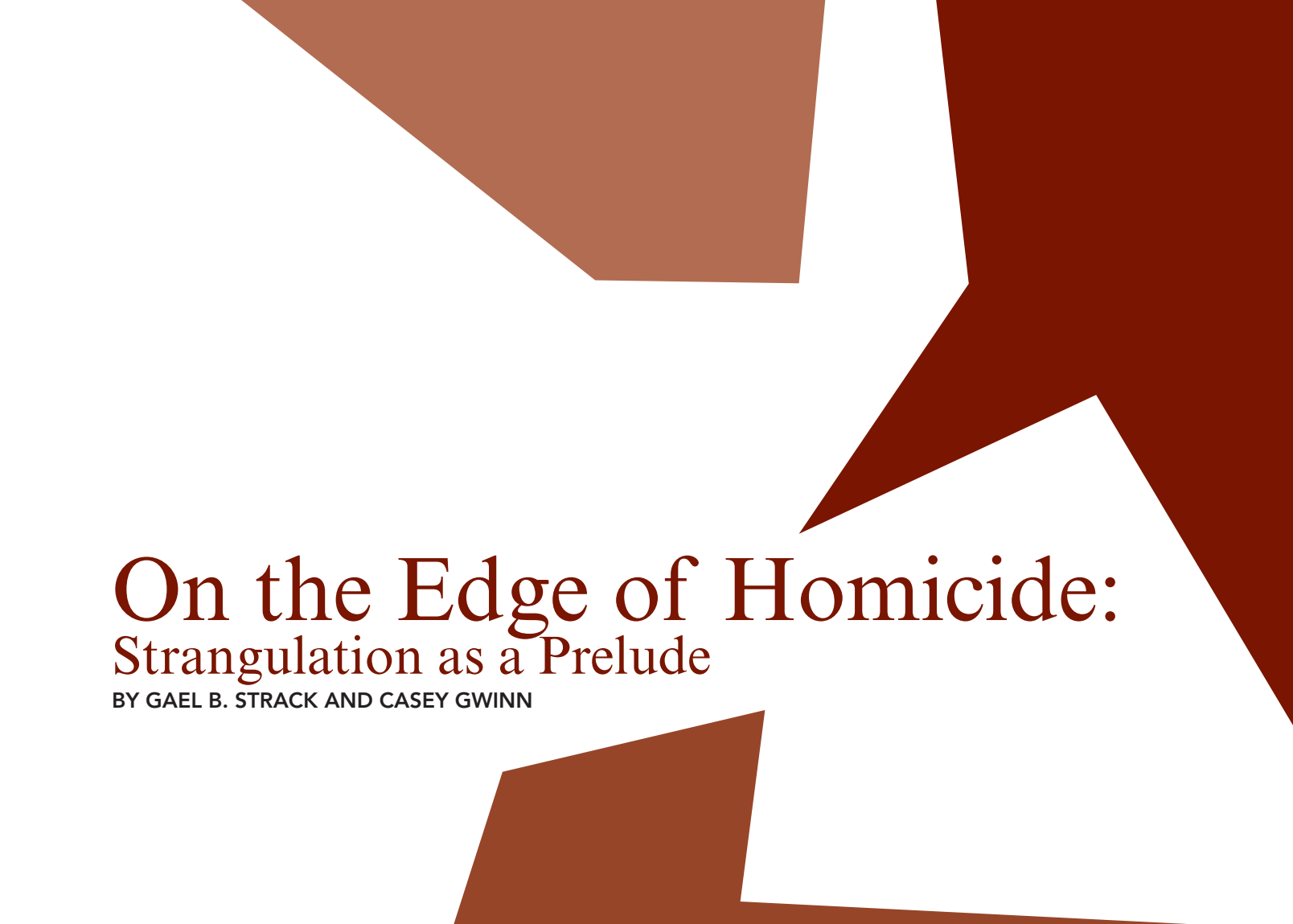




On the Edge of Homicide: Strangulation as a Prelude

BY GAIL B. STRACK AND CASEY GWINN

In March 1995, Sgt. Anne O'Dell, head of the San Diego police domestic violence unit, contacted her counterpart at the domestic violence unit of the San Diego City Attorney's Office to report the city's first domestic violence homicide of the year. Casondra Stewart had been repeatedly stabbed by her 21-year-old boyfriend, Alfonzo Terrell Merritt, and had died in front of her friends. Stewart was just 17 years old and mother to a young child.

There was a history of domestic violence in the relationship. Just two weeks prior to her death, Stewart had called the San Diego Police Department to report an incident in which her boyfriend had choked her; however, by the time police arrived, she was already recanting. Stewart minimized the attack, refusing to give police a detailed statement, and, as a result, no photos were taken of the red marks on her neck. The case was assigned

to a domestic violence unit detective who, observing San Diego's law enforcement protocol, followed up with the victim. Stewart, though, did not budge from her original statements and refused to cooperate. With no independent corroboration, the case was closed due to a lack of evidence and never submitted for prosecution.

Two months later, Sgt. O'Dell placed another call to report San Diego's second domestic violence homicide of the year. Her admonition was simple: "Check out today's paper." The newspaper report stated:

A Tierrasanta man, who is accused of strangling his 16-year-old girlfriend and setting her body ablaze in an Oak Park field, was charged with two counts of murder yesterday after prosecutors disclosed that the victim was 5½ months pregnant.

Mario Andre Rushing, 18, pleaded not guilty to the murder charges and an arson charge. The body of Tamara Smith was found by firefighters Friday night in a field off Federal Blvd and an autopsy determined she had been strangled.

Rushing was the father of the child Smith had been expecting at the time of her murder—as well as the victim's 11-month-old daughter.

Like Casondra Stewart, Tamara Smith had a history of domestic violence. According to family members, Smith and her boyfriend, Rushing, had had a violent relationship since the eighth grade. They repeatedly broke up and reconciled. San Diego police had responded to at least two disturbance calls. One of those calls resulted in Rushing being arrested for domestic violence, but he was released on his own recognizance. The day Rushing was scheduled to appear for arraignment was the day that Tamara Smith was found dead.

The deaths of Casondra Stewart and Tamara Smith triggered profound changes in San Diego and, ultimately, around the world. The San Diego City Attorney's Office conducted an informal death review to learn what needed to be changed within the school district and the criminal justice system in the hopes that maybe San Diego could prevent the same thing from happening to another victim. While the law enforcement and prosecution protocols for San Diego were followed to a "T," the fact remained that two teenagers with a history of domestic violence were dead, and the informal death review team concluded both were preventable. Jointly, the San Diego City Attorney's Office and the San Diego Police Department determined it was critical to educate front-line police and prosecutors on how to better handle "choking" cases—at the scene and in court. Both Casondra Stewart and Tamara Smith had been "choked" prior to their deaths and neither case had been prosecuted. A better criminal justice response was key. Sadly, it wasn't until their deaths that San Diego came to understand the seriousness and the significance of a "choking" case.

Within 30 days of completing the informal death review, then-San Diego City Attorney Casey Gwinn launched an education campaign, in partnership with

teen educator Nancy Regas, within the city school district and with county law enforcement. Gwinn called on his domestic violence unit—established 10 years earlier and already a nationally recognized program—under the leadership of Assistant City Attorney Gael Strack, to conduct a study of existing "choking" cases that had been submitted for prosecution. The results of the study were eye-opening. The study revealed that on a regular basis victims had reported being choked, and in many of those cases, there was very little visible injury or evidence to corroborate the "choking" incident. The lack of physical evidence was causing the criminal justice system to treat many "choking" cases as minor incidents, when, in fact, such cases were among the most lethal and violent cases in the system. The city attorney's 1996 study was later published in the *Journal of Emergency Medicine* as "Review of 300 Attempted Strangulation Cases" (2001), but at the time, the findings launched the most comprehensive effort in the United States to educate criminal and civil justice professionals about strangulation. The 1996 San Diego strangulation study has spawned research, protocols, policies, and laws across the country and around the world.

The major findings are now common knowledge:

- most strangulation cases produce minor or no visible injury;
- many victims, however, suffer internal injuries and have documentable symptoms;
- strangulation is a gendered crime—virtually all perpetrators are men (299/300);
- most abusers do not strangle to kill—they strangle to show they *can* kill;
- victims often suffer major long-term emotional and physical impacts; and
- victims of prior attempted strangulation are seven times more likely to become homicide victims.

Today, it is known unequivocally that strangulation is one of the most lethal forms of domestic violence. When a victim is strangled, she is at the edge of a homicide. Unconsciousness may occur within seconds and death within minutes. In *Intimate Partner Violence* (Connie Mitchell ed., Oxford Univ. Press 2009), the authors describe the terms "strangulation," "choking," and "suffocation" (see ch. 16). These terms are often confused, yet they all lead to asphyxia—a lack of oxygen to the brain. In "strangulation," external compression of the neck can impede oxygen transport by preventing blood flow to or from the brain or direct airway compression. "Choking" refers to an object in the upper airway that impedes oxygen intake during inspiration and can occur accidentally or intentionally. "Suffocation" refers to obstruction of

Gael B. Strack is the former assistant city attorney for San Diego and current chief executive officer and cofounder of the Family Justice Center Alliance in San Diego. **Casey Gwinn** is the Alliance's president. Gwinn previously served as San Diego city attorney, and in that post he teamed with law enforcement to establish the nationally recognized San Diego Family Justice Center to address domestic violence, child and elder abuse, and sexual assault. Contact either author through the justice center website at www.familyjusticecenter.com.

RESOURCES

To find out more about strangulation or to receive training through the Strangulation Training Institute, visit the National Family Justice Center Alliance's resource library at www.familyjusticecenter.org.

- Jacquelyn C. Campbell, *Prediction of Homicide of and by Battered Women in ASSESSING DANGEROUSNESS: VIOLENCE BY BATTERERS AND CHILD ABUSERS*, 96–113 (Sage Publications 1995).
- Gael B. Strack, George E. McClane, and Dean Hawley, *A Review of 300 Attempted Strangulation Cases Part I: Criminal Legal Issues*, 21 J. EMERGENCY MED., 303 (2001).
- George E. McClane, Gael B. Strack & Dean A. Hawley, *A Review of 300 Attempted Strangulation Cases Part II: Clinical Evaluation of the Surviving Victim*, 21 J. EMERGENCY MED., 311 (2001).
- Dean A. Hawley, George E. McClane & Gael B. Strack, *A Review of 300 Attempted Strangulation Cases Part III: Injuries in Fatal Cases*, 21 J. EMERGENCY MED., 317 (2001).
- Casey Gwinn, George McClane, Kathleen Shanel-Hogan & Gael Strack, *Domestic Violence: No Place for a Smile*, 32 J. CAL. DENTAL ASS'N 399 (May 2004).
- IACP NAT'L LAW ENFORCEMENT POLICY CENTER, DOMESTIC VIOLENCE, CONCEPTS AND ISSUES PAPER (June 2006).
- Strangulation Testimony on SB 260 (Angie's Law) before the Wisconsin State Senate Committee on Judiciary and Corrections (Nov. 7, 2007) (statement by Julie Lassa, D-Stevens Point), available at http://legis.wisconsin.gov/lc/comtmats/old/07files/sb0260_20071115112500.pdf.
- Kathryn Laughon, Nancy Glass & Claude Worrell, *Review and Analysis of Laws Related to Strangulation in 50 States*, 33 EVALUATION REVIEW no. 4, 358 (Sage Publications 2009).
- Nancy Glass et al., *Non-Fatal Strangulation Is an Important Risk Factor for Homicide of Women*, 35 J. EMERGENCY MED., 329 (2008).
- Kathryn Laughon, Paula Renker, Nancy Glass & Barbara Parker, *Revision of the Abuse Assessment Screen to Address Nonlethal Strangulation*, 37 J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING (JOGNN), 502 (2008).
- Ellen Taliaferro, Dean Hawley, George McClane & Gael Strack, *Strangulation in Intimate Partner Violence in INTIMATE PARTNER VIOLENCE* (Connie Mitchell ed., Oxford Univ. Press 2009).
- Marna Anderson, *Why Strangulation Should Not Be Minimized*, WATCH, Spring 2009 at 1.
- NAT'L DIST. ATTORNEYS ASS'N, CRIMINAL STRANGULATION/IMPEDING BREATHING STATUTORY COMPILATION FOR THE UNITED STATES AND ITS TERRITORIES (2010).

Please note: Those in an abusive situation should call the National Domestic Violence Hotline at 1-800-799-SAFE.

the airway at the nose or mouth and can also occur accidentally or intentionally. Therefore, the term “strangulation” should always be used to specifically denote external neck compression. The term “choking” should be reserved for internal airway blockage. When the victim, perpetrator, or witness uses the term “choking,” document the statement with quotation marks since, in nearly all cases, they are describing strangulation, not choking. Professionals working in this field should always use the word “strangulation” when referring to external compression of the neck.

Strangulation is, in fact, one of the best predictors for the subsequent homicide of victims of domestic violence. One study showed that the odds of becoming an attempted homicide victim increased by 700 percent, and the odds of becoming a homicide victim increased by 800 percent for women who had been strangled by their partner. (Nancy Glass et al., *Non-Fatal Strangulation Is*

an Important Risk Factor for Homicide of Women, 35 J. EMERGENCY MED. 329 (2008).) The occurrence of strangulation has been reported in 47–68 percent of women who were being assessed for intimate partner violence, and smothering or strangulation has been identified in 25 percent of women killed by an intimate partner. (J. Stephan Stapczynski, *Strangulation Injuries*, 31 EMERGENCY MED. REP. 193–203 (2010).) These studies clearly show the need for any professional working with victims of intimate partner violence to take strangulation seriously and to educate themselves on local resources and laws. In their practices and in court, legal professionals should make use of risk assessment tools, create personalized safety plans, and improve their screening and documentation of strangulation victims.

Victims may have no visible injuries, yet because of underlying brain damage due to the lack of oxygen during the strangulation assault, they may have serious in-

ternal injuries or they may die days—even weeks—later. The lack of external injuries and the lack of medical training among domestic violence professionals have led to the minimization of this type of violence, exposing the victims to potentially serious health consequences, further violence, and even death. Not only has strangulation been overlooked in the medical literature, but many states still do not adequately address this violence in their criminal statutes, policies, or responses. Domestic violence perpetrators who use strangulation to silence their victims not only commit a felonious assault but can also be charged for an attempted homicide. Strangulation is a form of power and control that can have a devastating psychological effect on victims in addition to the potentially fatal outcome, which includes the victim committing suicide.

The horrific deaths of Casondra Stewart and Ta-

McClane, and Hawley) steadily expanded to include other doctors, attorneys, forensic nurses, detectives, and prosecutors to help with the training. In 2002, the San Diego Family Justice Center partnered with the Minnesota-based Battered Women's Justice Project to develop a two-day advanced strangulation workshop for domestic violence professionals.

As a result of those early efforts, many strangulation cases are now being elevated for felony-level prosecution due to professionals' understanding of the lethality of strangulation. Police and prosecutors are using existing statutes or working with legislators to create new felony legislation. Currently, 30 states have passed felony strangulation laws with New York, Wyoming, Tennessee, and California being the most recent. States such as Ohio, South Dakota, and Maine have statutes pending or under consideration. Specialized medical forms have been

Doctors, forensic nurses, and domestic violence detectives are testifying in courts as expert witnesses on strangulation.

mara Smith ultimately changed the course of domestic violence history and caused us to recruit experts and improve the criminal justice system's response to the handling of "choking" cases—now referred to as "near-fatal strangulation" cases. The momentum for specialized training has spread nationwide. An initial partnership between the San Diego City Attorney's Office and medical physicians George McClane and Dean Hawley in 1995 started with a simple goal: Train police officers and prosecutors in San Diego on how to improve their investigation and prosecution of "choking" cases.

By 1996, the training curriculum had been shared at statewide conferences and training programs. Former prosecutor Candace Heisler helped the initial partnership to introduce the training to the California District Attorneys Association. Former police officer Ray Bray helped to integrate the strangulation curriculum into police training via California's Commission on Peace Officer Standards and Training. Linda Burger, the then-director of the Statewide Coalition for Battered Women, invited the San Diego team to train domestic violence and sexual assault advocates across California. In 1997, the training curriculum was shared on a national level through the National District Attorneys Association, the Law Enforcement Television Network (LETN), state domestic violence coalitions, district attorney and law enforcement associations, and other international organizations. The core team of trainers (Gwinn, Strack,

developed to help legal and medical professionals document victim injuries and identify strangulation symptoms. Doctors, forensic nurses, and domestic violence detectives are being utilized as experts and are testifying in court about strangulation. Strangulation training is also being provided at many conferences and included at some regional police training academies, often aided by the strangulation training videos produced in San Diego through partnerships with the LETN (1997) and IMO Productions (2000/2010). In addition, many articles on strangulation have been written by the core team of trainers and others.

The specialized strangulation laws are working and becoming a valuable law enforcement tool to address domestic violence cases, even when the identified offenses are charged as misdemeanors. One recent study on the New York strangulation law by the New York State Division of Criminal Justice Services found 2,003 charges were filed against perpetrators in New York in just the first 15 weeks of the law's passage. Of the filed strangulation cases, 83 percent were misdemeanor charges—only 17 percent were felony filings. Nevertheless, the study found that perpetrators who had previously avoided *any* punishment because of a lack of visible injuries were now facing criminal sanctions for their life-threatening behavior. Researchers concluded, as they have in many states, that the previous gap in the law, between no charges and murder charges, was now being rectified by

this innovative intervention tool.

Casondra Stewart and Tamara Smith did not die in vain. Their tragic deaths have led to dramatic changes within the system. However, more needs to be done. Most civil legal professionals have never received training on the signs and symptoms of strangulation. Even many police officers and prosecutors have very little knowledge of the dynamics regarding strangulation assaults due to high turnover rates in public law offices and law enforcement agencies. The type of training received by domestic violence and sexual assault professionals varies widely from jurisdiction to jurisdiction. Police officers, prosecutors, civil attorneys, advocates, and medical professionals rare-

nurses make particularly good witnesses because of their medical background, experience in evaluating patients and documenting evidence, as well as their willingness to testify.

Much time over the last 15 years has been spent educating the criminal justice system on the seriousness of strangulation. It is now time to train civil practitioners in order to improve their response to the handling of strangulation cases in court. At the top of the list are family law attorneys and civil legal clinics handling restraining orders. Since opening the Family Justice Center Legal Network (restraining order clinic) at the San Diego Family Justice Center, it has become clear that civil practitioners are generally not trained in

Much time has been spent educating the criminal justice system on the seriousness of strangulation. It is now time to train civilian practitioners.

ly receive medical training concerning the identification and documentation of injuries, or the signs and symptoms associated with strangulation.

There is a need to develop more experts in this field and to use those experts in court proceedings to educate juries and judges about the seriousness of strangulation and to understand the signs and symptoms associated with a strangulation case. Expert testimony is generally admissible on any subject that is sufficiently beyond common experience in which the opinion of an expert would assist the trier of fact. Expert witnesses can be used for various reasons, including teaching jurors about medical, technical, or scientific principles or expressing an opinion after evaluating the significance of the facts of the case. For strangulation cases, attorneys should consider using medical experts such as a coroner, medical examiner, emergency room physician, forensic nurse, or a paramedic who has been trained and has experience handling strangulation cases. Forensic

the power and control dynamics of domestic violence, interviewing traumatized victims, gathering evidence, safety planning, danger/risk assessment tools, or other types of evidence that police and prosecutors have used for years to establish an abuser's guilt in criminal court proceedings.

No legal professional should work with family law, personal injury, or criminal law matters without receiving training in strangulation assaults, medical symptoms, documentation techniques, and long-term effects. Thousands of women continue to suffer such assaults without effective prevention and intervention efforts in place in communities across America. But the research is now clear: When a victim is strangled, she is at the edge of a homicide. We are all responsible for becoming educated and acting aggressively with the information now available. Responsible professionals can prevent major injuries to victims of abuse, facilitate needed treatment, and support—even save—lives. ■