

WHEN THE VICTIM DOESN'T SPEAK OUT

How photos can speak out on behalf of the victim-and help successful prosecute the abuser

THE SAN DIEGO CITY ATTORNEY'S OFFICE knew it had a solid case - one strong enough to keep the batterer behind bars for years.

"The victim initially called the police in a hysterical state from the upscale condominium she shared with her boyfriend, a San Diego judge, who she said had beaten her," says Deputy City Attorney Casey G. Gwinn.

"When we investigated, we found the victim, cut and bloodied, in a neighbor's house. She was five months' pregnant, had been kicked in the stomach, and told us she lived in constant terror of her boyfriend's frightful temper.

"Then the shocker. Just days later she sent us a letter denying everything and saying she wanted the case dismissed." That was in 1986 and the case - which the City Attorney eventually lost in court - set the stage for a new aggressive approach to domestic violence cases in San Diego. "That loss was devastating," says Gwinn. "But we learned from it. Over the next six months, we tried 17 domestic violence cases without cooperation of the victims involved and won all but two."

What made the difference? "In addition to revised and refined policies and procedures, we mandated the collection of every conceivable type of evidence - and documented that evidence with on-the-spot instant photos," says Gwinn, who now delivers presentations on *Prosecuting Domestic Violence Cases Without the Victim* to law enforcement professionals across the country.

Instant Photo Evidence Crucial to Build Case. William Delahunt, Norfolk County (MA) District Attorney, says, "One absolutely cannot overemphasize the significance of Polaroids when building a case against an abuser - particularly when the victim is unable to testify, refuses to cooperate or has disappeared.

These photos actually can relieve the heavy burden placed on the victim as a result of a domestic violence incident. For the victim to come forward in the first place is an act of courage. Then for her to go through the process of standing up in court and testifying against her batterer is a process that inflicts incredible emotional and psychological stress. But, with the instant photo evidence, we can proceed against the batterer - even without the victim testifying.

Delahunt says instant photos also help to strongly reinforce his department's no drop policy. "Batterers will often convince, cajole, threaten and intimidate their victims not to testify in court. But with the photos as evidence, we can proceed - we assume the responsibility of trying and incarcerating the abuser and lift that burden from the victim. Instant photos are dramatic, telling and convincing - and are, in my opinion, the best evidence we can introduce in court."

Photos Powerfully Speak on Behalf of Absent Victim. "To win a case against an abuser without the victim's cooperation, one has to recreate, for the court, not only the scene but the "feel" of the crime," says Tom Kirkman, Barnstable County (MA) Assistant District Attorney.

"Instant photos, taken and displayed in sequence - what the officers saw when they first entered the house, the condition of the victim's clothing and injuries, the appearance of the abuser, the reactions of

any children who may be present, the state of the environment, any blood on clothing, furniture or walls - these are powerful documentations of evidence that can speak on behalf of an absent victim in court.”

Instant Photos Capture Emotional Condition of Victim. According to Gwen DeVasto, Community Education and Training Coordinator for the Norfolk County District Attorney’s Office, the majority of domestic violence cases proceed with an ambivalent or hesitant victim. “Close to 75% of our domestic violence victims come to us requesting that we drop the case.” DeVasto says.

“When we explain to them, we are going to pursue the case against their abuser with or without their testimony, many times they are extremely relieved because they don’t want the responsibility to be on them. They don’t want more retaliation from the batterer, so we are, in effect, telling the victim, ‘It’s not your decision to pursue, it’s ours. We’ll take the blame for putting your abuser in jail - or ordering him into batterers’ treatment.’”

When taking instant photos at the scene, Casey Gwinn says to document by diagram when photographing injuries. “Photographs are mandatory,” he emphasizes. “Create a body diagram on a report, mark the areas where injuries appear, then take Polaroids of each injury.

“Remember that photos can document not only the victim’s physical condition on clothing, smeared make-up, cuts, marks, abrasions, redness, swelling, bleeding - but her emotional condition, as well. For example, photos can be taken of victim showing crying, fear, anger, hysteria. These can be invaluable indications of the level of violence and fear generated by the abuser against the victim - and we are vital in building a successful case against the batterer.”

Take Photos of Abuser as Well as Victim. Include instant photos of the abuser, as well. “The defendant may try and say, ‘I was hit too,’ or ‘I was hit first.’ Instant photos of the abuser showing no bruises on him can counteract this testimony. Also, photos of the abuser at the scene of the crime will show him in the clothing he was wearing at the time - instead of the suit and tie in which he will generally show up at the trial.”

Spontaneous declarations or excited utterances of the victim should also be immediately documented. “If the victim is scared or crying, a statement like ‘My husband hit me in the face,’ may later be admissible in court based on the officer’s testimony,” says Gwinn.

“Statements such as ‘I’m in a lot of pain, my stomach hurts bad’ may later be admissible as a declaration of the victim’s existing mental state.”

By Polaroid