CIB #6: Recantation

What if a complaining witness recants her allegation? Typical explanations from the expert can include:

- Some studies indicate up to 80% of victims recant. (Meier, 2006)
- Recantation is associated with:
    - Financial dependence on offender;
    - Crime "not so bad" and doesn't deserve jail;
    - Victim substance abuse; • Lack of victim support or access to advocates;
    - Poor perception or experience of criminal justice system;
    - Offender's apology, influence or promised change

'Meet me at the hill where we used to park': Interpersonal processes associated with victim recantation.
Bonomi, Amy E., et al. Social Science & Medicine, Vol 73(7), Oct, 2011. pp. 1054-1061.

Research Related to Recantation

Prosecutorial Use of Expert Testimony in Domestic Violence Cases: From Recantation to Refusal to Testify

Audrey Rogers
J. Gender & L. 67 (1998), http://digitalcommons.pace.edu/lawfaculty/319/

Abstract

This article discusses the use of expert testimony in prosecuting those charged with domestic abuse. Part I provides a background on the need and nature of expert testimony in domestic violence cases and the requirements for the admission of such expert testimony. It traces the development of the role of expert testimony in domestic violence cases from its initial exclusive use as a defense tool to support self-defense claims to its present use by prosecutors to explain a complainant's recantation or other puzzling behavior. Part II discusses the appellate cases that have addressed the admissibility and scope of expert testimony offered by the prosecution in domestic abuse cases. It then analyzes the proper uses of the expert testimony, including when the State may introduce the testimony and what guidelines courts should follow to ensure that its probative value outweighs any prejudicial effect on the defendant. Part III applies the existing case law to the uncharted issue of whether the courts should allow expert testimony to explain a complainant's outright refusal to testify. It explains that law enforcement needs to change the prototype of a domestic abuse prosecution from being victim-propelled to one where sufficient independent evidence of the crime is gathered to enable prosecutors to proceed without the victim's cooperation or participation. Concomitant with this shift in focus, prosecutors, such as those in the Moon case, should view expert testimony as an integral component of a victimless prosecution. Part III explains that courts should allow expert testimony to explain the characteristics of battered women to help the jury properly assess the state's evidence in light of the complainant's absence. By limiting the expert to explaining general aspects of battering and its effects, rather than addressing the particular victim or specific acts of violence, the courts will safeguard the defendant against undue prejudice. Over time, the propriety of defense use of expert testimony has been unanimously accepted by the courts. The same judicial acceptance is developing for prosecutorial use of expert testimony on battering. The relevance of the expert testimony is identical in both situations: It aids the jury in assessing the evidence by explaining the effect of battering on the witness. This article concludes that the developing trend of prosecutorial use of expert testimony is an appropriate and necessary tool in successfully prosecuting domestic violence cases.

Court-involved battered women's responses to violence: The role of psychological, physical, and sexual abuse.

Dutton, Mary Ann, et al.
Violence and Victims, Vol 14(1), Spr 1999. Special Issue: Psychological Abuse in Domestically Violent Relationships. pp. 89-104.

Abstract:

This study examined the role of psychological abuse, physical violence, injury, and sexual abuse in predicting court-involved women's (1) prior attempts to seek help from the justice system and to leave the battering relationship, (2) use of criminal prosecution and civil protection orders, and (3) traumatic stress reactions. Ss were 149 18–58 yr old women who sought assistance from a domestic violence intake center located in the court. At the univariate level, each abuse variable was significantly associated with at least one strategic response and all traumatic responses to violence. Multivariate analyses revealed that strategic responses were largely predicted by injury and physical assault, whereas traumatic responses were mainly predicted by psychological abuse. Findings demonstrate the important role of both physical and psychological abuse in shaping women's responses to domestic violence.

Obstacles to victims' cooperation with the criminal prosecution of their abusers: The role of social support.

Goodman, Lisa, et al.

Violence and Victims, Vol 14(4), Win 1999. pp. 427-444.

Abstract:

Examined social support factors related to domestic violence victims cooperating with authorities. In the prospective study 92 women (age 18–46 yrs) who appeared at a domestic violence intake center the day after their alleged abuser was arrested completed a series of questionnaires, including the Revised Conflict Tactics Scales (M. A. Straus et al, 1996), the Interpersonal Support Evaluation List (S. Cohen, et al, 1985), and tests to measure depression, emotional dependence on the abusive partner, and alcohol and drug abuse. Results show that 90% of Ss reported at least 1 instance of severe physical violence at the hands of the defendant and over half reported severe injury. Those more likely to cooperate with the prosector were more severely injured and had tangible support, such as financial help and babysitting for court appearances. The relationship between emotional support and cooperation was not significant. Those who were abused by the father of their children were 4 times more likely to cooperate. Findings suggest tangible ways in which advocates and prosecutors can increase support of abused women.

Introduction: Making domestic violence victims testify.

Berliner, Lucy.

Journal of Interpersonal Violence, Vol 18(6), Jun, 2003. pp. 666-668.

Abstract:

This section offers an introduction to the special commentary examining willingness of domestic violence victims to testify. Specifically, this commentary addresses the approach taken in many jurisdictions of pursuing prosecution even when victims refuse to cooperate.

Davis/Hammon, Domestic Violence, and the Supreme Court: The Case for Cautious Optimism

Joan S. Meier

105 Mich. L. Rev. First Impressions 22 (2006). Available at:
https://repository.law.umich.edu/mlr_fi/vol105/iss1/23

Abstract

The Supreme Court’s consolidated decision in Davis v. Washington and Hammon v. Indiana offers something for everyone: by “splitting the difference” between the two cases—affirming one and reversing the other—the opinion provides much grist for advocates’ mills on both sides of this issue. While advocates for defendants’ rights are celebrating the opinion’s continued revitalization of the right to confrontation, which began in Crawford v. Washington, advocates for victims have cause for celebration as well: the decision is notable for its reflection of the Court’s growing—albeit incomplete— awareness and understanding of the dynamics of domestic violence and their implications for justice. This acknowledgment is embodied in both the text of the opinion and in the Court’s jurisprudential compromise, which ensures that some victims at risk from testifying can still be protected by the criminal process. This Essay explains this perspective and suggests important avenues for advancing the jurisprudence to continue to better integrate the realities of domestic violence into constitutional standards.

What Do Battered Women Want? Victims' Opinions on Prosecution.
Hare, Sara C..
Violence and Victims, Vol 21(5), Oct, 2006. pp. 611-628.
Abstract:

Prosecutors have increasingly adopted mandatory prosecution in domestic violence criminal cases. There is little empirical evidence, however, that the policy is a good match for victims' needs. Interviews with 94 battered women, whose cases were randomly selected from prosecutors' files, focused on their opinions of prosecuting. A logistic regression explores the factors that predict whether victims favor or oppose prosecution. Open-ended responses are coded into themes using the goals of sentencing literature as a framework. Previous published works are also tentatively grouped into the same themes to look for trends in the field. The most frequent reason why victims oppose prosecution is that the crime is too minor to justify a penalty.

The significance of the victim advocate for domestic violence victims in municipal court.
Camacho, Christina M., et al.
Violence and Victims, Vol 23(3), 2008. pp. 288-300.
Abstract:

Previous research has examined factors that influence felony case prosecution in domestic violence cases, but few have analyzed how victim participation, or lack thereof, may affect the defendant’s case outcome in misdemeanors. This study used 384 municipal cases from a specialized domestic violence court to examine the role of the victim advocate and variables that had an impact on victim participation with prosecution and case disposition. To ensure that decisions in all cases were consistent, all decision makers in the sample involved the same group: the court advocate, prosecutor, and judge . The analysis found that victim cooperation after arrest coupled with services provided by shelter court advocates were a strong predictor of victim cooperation at disposition and case outcome.

'Meet me at the hill where we used to park': Interpersonal processes associated with victim recantation.
Bonomi, Amy E., et al.
Social Science & Medicine, Vol 73(7), Oct, 2011. pp. 1054-1061.
Abstract:

Our study used live telephone conversations between domestic violence perpetrators and victims to answer novel questions about how and why victims arrive at their decision to recant and/or refuse prosecution efforts. From October 2008 to June 2011, we conducted a qualitative study involving 25 heterosexual couples, where the male perpetrator was being held in a Detention Facility (in the U.S.) for felony-level domestic violence and made telephone calls to his female victim during the pre-prosecution period. We used 30-192 min of conversational data for each couple to examine: 1) interpersonal processes associated with the victim’s intention to recant; and 2) the couple’s construction of the recantation plan once the victim intended to recant. We used constructivist grounded theory to guide data analysis, which allowed for the construction of a novel recantation framework, while acknowledging the underlying coercive interpersonal dynamic. Our results showed that consistently across couples, a victim’s recantation intention was foremost influenced by the perpetrator’s appeals to the victim’s sympathy through descriptions of his suffering from mental and physical problems, intolerable jail conditions, and life without her. The intention was solidified by the perpetrator’s minimization of the abuse, and the couple invoking images of life without each other. Once the victim arrived at her decision to recant, the couple constructed the recantation plan by redefining the abuse event to protect the perpetrator, blaming the State for the couple’s separation, and exchanging specific instructions on what should be said or done. Our findings advance scientific knowledge through identifying, in the context of ongoing interactions, strategies perpetrators used—sympathy appeals and minimization—to successfully persuade their victim and strategies the couple used to preserve their relationship. Practitioners must double their efforts to hold perpetrators accountable for their actions, and efforts made to link victims to trusted advocates who can help them defend against perpetrators’ sophisticated techniques.