

“I Want to Drop This Case”: Dealing with Uncooperative Victims in Domestic Violence Cases

by Nana Knight

Across the state, prosecutors assigned to domestic violence cases routinely deal with uncooperative, recanting, and sometimes hostile or absent victims. Regrettably, a victim refusing to press charges appears to be the norm rather than the exception. This lack of cooperation often impedes the successful prosecution of domestic violence cases and makes some cases downright impossible to prove.

This article offers practical tips on how to deal with uncooperative victims, emphasizing methods on how to build a rapport with them, and provides guidance on how to successfully prosecute such cases. For cases with absent victims, the article offers a basic roadmap of alternative sources of evidence, such as non-testimonial statements, which may be valuable in securing a conviction. This is not meant to be a comprehensive guide on prosecuting domestic violence cases, but rather an overview of some of the basic tools available to a prosecutor who is new to prosecuting such cases.

The Centers for Disease Control and Prevention (CDC) estimates that “[o]n average, 20 people per minute are

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victims of physical violence by an intimate partner in the United States. Over the course of a year, that equals more than 10 million men and women.”¹ As such, CDC labels intimate partner violence as a “serious, preventable public health problem that affects millions of Americans.”² Domestic violence is not limited to a specific segment of society—it transcends race, gender, occupation, and social class. In some cases, the abuse is infrequent and unpredictable, but in other cases, it is an everyday routine.³ For many victims, the abuse is so constant that there is no sanctity of the home or a refuge, only pain and fear.⁴ Although mandatory arrests and prosecution policies have increased awareness and responsiveness to domestic violence victims’ needs, in reality, many domestic abuse incidents remain under the radar and unreported.⁵

Regardless of the nature of the assault, a vast majority of the reported domestic violence cases tend to have one common feature: After the initial report, victims become reluctant to cooperate and refuse to assist in holding their abuser criminally accountable. Confronted with the prospect of testifying in court, victims commonly fail to appear, minimize the abuse, or recant. It is estimated that up to 80 percent of domestic violence victims either recant or refuse to testify against their batterers.⁶

Why Victims Recant or Refuse to Cooperate

To obtain cooperation, it is imperative to understand the reasons why victims of domestic violence recant or minimize what occurred to them. These reasons are often multifaceted and complex. In many cases, victims are forced to confront their abusers in court and publicly document the abuse, vilifying a person they once loved or still love, and possibly have children with. Other victims are intimidated by the prosecutorial process, and many feel there is a degree of stigma attached to being associated with the criminal justice system that is unwelcome and uncomfortable. Participating in the prosecution process often requires retelling the violent incident to the police, the prosecutor, the judge, and the jury. Many victims resent reliving the violence perpetrated against them.

Another reason is economic vulnerability.⁷ Some victims realize that by putting their abuser in jail, they may suffer financially. A

domestic violence victim faces a 50 percent chance of his or her income falling below the poverty level if separated from the abuser.⁸ If the abuser is convicted, the family will most likely suffer due to the abuser's lost income while incarcerated. Continuous domestic abuse may also adversely affect a victim's employment. Frequently, victims "lose their jobs due to repeated absences, workplace disruptions, performance problems—or simple prejudice against victims."⁹ In turn, an intermittent work history and poor credit record may obliterate a victim's ability to obtain adequate housing. For many immigrants, there is a risk of deportation, which can be devastating for families who rely on their abusers as the primary breadwinners.¹⁰

Self-blame also accounts for lack of cooperation in some cases.¹¹ Victims may feel that they brought the abuse on themselves, and that they should somehow solve the problem on their own without getting the authorities involved. Underlying this sentiment is often the victims' unwillingness or inability to see themselves as sufferers of abuse. Some female victims do not view themselves as "battered women," because there are negative perceptions and stereotypes attached to victimization, which are inconsistent with the victims' perception of themselves.¹² In fact, while a violent incident is one that merits aggressive prosecution, for many victims, the episodes of violence are the exception in what they perceive as otherwise normal intimate relationships.¹³

For victims who refuse to prosecute, the abuse often escalates. The 911 call is a desperate cry for help because the call launches a criminal intervention and signifies that the victim is unable to get the abuser to stop. The abuser's arrest, even if temporary, gives the victim some respite and allows the victim some time to access resources (e.g., a victim advocate), move away, and/or form a plan for safety. However, as time passes, many victims refuse to cooperate in the prosecution. Some forgive their abusers while others fear that if they cooperate, the abuser will hurt them or their loved ones.¹⁴

Instead of assisting with the prosecution, many victims learn to adapt and cope with the abuse.¹⁵ Trapped in a cycle of violence, victims can be quite rational in that they often show independence even under constrained circumstances and try to reason with their

partners to “end the violence.”¹⁶ At times, victims try to pacify their abusers by engaging them in constructive dialogue. They adapt to their abuser’s moods, evaluate their abuser’s “use of alcohol, tone of voice, repertoire of gestures and mannerisms,” in an attempt to mollify the abuser.¹⁷ When these methods are ineffective, some victims escalate their response by calling 911, confronting their abuser physically and verbally, leaving the relationship, or ousting the abuser from the house.¹⁸

If a criminal prosecution is initiated, some abusers resort to manipulation. If in custody, the abusers call from jail promising love and reform or threaten with retaliation if the victim goes to court or testifies.¹⁹ Many perpetrators are fixated on power and control over their victim.²⁰ Sometimes, they leverage the victim’s economic dependence by paying for the victim to leave town so they will not be found. Some use family members to exert pressure and dissuade the victim from testifying.²¹ Others take advantage of the victim’s vulnerabilities, including the victim’s love of his or her children.²² Initially cooperative, victims slowly give in to the defendant’s manipulation and refuse to participate in the prosecution.

A victim’s lack of cooperation manifests itself in many ways, from minimization of the incident, to a complete recantation of a previous statement given to police on the scene. Oftentimes, if a prosecution is initiated, victims will:

- evade subpoena service, impeding all efforts to locate and personally serve them;
- call the district attorney’s office, asking the prosecutor to “drop the case”;
- contend that they lied to the police;
- claim that they fabricated the domestic violence incident in retaliation for their partner’s perceived infidelity;²³
- allege they were under the influence of drugs at the time their witness statement was taken; therefore, their perception of the incident was impaired or false; or
- state that the police coerced their statements or recorded “false statements” in the police report.

On the stand, some victims refuse to testify, prompting the court to find them in contempt pursuant to Code of Civil Procedure section 1219, which states:

[A] court shall not imprison or otherwise confine or place in custody the victim of a sexual assault or domestic violence crime for contempt if the contempt consists of refusing to testify concerning that sexual assault or domestic violence crime. Before finding a victim of a domestic violence crime in contempt as described in this section, the court may refer the victim for consultation with a domestic violence counselor.

However, the risk of conviction for contempt and other punitive actions authorized by section 1219 are not enough for some victims to change their stance on testifying against their abuser. It is also not uncommon for victims to invoke their Fifth Amendment privilege against self-incrimination, especially in cases where there are mutual combat elements present in the domestic violence incident, or in cases where the victims claim they lied to the police or “filed” a false police report.

Proving Domestic Violence Cases with Uncooperative or Absent Victims

Given the underlying dynamics behind victim uncooperativeness, proving domestic violence cases involving absent or hostile victims can be challenging. However, it is important to remember that the crime is perpetrated not just against the victim, but against the community as well. Therefore, the state has an interest in keeping victims safe in their homes.²⁴ This is especially true in households where children are present and witness recurring domestic violence.²⁵

A domestic violence prosecutor should make every effort to reach out to an uncooperative victim and try to win the victim over. Although in many cases this will be an impossible task, the prosecutor should still consider moving forward with the case without the victim’s participation and focus on gathering corroborating evidence to prove the charges without the victim. Proceeding without the victim is especially important in cases where incarceration is the only way to keep victims and the public safe from violent, repeat offenders.²⁶

Keeping the Victim Updated on the Progress of the Case

Getting the victim to cooperate starts with building a rapport early in the prosecution process. Once the prosecutor gets the case for filing, or before arraignment, and certainly before the first pre-preliminary hearing, he or she should contact the victim. To reference the old adage of “striking while the iron is still hot,” this is the stage of the process where the victim may still be experiencing resentment and hurt against the abuser, making it easier to establish a cooperative relationship. Hence, it is imperative to stay in contact with the victim early and often throughout the pendency of the case by providing updates on the progress of the case. The prosecutor should encourage the victim to attend pre-trial hearings so the victim can witness the court proceedings and obtain in-person updates from the prosecutor.

Updating victims on the developments of the case is critical because many victims stop cooperating with the criminal justice system when they are not adequately informed about what to expect from the prosecution process.²⁷ Some victims do not believe they are going to be sufficiently protected by the system and have unrealistic expectations about how long the process takes.²⁸ It is important for counties using the community response approach to put the victim in contact with victim support services as soon as possible to minimize the risk of non-cooperation.²⁹ Additionally, victims often have a strong connection to their parents, relatives, and friends; consider building rapport with these key individuals because they support the victim, want the victim to terminate the relationship with the abuser, and desire to see the abuser be held criminally accountable for violence against their loved one.³⁰

During and after the process of establishing rapport with the victim and his or her support group, prosecutors should work toward convincing the victim to see the benefits of prosecution. To this end, it is important for victims to understand that if left without redress, the abuser will not stop and the violence may increase, eventually leading to the victim’s death or a situation where the victim kills the abuser. If children are present during the domestic violence episodes, they suffer if they see their parent getting hurt. Therefore, victims need to stay strong and assist in

the prosecution to end the abuse. With the assistance of victim advocate services, victims learn to form safety plans to deal with living arrangements and financial concerns, thereby alleviating some of their fears of an uncertain future.

For many victims, going through the criminal justice process is personally taxing and terrifying. Prosecutors should show an understanding of the challenges that the victim faces vis-à-vis taking time off work, facing the abuser in court, enduring grueling cross-examination, and coping with the fact that their testimony caused their intimate partner to lose his or her freedom. Prosecutors should be sensitive to the fact that the victim may fear retaliation by the accused or his or her friends and/or family. It is important to appreciate the risk that the victim undertakes during the process.

Compelling Testimony

Ideally, with enough support and encouragement, the victim will reassess his or her unwillingness to testify, put aside reservations, and agree to assist in the prosecution as a witness against the abuser. However, if the victim is not ready to assist, then the prosecutor should consider compelling the victim's testimony if continued prosecution has a good chance of resulting in a conviction. By compelling the victim to testify, the victim does not face the dilemma of choosing whether or not to proceed with his or her claim. This in turn effectively removes the risk that the abuser will threaten the victim into dropping charges.³¹

One of the drawbacks with compelled testimony is that it sets up an adversarial relationship between the prosecutor and the victim. At trial, the jury will probably detect the tension between the two. Treating the victim as a "hostile witness" may also validate some of the juror's biases against domestic violence victims (i.e., the incorrect belief that domestic violence victims are not credible and that they are somehow to blame for their problem).³² Furthermore, when the victim is hostile, the quantity of evidence may be limited and questionable, which may make some charges impossible to prove.³³ Expert testimony may be helpful in these situations to explain to the jury some of the dynamics of domestic

violence, including the cycle of violence, victim response, reasons for the victim's refusal to testify, and his or her continued loyalty to the abuser. One benefit of compelling a victim to testify at a preliminary hearing is that if the victim later becomes unavailable at trial, the prosecutor may be able to use the former testimony, if the requirements for former testimony are met.³⁴

Gathering Corroborating Evidence

Faced with an uncooperative or an absent victim, it becomes even more crucial to gather independent, corroborating evidence of the crime. The objective should be to create a provable case at trial without relying on the victim's testimony.³⁵ To this end, there are several tools available to prosecutors who are motivated to build a trial case without relying on the victim. For example, the responding officers should get more details on the physical condition of the victim, including the victim's emotional state, along with a

detailed description of the injuries. With regard to injuries, some can be physically detected through touch (e.g., a bump on the head), but not necessarily projected in photographs. Follow-up interviews with the victim and subsequent documentation of the injuries may be valuable in cases where the injuries do not show or appear until days after the assault (e.g., a bruise). Details regarding the setting, including non-testimonial statements made by the victim and other witnesses are all important in strengthening the case.³⁶

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Jail and 911 Calls

As experienced domestic violence prosecutors know, defendants' calls from the jailhouse often serve as valuable tools in building a trial case and securing a plea. Even jail calls that do not contain outright confessions may still yield useful admissions by a defendant that can help prove the case. Additionally, defendants may dissuade or threaten victims and witnesses from cooperating or attending court hearings, which would not only be a basis to add a Penal Code section 136.1 charge, but also serve as evidence of "forfeiture by wrongdoing," eliminating the defendant's Sixth Amendment right to confront the witness.³⁷

Editor's Note: For more on the doctrine of forfeiture by wrongdoing, see *"Forfeiture by Wrongdoing After Crawford and Giles: An Effective Tool for Prosecutors with an Absent Victim at Trial,"* on page 226.

911 calls made by victims and witnesses may also significantly strengthen the case. These calls are often non-testimonial and serve as reliable evidence of the violence that just took place.³⁸ In cases where the victim is recanting or unavailable to testify, the 911 call can paint a picture of the assault and help prove the elements of charged crimes, enabling the jury to hear and sense what happened. Finally, the 911 calls allow the prosecutor to track down other callers who witnessed the crime and can independently corroborate details of the domestic violence.

Evidence and Hearsay Exceptions

Prior acts of domestic violence are admissible under Evidence Code section 1109 and can be powerful in painting a picture of a serial batterer. "1109" evidence is especially helpful in situations where the abuser claims self-defense. Similarly, Evidence Code section 1370 carves out a hearsay exception for statements that describe the infliction or threat of physical injury upon the declarant if certain conditions are met.³⁹ Other useful hearsay exceptions include the "state of mind" exception to show a victim's

fear of the defendant and potentially, descriptions of the abuse.⁴⁰ The victim's state of mind can be especially relevant where the defendant is claiming self-defense or an accident.

Further, assuming confrontation clause barriers can be overcome, the residual hearsay exception can be used to admit the victim's statements to family members, including statements on restraining orders or other family law court petitions, or even statements to police.⁴¹ By relying less on the victim's testimony and using alternative sources of evidence, prosecutors increase the chances of securing a conviction.

Medical Records

A victim's medical records may serve as a valuable source of corroborating evidence. Many victims of domestic violence seek emergency and follow-up medical treatment for their injuries. Prosecutors should routinely subpoena and review the records and identify the medical personnel who can serve as useful witnesses about the nature of the injuries, including, potentially, the victim's statements regarding the cause (e.g., assault by husband) to enable the medical provider to form an accurate diagnosis.⁴² Prosecutors may argue that the statements to medical personnel are non-testimonial with the primary purpose of obtaining emergency medical care and also admissible under Evidence Code section 1370.⁴³

Qualifying Out-of-Court Statements as Non-Testimonial

In cases without a victim present, qualifying the victim's or other witness statements as non-testimonial can be especially helpful in proving the case. Overcoming the barriers posed by the defendant's Sixth Amendment right to confront witnesses presents the biggest challenge in this regard.⁴⁴ Criminal law practitioners are familiar with the 2004 U.S. Supreme Court landmark case of *Crawford v. Washington*, which defined a testimonial statement as a "solemn declaration or affirmation made for the purpose of establishing or proving some fact."⁴⁵ The decision held "[w]hatever else the term covers, it applies at a minimum to prior testimony at

a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations.”⁴⁶ Based on *Crawford*’s holding, testimonial statements are only admitted against a criminal defendant when the declarant is unavailable and the defendant had a previous opportunity to cross-examine.⁴⁷

In discerning testimonial from non-testimonial statements, the U.S. Supreme Court cases of *Michigan v. Bryant* in 2011⁴⁸ and *Ohio v. Clark* in 2015⁴⁹ are critically important. *Bryant* held that statements made to police at the scene of the crime by a mortally wounded victim were not testimonial. The court must conduct an objective analysis of all relevant circumstances to decide the primary purpose of police interrogation and whether its purpose is to create an “out-of-court substitute for trial testimony.”⁵⁰ The circumstances relevant to this determination include an analysis of whether an ongoing emergency exists. Relevant to a finding of an “ongoing emergency” are factors such as whether “the threat to the first responders and public may continue” even after the threat to the first victim is neutralized, the “type of weapon employed,” and the “medical condition of the declarant,” which are all regarded as valid inquiries to take into account when determining whether an ongoing emergency exists.⁵¹ “In addition to the circumstances in which an encounter occurs, the statements and actions of both the declarant and interrogators provide objective evidence of the primary purpose of the interrogation.”⁵² The prosecutor may be able to establish an “ongoing emergency,” if he or she can successfully argue that the primary purpose of the victim’s statements to the police at the scene of the crime was to help law enforcement catch the defendant who is armed and at large.

Clark re-affirmed the *Bryant* standard. The court in *Clark* upheld the “primary purpose test,” stating:

Statements made to someone who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement officers.^[53]

This means that statements the victim made to family and friends regarding immediate danger posed by the defendant

may be classified as non-testimonial. The ultimate question is whether “in light of all of the circumstances, viewed objectively, the primary purpose of the conversation was to create an out-of-court substitute for trial testimony.”⁵⁴ This means that even if interrogation is used as a response to an ongoing emergency, if its primary purpose is not to create a record for trial, then the statements are not testimonial.⁵⁵ However, it is important to remember that even if the statement is classified as non-testimonial, it must still be admissible under the rules of evidence. In other words, it must qualify for an exception to the prohibition against hearsay.⁵⁶

The framework established by *Bryant* and *Clark* provides some ammunition for prosecutors to qualify out-of-court statements as non-testimonial. Prosecutors can argue that the primary purpose of an injured victim’s statements on the scene is to meet an ongoing emergency and end a threat to the victim’s life, especially if the perpetrator is nearby.⁵⁷ With regard to the formality of the questioning, prosecutors can also argue that the police inquiry was not structured, but rather informal and designed to protect the victim from future harm.⁵⁸ Further, prosecutors can argue that from the first responder’s perspective the questions are designed “to identify the abuser in order to protect the victim from future attacks.”⁵⁹ These are some examples that prosecutors can use to argue for the admissibility of out-of-court statements when building cases that do not rely on the victim’s testimony at trial.

Conclusion

There are many social, economic, and psychological factors implicated in a domestic violence victim’s decision to cooperate or abstain from prosecution. Understanding the reasons behind the victim’s refusal to cooperate is important for a prosecutor who wants to create a good rapport with the victim. Showing support, compassion, and demonstrating an understanding of the victim’s plight can help forge a cooperative relationship with a victim who is hostile to prosecution.

To this end, the prosecutor should neutralize some of the factors that make domestic violence different from other crimes

and strive to describe the prosecution process as a safe haven or a refuge for the battered, rather than an undesirable or agonizing process. With sufficient support and encouragement, the victim will hopefully unlearn his or her helplessness, put aside any reservations, and agree to hold the abuser accountable by cooperating in the prosecution. However, when despite all efforts, the victim still refuses to cooperate, there are many tools available to the resourceful prosecutor who is motivated to prove the case with an uncooperative or absent victim. With sufficient corroborating evidence and creative use of the evidentiary rules and non-testimonial statements, it becomes entirely possible for the enterprising prosecutor to obtain a conviction in cases with uncooperative or absent victims. ■

ENDNOTES

1. <<http://www.cdc.gov/violenceprevention/nisvs>> (accessed Nov. 17, 2016).
2. <<http://www.cdc.gov/ViolencePrevention/intimatepartnerviolence/index.html>> (accessed Nov. 17, 2016).
3. Gena Durham, *The Domestic Violence Dilemma: How Our Ineffective and Varied Responses Reflect Our Conflicted Views* (1998) 71 So. Cal. L. Rev. 641, 645.
4. *Id.*
5. Kimberly D. Bailey, *It's Complicated: Privacy and Domestic Violence* (2012) 49 Am. Crim. L. Rev. 1777, 1785, citing Donald G. Dutton, *The Domestic Assault of Women: Psychological and Criminal Justice Perspectives* (1995) 218 [finding that only one in six assaults are reported to authorities] <<http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1038&context=facschol>> (accessed Nov. 18, 2016). See also Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation* (1991) 90 Mich. L. Rev. 1, 10-11 [some scholars estimate that 50 percent or more of women will be battering victims at some point in their lives and that accurate estimates are difficult due to potential underreporting].
6. Tom Lininger, *Prosecuting Batterers After Crawford* (2005) 91 Va. L. Rev. 747, 751 <<http://virginialawreview.org/sites/virginialawreview.org/files/747.pdf>> (accessed Nov. 18, 2016).
7. Bob Meade, *Spin Cycle Stop: A Practical Handbook on Domestic Violence Awareness* (2009) p. 83 ["As an abuser gains more and more control in the relationship, the victim finds herself becoming more and more dependent economically."].
8. Lininger, *Prosecuting Batterers*, *supra*, at p. 769.
9. Deborah A. Widiss, *Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy* (2008) 35 Fla. St. U. L. Rev. 669, 676-677 <<http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1019&context=facpub>> (accessed Nov. 17, 2016).

10. Donna Coker, *Shifting Power for Battered Women: Law, Material Resources and Poor Women of Color* (2000) 33 U.C. Davis L.Rev. 1009, 1048-1049 [discussing immigration consequences for domestic violence convictions] <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2011468> (accessed Nov. 18, 2016).
11. Meade, *Spin Cycle Stop*, *supra*, at p. 51 ["She will blame herself for everything and claim that the only reason he went crazy on her was because she did something or forgot to do something or she said something when she knew she shouldn't have said it, and so on."].
12. Mahoney, *Legal Images of Battered Women*, *supra*, at pp. 8-9.
13. *Id.* at pp. 10-19 [Arguing most victims of domestic violence do not view themselves as "battered women" because of the negative stereotypes associated with victimization that are not consistent with victims viewing their experiences as periodic episodes of violence in otherwise normal intimate relationships.].
14. Natalie Loder Clark, *Crime Begins at Home: Let's Stop Punishing Victims and Perpetuating Violence* (1987) 28 Wm. & Mary L.Rev. 263, 288 ["What will often appear as consent in this area actually is a form of forgiveness or acceptance."] <<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2082&context=wmlr>> (accessed Nov. 18, 2016). See also Meade, *Spin Cycle Stop*, *supra*, at p. 86 ["If the abuser is in jail or going to prison, he tells her that his 'brothers' in his gang 'will take care of her.'"].
15. *Id.* at pp. 49-54 [discussing learned helplessness, emotional numbness and verbal acceptance of battered women who choose to stay in abusive relationships].
16. Bailey, *It's Complicated*, *supra*, at p. 1790, fn. 90, citing Kate Cavanagh, *Understanding Women's Responses to Domestic Violence* (2003) 2 *Qualitative Social Work* 229, 232 ["Conceptions of abused women as passive participants in their own intimate relationships are reflected in these assumptions. However, while such conceptions have been refuted for many years, their explanatory power continues to exert significant influence in practice."]. See also Meade, *Spin Cycle Stop*, *supra*, at pp. 69-80 for an excellent discussion of the cycles of abuse.
17. Bailey, *It's Complicated*, *supra*, at pp. 1790-1791, fn. 93, quoting Cavanagh, *Understanding Women's Responses*, *supra*, at p. 238.
18. Bailey, *It's Complicated*, *supra*, at p. 1791.
19. The jail calls frequently provide evidence to add a felony charge per Pen. Code § 136.1(b).
20. Meade, *Spin Cycle Stop*, *supra*, at p. 11 [discussing the tools of abuse in the cycle of violence, which include psychological, emotional, and verbal].
21. In a recent case, the defendant's family paid for a lawyer to advise the victim of her rights under Code of Civ. Proc. § 1219.
22. In a shared custody situation, the defendant threatened the victim with not returning the children to her after visitation, if the victim testified against him in court.
23. Prosecutors should be aware of the potential need to have a third party (e.g., an investigator) present when these types of conversations occur with the victim to avoid becoming a witness in their own case.

24. Bailey, *It's Complicated*, *supra*, at pp. 1810-1811 [discussing when the state should intervene in domestic violence cases].
25. *Id.*
26. Kimberly D. Bailey, *Lost in Translation: Domestic Violence, The Personal is Political, and the Criminal Justice System* (2010) 100 J. Crim. L. & Criminology 1255, 1273 [providing an overview of how feminist activists and scholars challenged the widely accepted view that events inside the home should be kept in a private and isolated space] <<http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7376&context=jclc>> (accessed Nov. 21, 2016). See also H. Morley Swingle and Angel M. Woodruff, *Unhappy Families: Prosecuting and Defending Domestic Violence* (2002) 58 J. Mo. B. 220, 220-221 [discussing how state domestic violence laws helped curb domestic violence]; Donna Wills, *Domestic Violence: The Case for Aggressive Prosecution* (1997) 7 UCLA Women's L.J. 173 [discussing no-drop policies where the prosecutor will not dismiss a domestic violence case simply based on victim's request] <<http://escholarship.org/uc/item/7jq4p3kf>> (accessed Nov. 21, 2016).
27. Bailey, *It's Complicated*, *supra*, at p. 1808, citing Eve. S. Buzawa and Carl G. Buzawa, *Domestic Violence: The Criminal Justice Response* (2003) p. 182 [reviewing a study finding high rates of uncooperative victims].
28. *Id.* See also Karin V. Rhodes, et al., "Victim Participation in Intimate Partner Violence Prosecution: Implications for Safety" (July 2011) Office of Justice Programs, U.S. Dept. of Justice [discussing the effect of victim participation in the prosecution on the victim's safety, along with the importance of direct contact between the victim and prosecutor] <<https://www.ncjrs.gov/pdffiles1/nij/grants/235284.pdf>> (accessed Nov. 17, 2016).
29. In Fresno County, the Marjaree Mason Center provides emergency and long-term safe housing, along with a wide variety of support services for victims of domestic violence <<https://www.mmcenter.org>> (accessed Nov. 17, 2016).
30. Meade, *Spin Cycle Stop*, *supra*, at p. 37 ["One saving grace I've seen for some clients is that no matter what the abuser tries, the family stayed right beside them and never wavered in their support. When this family unit is strong, many times the abuser's tactics will fail and the partner survives in a healthy way."].
31. Durham, *The Domestic Violence Dilemma*, *supra*, at p. 653 [discussing the negative aspects of compelled testimony].
32. *Id.*
33. *Id.*
34. See Evid. Code §§ 1290-1292 [requiring a finding of witness "unavailability"].
35. Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions* (1996) 109 Harv. L.Rev. 1849, 1859-1860 [discussing evidence-based prosecutions] <https://www.jstor.org/stable/1342079?seq=1#page_scan_tab_contents> (accessed Nov. 18, 2016).
36. Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law* (1995) 143 U. Pa. L.Rev. 2151, 2169-2170 [discussing protocols for officers responding to domestic violence calls] <http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3583&context=penn_law_review> (accessed Nov. 18, 2016).

37. The prosecutor may request a “forfeiture by wrongdoing” hearing. Under *Giles v. California* (2008) 554 U.S. 353, 377, the declarant must show an intent to prohibit the victim from testifying. *Giles* discussed evidence showing that the defendant intended to “dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions. ... Earlier abuse, or threats of abuse, intended to dissuade the victim from resorting to outside help would be highly relevant to this inquiry.”
38. *People v. Corella* (2004) 122 Cal.App.4th 461 [on trial for inflicting injury on spouse, the victim’s statements to police and to 911 operators qualified as spontaneous statements and were non-testimonial under *Crawford v. Washington* (2004) 541 U.S. 36]; see also *Davis v. Washington* (2006) 547 U.S. 813 [the victim’s statements in response to a 911 operator’s interrogation were non-testimonial because they had the “primary purpose” of meeting an ongoing emergency].
39. Evid. Code § 1370(a)(1)–(5) [requiring declarant unavailability and that the statement be made “near the time of the infliction or threat of physical injury”].
40. Evid. Code § 1250.
41. Swingle and Woodruff, *Unhappy Families, supra*, at pp. 224–225 [discussing the use of residual hearsay exception for proving domestic violence cases].
42. Hanna, *No Right to Choose, supra*, at pp. 1903–1904.
43. *People v. Hernandez* (1999) 71 Cal.App.4th 417 [cert. for part. pub.] [Evid. Code § 1370 is constitutional. A statement of infliction of injury upon the declarant is admissible where she is deceased.].
44. “In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.”
45. *Crawford, supra*, at 51.
46. *Id.* at 68.
47. *Id.* at 59, fn. 9 [“The [Confrontation] Clause ... does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.”].
48. *Michigan v. Bryant* (2011) 562 U.S. 344.
49. *Ohio v. Clark* (2015) 135 S.Ct. 2173.
50. *Bryant, supra*, at 358.
51. *Id.* at 363–364.
52. *Id.* at 367.
53. *Clark, supra*, at 2182.
54. *Id.* at 2180, quoting *Bryant, supra*, at 358. See also A. Ann Ratnayake, *The Confrontation Clause After Ohio v. Clark: The Path to Reinvigorating Evidence-Based Prosecution in Intimate Partner Violence Cases* (2016) 84 Geo. Wash. L.Rev. 18.
55. *Id.*
56. *Clark, supra*, at 2180.
57. Ratnayake, “*The Confrontation Clause, supra*,” at p. 32.
58. *Id.*
59. *Clark, supra*, at 2181.