, and rightfully so. I completely understand the urge to resist thinking this, let alone put it in black and white, given that everything about restorative justice seems backward! After all, that's not how the justice system is designed. We are prosecutors (for crying out loud) and we were taught to believe in a system where the offender is punished; this idea of restorative justice for the bully seems wrong.

At the juvenile level however, studies have shown the use of restorative practices to be beneficial.⁴ Schools that have implemented restorative practices

The term restorative justice or restorative practice seems to be the trending thing lately to bullying prevention, by rethinking discipline and adopting a “no blame” approach to bullying, in an effort to bring the affected parties together following a conflict to identify a shared solution in order to repair the harm without focusing on punishment.

begs the question: can we ever get to a place where we, as a society, can say ‘no to bullying?’ I don’t know what the answer is, but a number of school districts, including the San Diego Unified School District (SDUSD), are striving toward that goal through restorative practices.

The term restorative justice or restorative practice seems to be the trending thing lately to bullying prevention, by rethinking discipline and adopting a “no blame” approach to bullying, in an effort to bring the affected parties together following a conflict to identify a shared solution in order to repair the harm without focusing on punishment. Okay, sidebar...*What?!!*

have seen a number of benefits, to include alleviating problems such as bullying, disputes between students, increased attendance, improved achievement, and reduced suspensions. From a macro perspective, it is believed that it will result in an overall reduction in antisocial behaviors and lead to fewer criminal offenses and ultimately fewer youths being incarcerated in the long run. Here in the San Diego District Attorney’s Office, we have implemented restorative practices in both the juvenile and adult systems. Though we are still in the early stages and data is limited, the juvenile branch has been working collaboratively with the var-

² *Ibid.*

³ San Diego Unified School District (2018), *Anti-Bullying and Intimidation*. Retrieved from sandiegounified.org/anti-bullying-and-intimidation.

⁴ *Restorative Practice in Schools: Promoting Quality Restorative Practice For Everyone*. (2011) Retrieved from restorativejustice.org

ious school districts to implement and foster restorative practices.

In 2012, the SDUSD took a very proactive approach to address bullying by focusing on the problem as a community-wide issue that cannot be solved unless the schools, students, parents and community work together. To that end, SDUSD does not tolerate any student or staff member being bullied (including cyber-bullying) or intimidated in any form at school or school-related events, (including off-campus events, school-sponsored activities, school busses, any event related to school business), or outside of school hours with the intention to be carried out during any of the above.⁵

To be effective, restorative approaches must be in place throughout the school—students, staff, management and the larger school community. The restorative approach to bullying prevention in schools incorporates teaching students how to treat each other respectfully by discussing behavioral expectations at the outset of the term. The practice is continued throughout the school year, for example, before starting a project or boarding the bus to go on a school trip. The thought process is that when the students articulate their own needs and desires for behavior in class, as well as rationale for those expectations, they take ownership and feel responsible for sticking to the rules and helping to uphold them.

Our office is committed to working toward a reduction in juvenile crime for the long haul. In recent years, our approach has changed and there has been a bigger push not to bring as many youths into the juvenile justice system especially if the youth is of low or medium risk to recidivate. The use of restorative justice has been implemented in a number of low-level

offenses in the juvenile branch such as vandalism, petty theft and simple battery. The central feature of restorative justice is a meeting between the victim, offender, and the community following the commission of the offense. The involved parties enter into a dialogue to identify how the victim was harmed by the infraction and to mediate a collective agreement aimed at repairing damages and rehabilitating the offender. The process is completely voluntary, and the offender needs to be willing to accept responsibility for the committed act and be willing to repair damages.

Given that restorative practices in the school setting is relatively new, research is limited as to its long-term effectiveness. However, a number of officials within the district have devoted significant resources to the practice and as a result, we have seen a steady decline in arrests from 669 in 2012-13 school year down to 222 the following year. Since being implemented in 2012, there has also been a dramatic reduction in truancy and suspensions in the district. In fact, Hoover High School, one of the first schools to implement the practice, saw suspensions drop in one year, from 321 in 2013-14 to 58 the next year. While restorative practices are not the antidote to bullying in schools, it has certainly garnered interest and heightened awareness among school officials in San Diego. Though the practice has drawn criticism from some, ultimately the proof will be in the numbers. If restorative practices lead to improved relationships, foster better communities and transform the entire school environment, then maybe, just maybe, we can change the hearts and minds of the most doubtful, even the hard-nosed prosecutors, and eradicate bullying from our culture once and for all.

⁵ *Ibid.*

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BULLYING PREVENTION

School Violence and Bullying Requires a Community Response



BY JIM BULLOCK

REPORTS OF ACTIVE SHOOTERS in our schools have become an all too often occurrence. When these horrific events occur, the media, eager to scoop the story, begins its dissection of the troubled individual and the search for the motive behind the behavior. As the public debate in the media takes place, the focus turns to the means by which the violence is committed and does little to address the underlying reason for the violence. The debate becomes political and responsibility is often assigned to hot button topics such as gun violence or mental health. Too often an obvious reason for the behavior is overlooked. For when the political fray has calmed down, and the cases are reviewed, we find that the perpetrators are victims of bullying.

As a small town prosecutor, the possibility of school violence is ever present and is accompanied by the fear that should such an event occur in our community, it could easily overwhelm us and our ability to respond.

When school violence did come to my town, the results were not catastrophic due to early law enforcement intervention. Because there was a quick intervention, and no catastrophic incident, we could review the cases without intense media scrutiny and public opinion interfering with the investigations. As a result, we could candidly review the triggering event. Our two primary cases involved a high school football hazing incident and threats made by three teens to “shoot up” their school in response to being bullied.

In small town America, there has been a long-time culture of hazing and bullying. This “rite of passage,” and the mindset of “this is the way we have always done it,” have long been viewed as normal but are simply unacceptable in today’s society. These attitudes prompted the high school football seniors to target the underclassmen and for classmates to bully the school “loners” in my community. Clearly we needed to develop a response to these cases. Simply prosecuting

Jim Bullock is the District Attorney for 16th Judicial District, Colorado.

the few individuals involved for their behavior would have minimal impact because it would do little to address the underlying behaviors that triggered the criminal activity. My community was fortunate to intervene before any actual violence occurred due to aggressive law enforcement intervention and swift judicial response. The investigation by law enforcement, assisted by the Office of the District Attorney, immediately initiated juvenile petitions in order to

juvenile is the recipient of bullying by peers, shouldn't the treatment also address the behavior of the "victim"? While bullying in no way diminishes the responsibility of the juveniles who threatened to become the next school shooters, shouldn't the community and those engaged in bullying also receive the same response and treatment in hopes that their behavior in the future will help diminish the potential for violent responses?

When the behavior of the "victim" triggers the criminal act, such as in the instances where the juvenile is the recipient of bullying by peers, shouldn't the treatment also address the behavior of the "victim"?

bring those adolescents involved under court supervision, providing a means to monitor the adolescents' activities. After the initial response, we began the long, arduous task of determining the credibility of the potential threat and the reasons underlying the adolescents' actions. In the case of the threatened school shooters, the ensuing investigation established that no real action plan for violence on the part of the juveniles existed. It was more of a cry of frustration because the juveniles were being hazed and bullied. Clearly the potential for violence was there and could have easily matured into horrific violence had law enforcement not intervened. As with many investigations, it not only answered questions, but also generated many unanswered ones.

The stated policy of the Colorado Juvenile Justice Code is to focus on the rehabilitation of the juvenile. As prosecutors, we look to the criminogenic factors of the offending juvenile in an effort to provide treatment specific to that individual. If our analysis shows the juvenile has antisocial cognition, we provide treatment and therapy for that individual. But what about those circumstance when a member of the community or the community's culture is the origin of the antisocial behavior? When the behavior of the "victim" triggers the criminal act, such as in the instances where the

In our case, we concluded that education and a community-wide response was necessary. The disposition in the (almost) school shooting case involved the school, faculty, and the community at large. Our community needed to be made aware of the potential consequences caused by the willingness to accept and tolerate bullying behavior. The cause of the potential school threat did not only lie with the individuals subjected to court supervision, but to the community that didn't recognize the role bullying played in precipitating the juvenile's behavior.

In developing a dispositional plan in the case, we identified four primary groups that needed attention. Those groups consisted of the juveniles charged in the court proceedings, the school faculty, the student body, and the community at large. The juveniles received traditional court supervision with counseling and monitoring. Since the school was one of the "victims" in the case, the school board was consulted throughout the proceedings and was made aware that the threats were precipitated by bullying. We recognized keeping the community informed about the school's safety required an immediate response, but we also determined we could use this as an opportunity to educate the community regarding an appropriate response to bullying. This education piece quickly became one of

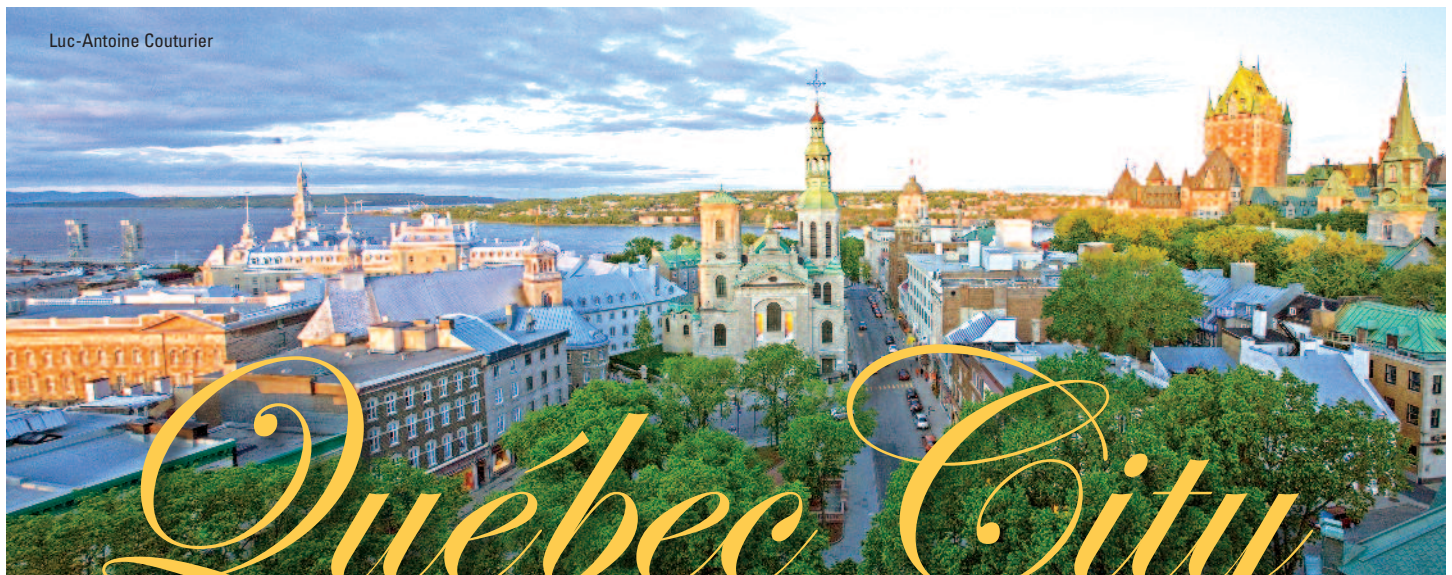
the goals of this prosecution.

The dispositional plan included components of public education as well as instruction and training for the school faculty and student body. We helped develop an in-service day to better educate teachers and school administrators on how to identify and address bullying within the school. Many schools have a zero-tolerance policy for bullying, but lack basic understanding on how to respond to bullying. Experience has taught us that a zero-tolerance policy for bullying has, in some cases, only resulted in expelling the bully from school, which then leads to escalation of the bullying behavior. A better response is for the student body and school faculty to identify and develop a method for isolating the bullying and then eliminating it. The goal of the in-service day was to help develop tools to recognize hazing and bullying and define appropriate responses to that behavior. With the assistance of consultants, we developed a presentation to

guide the public debate toward the development of a community response addressing bullying. A town hall forum was convened in order to first reassure the public that their school safety concerns were being addressed, and second to assist the community in recognizing the roles hazing and bullying have in cases of threatened school violence.

An additional component of the dispositional plan was a student body assembly presentation by experts in the field to advise the students on the impact bullying has on its victims. The presentation provided tools to students on how to respond if they observed bullying and highlighted that a small effort to prevent bullying could have a huge impact on preventing school violence. In a nutshell, students can be taught that an ounce of prevention can be worth a pound of cure.

Our experience has taught us that a potential threat of school violence requires a community response and not a mere criminal prosecution to a specific crime.



INNOVATIONS IN PROSECUTION

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