



# **GRIC Protecting Our Communities Addressing Domestic Violence, Child Violence, and Sexual Violence**



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## **STRANGULATION: THE SCIENCE & THE LAW**

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Distributed by:

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# Prosecuting Strangulation



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# These cases are important!



- Strangulation investigations are *homicide prevention*.
- Victims of non-fatal strangulation are:
  - 7x or 800% more likely of becoming a homicide victim
  - 6x or 700% more likely of becoming an attempted homicide victim.
  - 43% of women who were murdered in domestic assault were victims of non-lethal strangulation in the past year.
    - ✦ Glass et al. (2008). Non-fatal Strangulation is an Important Risk Factor for Homicide of Women, *The Journal of Emergency Medicine*, 35(3), 329-335.

# These cases are important! (continued)



- **San Diego Strangulation Study (2013):**
  - 99% of suspects were male.
  - Suspects had a history of DV in 90% of cases.
  - Children were present in 50% of cases. Children witnessed the strangulation in 41% of cases.
- **Riverside County DA's Office 2013 study**
  - Analyzed LEOs killed in line of duty 1993-2013
  - 50% of officers were killed by a criminal suspect with a history of strangulation assault in a prior relationship.

# But these cases are HARD!



- There are many issues at trial.
  - Uncooperative victims
  - No injuries in 50% of cases
  - Minimal corroboration
    - ✦ Often no witnesses
    - ✦ Regularly no physical evidence
    - ✦ Conflicting statements from suspect
  - Juror preconceptions
- How do we combat these issues?
  - First: attorney education!



# A.R.S. 13-1204(B): Strangulation

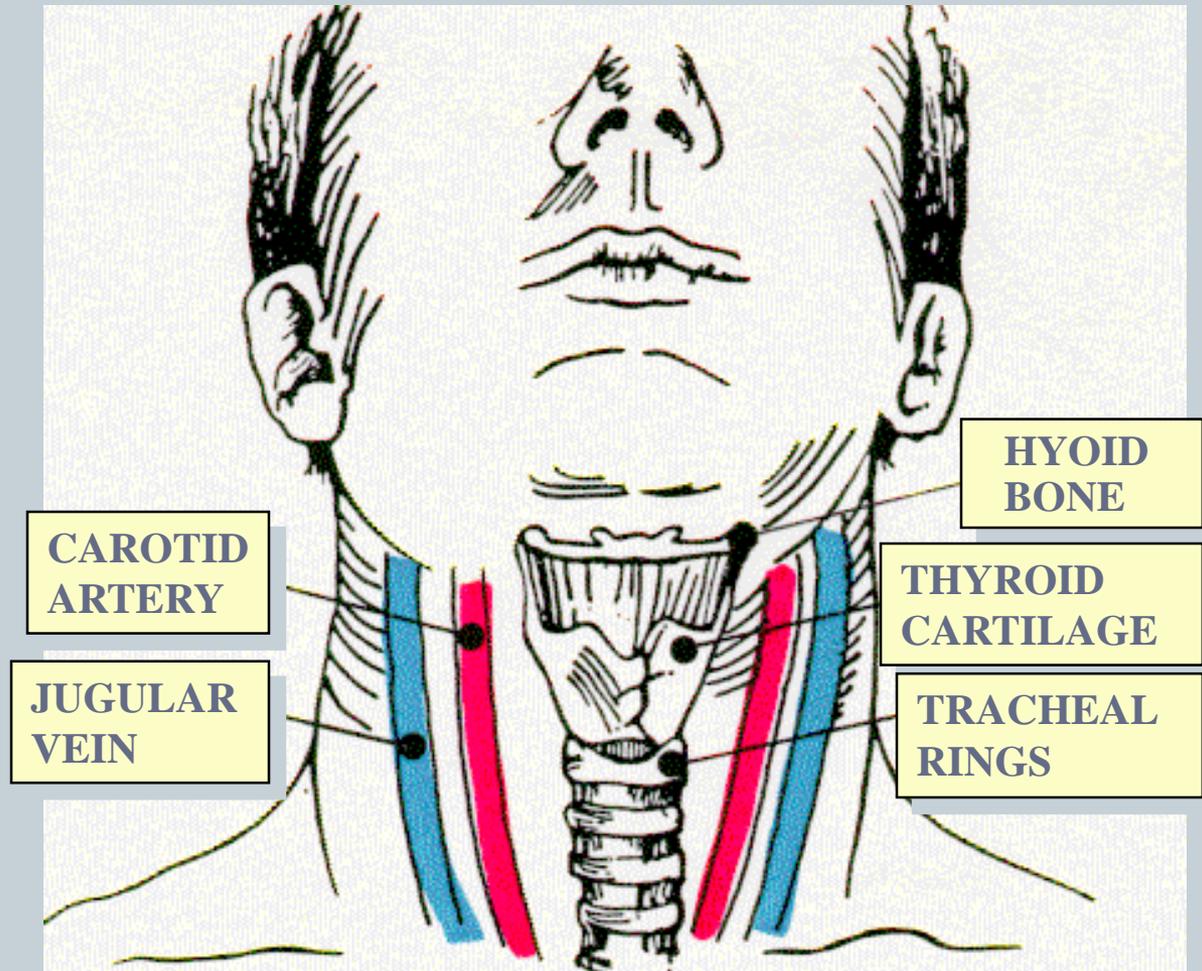


- This is what we have to prove at trial:
- Defendant committed an assault by either:
  - intentionally, knowingly or recklessly causing any physical injury to another person,
  - intentionally placing another person in reasonable apprehension of imminent physical injury or
  - knowingly touching another person with the intent to injure the person
- **AND Defendant intentionally or knowingly impeded the normal breathing or circulation of blood of another person...**
  - by applying pressure to the throat or neck
  - or by obstructing the nose and mouth
  - either manually or through the use of an instrument.
- **AND Defendant and victim were in a DV relationship.**

# What Strangulation Does



- Jugular vein: brings deoxygenated blood from head back to heart.
- Carotid artery: supplies head and neck with oxygenated blood.
- Trachea: windpipe.
- Strangulation can block all three—preventing blood and airflow to the brain.



# What Strangulation Does (continued)



- 4.4 pounds of pressure can close the jugular veins.
- 11 pounds of pressure can close the carotid arteries.
- 30 pounds of pressure can close the trachea.
- To put this in perspective...
  - It only takes 4-6 pounds of pressure for a trigger pull.
  - It only takes 22 pounds of pressure to open a can of soda.



# “Strangulation” vs. “Choking”



- Strangulation: occurs when external pressure is applied to the neck, closing blood vessels and/or air passages.
- Choking: occurs when an object gets into the airway and blocks air flow internally.
- Victims often use “choking” to mean “strangulation.”



# Marks to neck



- Scratches, abrasions, bruises, fingernail marks, ligature marks, etc.
- Consider victim's description of strangulation- do injuries match?
- Rare to have extreme bruising/marks.



# Petechaie



- Burst blood vessels from constriction of blood flow.
- Most common in eyes, back of throat, ears, neck.
- Lack of petechaie does not mean victim was not strangled.



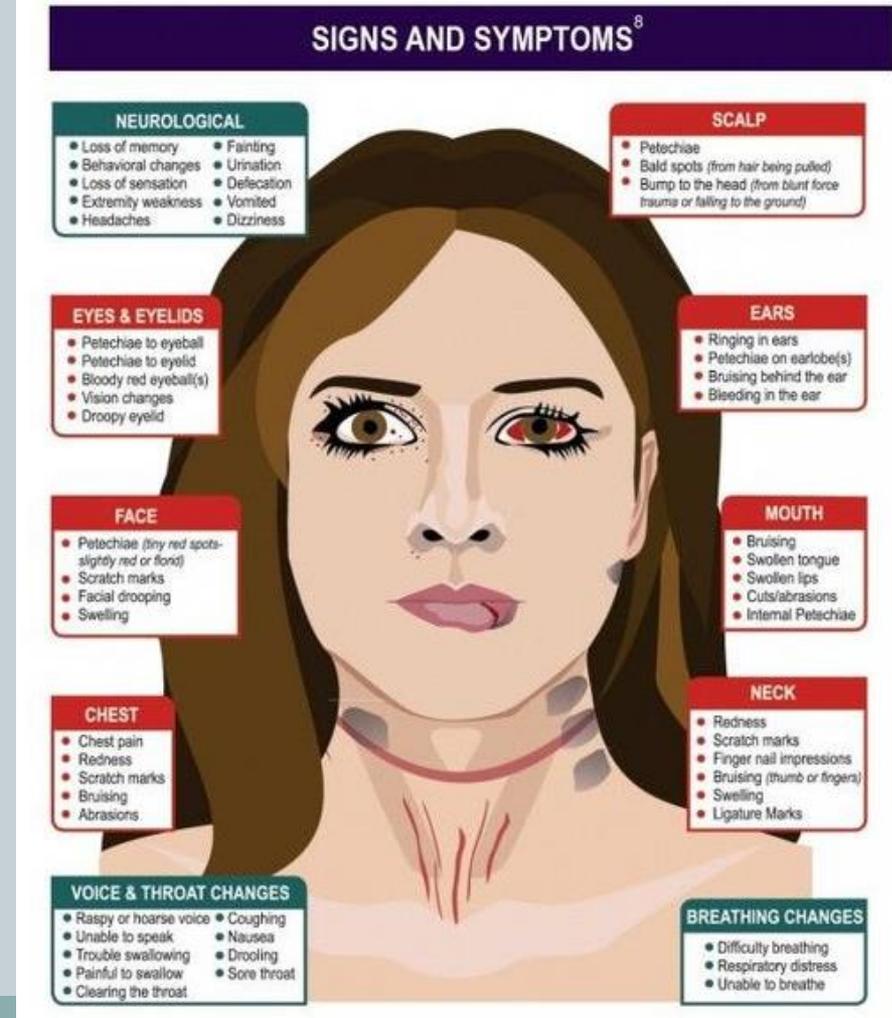
# Hemorrhages to Eyes



# Signs and Symptoms

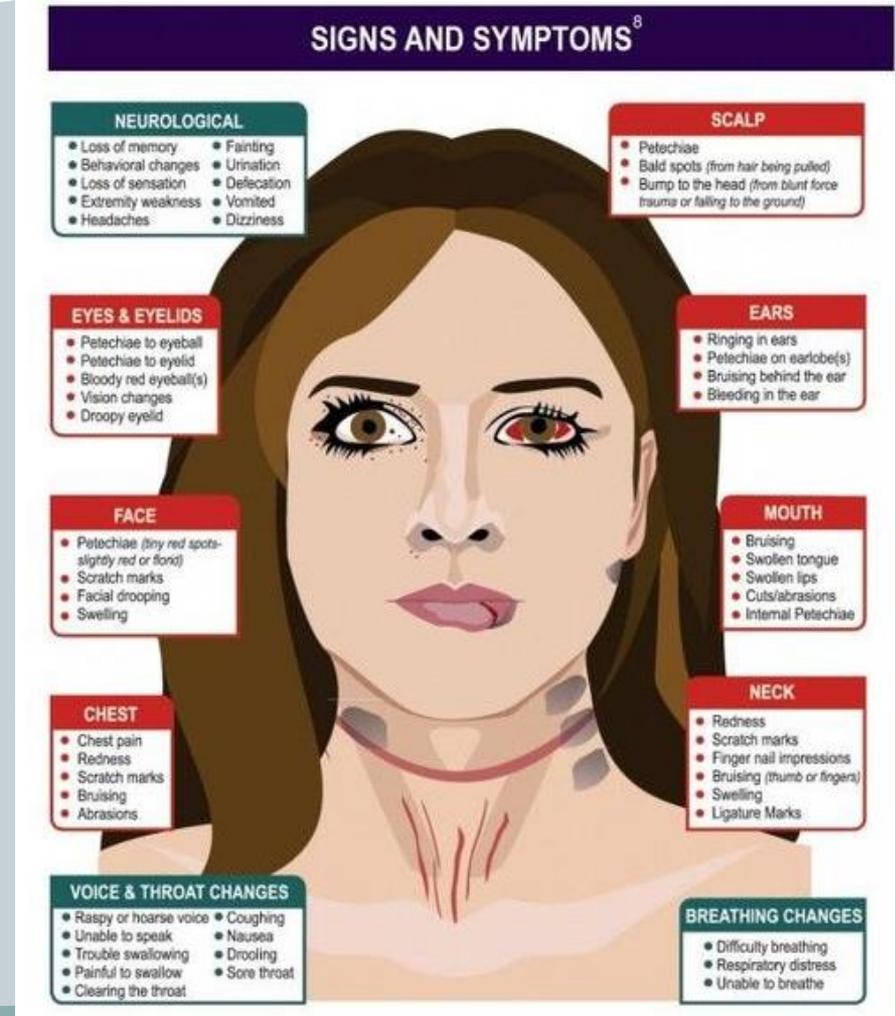


- Loss of consciousness
  - Common for victims to have memory lapses when they lose consciousness.
- Involuntary urination/defecation
  - Ask if victim is wearing the same clothes she wore during assault.
- Dizziness, nausea, vomiting, headache
- Difficulty breathing



# Signs and Symptoms (continued)

- Voice changes: hoarseness, change in pitch, raspy voice, loss of voice, coughing.
- Throat changes: difficulty swallowing, painful swallowing, external throat pain, coughing, clearing of throat, drooling.
- Breathing changes: hyperventilation, having trouble catching breath, difficulty breathing, coughing.
- Vision and hearing changes: blurry vision, fuzzy hearing, etc.



# Issues at Trial



- There are a lot of them!
  - Uncooperative victims
  - Minimal corroboration
    - ✦ No visible injury in 50% of cases
    - ✦ Often no witnesses
    - ✦ Regularly minimal physical evidence
    - ✦ Conflicting statements from suspect
  - Problems with investigation
  - Juror miseducation
- How do we overcome these issues?

# Combating Trial Issues: Jury Expectations



# Combating Trial Issues: Jury Expectations



# Combating Trial Issues: Juror Education



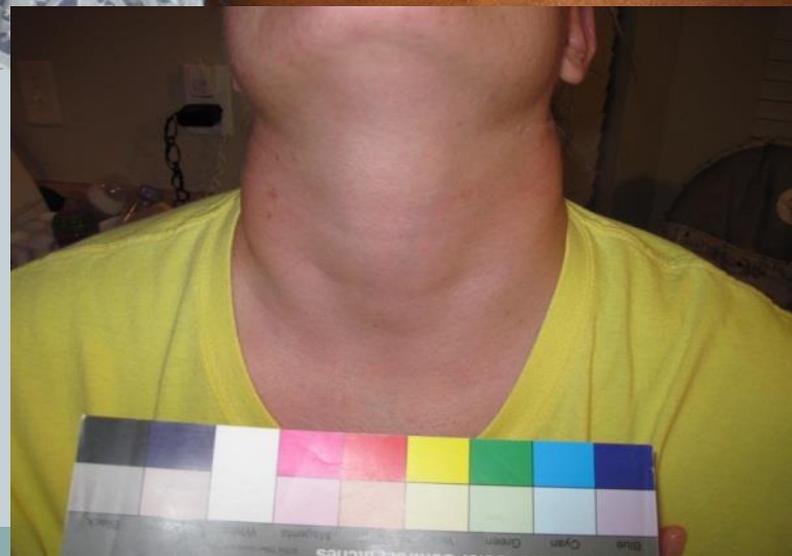
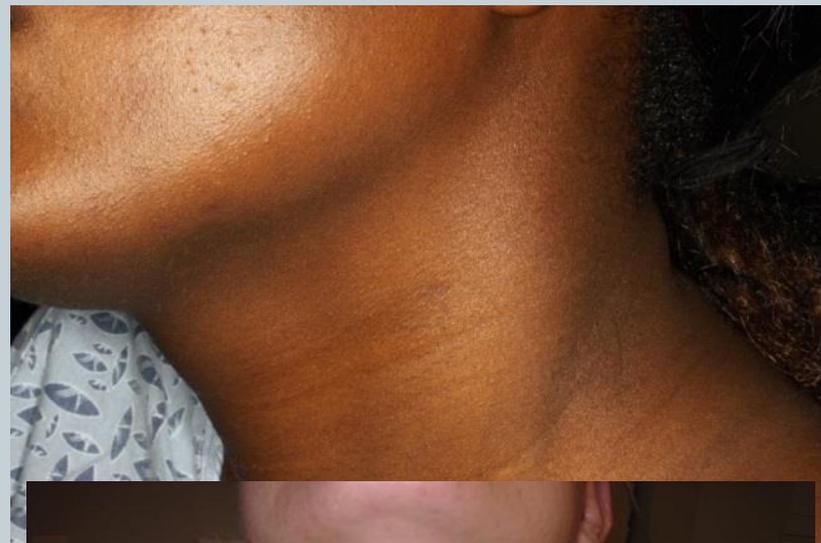
- Must educate your jurors!
- Use your experts!
  - Case agent.
    - ✦ General domestic violence issues.
      - Cycle of violence, recantation.
  - Forensic nurse.
    - ✦ Mechanics of strangulation
    - ✦ Lethality of strangulation  
(make the jury care!)
    - ✦ No physical injury = no big deal
  - **PREP YOUR EXPERTS!**
    - ✦ Many have never testified before!
    - ✦ Make sure they are comfortable testifying on these subjects!



# Juries expect to see this...



But usually we get this...



# Combating Trial Issues: Minimal Injuries



- Lack of physical injury means **NOTHING!**
  - Forensic nurse can testify about this!
- San Diego Strangulation Study, 2013.
  - Most victims lacked physical evidence of being strangled.
    - ✦ 50% of cases, no visible injury
    - ✦ 35% of cases, injury too minor to photograph
    - ✦ 15% of cases had injuries significant enough to photograph
    - ✦ 3% of victims sought medical attention
- It is possible to strangle someone to death without leaving any external marks.

# Forensic Nurse Exam



- **What happens?**
  - Specially trained nurse.
  - Called to FAC or hospital.
  - Checks vitals.
  - Obtains medical history.
  - Obtains description of assault.
  - Documents symptoms & injuries.
  - Photographs injuries.
  - Discharge instructions.
- **Forensic nurse = BFF @ trial!**
  - Can testify about a variety of issues!



# Forensic Nurse Exam (continued)



- Main purpose is **MEDICAL TREATMENT!**
  - Officers should tell victim:
    - ✦ Nurse exam is encouraged because there can be serious internal and/or delayed injury from strangulation.
    - ✦ Victims of strangulation should seek medical treatment and we have a nurse on call to help you.
    - ✦ Our nurse can evaluate whether further medical treatment is necessary.
    - ✦ Put this in report and state it on body cam!
  
- Main purpose is **NOT** collecting evidence.

# Combating Trial Issues: Victim Problems



- “Cooperative” victim
  - Never expect cooperation.
  - Pretrial preparation is key.
  - Details, details, details.
    - ✦ Details increase victim’s credibility.
  - What did she hear, see, smell, feel, during assault?
  - What was she thinking during the assault?
  - How did she feel after?
    - ✦ Physical symptoms.
  - Exactly how was she strangled?
  - What is her response to his story?



# Combating Trial Issues: Victim Problems



- Uncooperative victim
  - Just need to get her to court!
    - ✦ Strategies
  - Be prepared for anything:
    - ✦ Memory issues
      - Real or feigned?
    - ✦ Minimizing
    - ✦ Recanting
    - ✦ Hostile witness
  - Impeach, impeach, impeach!
  - Use body cam footage to show demeanor/symptoms.



*Victims are like a box of chocolates...*

# Combating Trial Issues: Victim Problems



- **Missing victim.**
  - Can you prove it without her?
    - ✦ 911 call—is it coming in?
    - ✦ Witnesses
      - Did anyone see the actual strangulation?
      - Can anyone identify D?
    - ✦ Statements to forensic nurse
      - Will your FNE come in?
    - ✦ Forfeiture by wrongdoing.
      - Get those jail calls!
  - Pretrial litigation is key.

# Combating Trial Issues: Minimal Corroboration



- **Combat investigation issues by acting FAST!**
  - Furthers are your friend.
  - OK to make your case agent work!
- **Locate all potential witnesses**
  - 911 caller
  - Children over 5
  - Other adults in home
  - Friends or family contacted after assault
  - Neighbors
  - Paramedics and other medical personnel
- **Just because they weren't interviewed that night doesn't mean they can't be located and interviewed now!**

# Combating Trial Issues: Minimal Corroboration



- **Jurors like STUFF**
  - Appeal to different learning styles.
  - Combat boredom!
- **Be creative!**
  - Physical evidence from scene—broken phone, wet pants, etc.
  - Photographs of scene
  - Surveillance video?
  - Maps, charts, diagrams.
  - Play audio/video: 911 call, voicemail messages, body cam footage
  - Blow up those text messages!
  - Jail calls/letters!



# Combating Trial Issues: Minimal Corroboration



- No Forensic Nurse Exam?
  - All hope is not lost!
  - Look for:
    - ✦ Photos of injuries
    - ✦ Good description of symptoms in DR
    - ✦ Body camera footage of symptoms, injuries?
    - ✦ Other medical treatment? Paramedics, hospital?
  - At trial, call forensic nurse to discuss strangulation in general.
    - ✦ Sometimes use nurse to discuss photos of injuries and description of symptoms, even if she didn't personally exam victim.

# Case Study #1



- Delayed report
- No witnesses
- Minimal injuries
- “Difficult” victim
- Defendant denied assault and presence at scene



# Case Study #1 (continued)



- How could we make this case better?
  - Can any witnesses corroborate parts of victim's statement?
    - ✦ Even if they didn't witness the actual strangulation.
    - ✦ Can anyone place Defendant at the scene?
  - Did Defendant contact victim after the assault?
    - ✦ Text messages, voicemails, phone calls.
  - Did Defendant make any social media posts after the assault?
  - Is victim willing to do a confrontation call (pre-arrest)?
  - Did Defendant call victim from jail (post-arrest)?

# Case Study #1 (continued)



# Case Study #1 (continued)



# Case Study #2



- Minimal police investigation
- Delayed report & change of location
- Memory loss
- Past unreported incidents
- Suspect not located at scene but admits to being there
- Minimal injuries
- Alcohol Use



# Case Study #2 (continued)



- How could we make this case better?
  - Interviews of other witnesses?
    - ✦ Friends of victim, coworkers, bartender, etc.
  - Proof suspect was at bar?
  - Proof victim was working that night?
  - Text messages?
  - Social media?
  - Confrontation call?

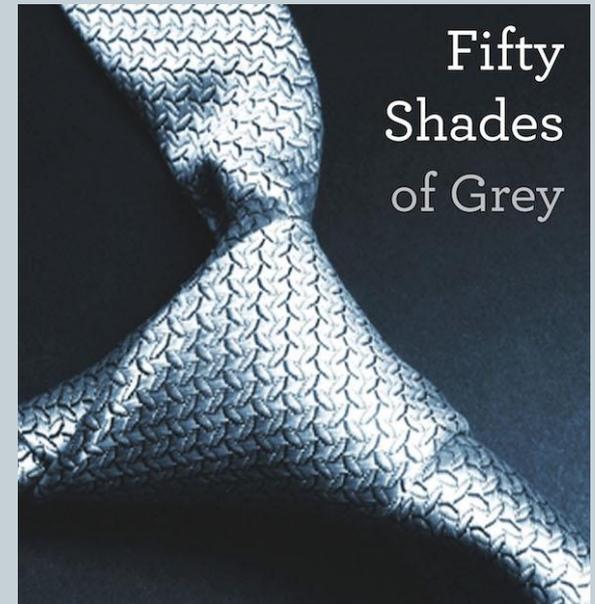
# Case Study #2 (continued)



# Combating Trial Issues: Common Defenses



- Self-defense
  - Photographs of suspect—no injuries?
  - Size difference
  - Witnesses?
- Rough sex
  - Talk to your victim!
  - Any corroboration?
  - Vic seen with prior injuries?
- “She’s making it all up to get me in trouble.”
  - Consider everything she has had to do—why would she bother?
  - Does she have a motive to lie?
  - How many people would have to lie to keep the conspiracy going?



# Pretrial Litigation



- **Motions in Limine**
  - Preclude...
    - ✦ Victim issues
    - ✦ D self-serving hearsay
  - Admit...
    - ✦ FNE statements w/out victim.
- **404(b)—get in prior DV**
- **Crawford—get in that 911 call!**
  - Though you don't always want to...
- **Consider forfeiture by wrongdoing**
  - Get those jail calls!



# Voir Dire



- **Consider: Who will be resistant to the facts of your case?**
  - Identify problems—recanting victim, victim/witness baggage, bad investigation, bad facts, etc.
- **Sample questions:**
  - Does anyone agree with this statement: “Domestic violence is often blown out of proportion by the police and criminal justice system”?
  - Does anyone feel that it is wrong for the government to get involved in a domestic violence case?
  - Is there anyone here who believes that if a victim does not agree with prosecution, the state should not proceed with the case?
  - How many of you think that it is impossible for the victim to still care for an abusive partner after the abuse is over?

# Why does MCAO turn down?



- **Major victim credibility issues**
  - Motive to lie/bias
  - Severe impairment (DR documents signs/symptoms)
  - Inconsistent statements to officer, detective, nurse, other medical
- **Mutual combat concerns**
  - Are suspect's injuries worse than victim's?
  - Did witness see victim start physical confrontation?
- **No corroboration for victim's statements**
  - No injuries, no witnesses, no 911 call, no suspect statements.
  - Nothing puts suspect at the scene.
- **Victim never said she couldn't breathe and did not have symptoms consistent with blood impairment**
  - We generally do not charge attempts.
- **Weak case with no prior convictions- we are likely sending it to the city prosecutor**
  - Suspect more likely to get jail at city anyway...

# Conclusion



- When in doubt, contact us!
  - Kate Boehm
    - ✦ E-mail: [boehmk@mcao.maricopa.gov](mailto:boehmk@mcao.maricopa.gov)
    - ✦ FVB- East: 602-506-5999
      - (Any FVB attorney can help on these cases)
  
- Good luck!