

Laying Down the Law

A new "Drew Peterson" law could help victims of domestic abuse make their voices heard, even after they've been silenced. **By Gemma Allen**

You get a frantic call from your best friend. It's not the first time she's called you in distress about her abusive relationship, but this time she sounds truly terrified. She whispers to you that her husband is threatening to kill her, and if she ever goes missing or is found dead, he did it. She asks you to remember this call if anything ever happens to her.

Then your friend vanishes. There are no calls from her, no emails, no texts, no activity on her financial accounts and there is no body. She seems to have literally disappeared. You, of course, remember your promise and go directly to the authorities.

According to a law passed late last fall in Illinois, sometimes referred to as the Drew Peterson law, your friend's conversation with you could possibly be admitted into evidence if her husband were to be charged with her murder.

Why Only "Possibly"?

I say "possibly" because there could be some constitutional problems with this legislation; even the law itself has a limited application. It would allow into evidence the statement your friend made to you (which is technically hearsay since she's no longer alive to be cross examined) if and only if prosecutors believe the victim was killed specifically to prevent her from testifying.

For lay people who are either friends of victims of domestic violence or see the horror stories in the media, the Illinois law does not seem to go far enough and the need for it seems self-evident.

Lawyers and judges, however, have always been extremely protective of the right of any accused to confront actual witnesses and not just the statements allegedly made by a deceased victim who is no longer available for cross examination.

Competing Legal Principles

The Sixth Amendment of the U.S. Constitution guarantees such a right to all

defendants. Competing with that constitutional right is a common law (and also common sense) principle: that an individual should not benefit in a criminal trial from his or her own misconduct – i.e., by killing a witness to keep them from testifying.

As recently as January 2008, the U.S. Supreme Court grappled with these competing legal principles in the case of *Giles v. California*. The facts of that case and the California law are both different from the Peterson case and the Illinois law.

In the *Giles* case, California charged a man with murder who admitted to killing his former girlfriend, but claimed it was self-defense. At the trial, the prosecution used a statement the victim had earlier made to the police about the defendant's threats to kill her, which related to an earlier incident. The defendant challenged the use of this statement, and the case went to the U.S. Supreme Court.

In reviewing the California case, the Supreme Court held that the state had not shown that *Giles* killed his former girlfriend explicitly to keep her from testifying. Therefore, his Sixth Amendment right to confront witnesses against him "trumped" the California law. The problem presumably found with the California law was that it would allow such statements to be used against a defendant whenever the accused had caused a witness to be "unavailable," whether or not the purpose of an alleged killing was to stop her from testifying.

There was some hope for domestic violence victims in the ruling, however, and even for *Giles*, his victory might only be an interim one. Justice Antonin Scalia, who wrote the majority opinion, wrote several comments that made it clear the case was not yet over for *Giles* or other putative abusers. The Supreme Court felt it was fair for California to explore exactly what was *Giles'* intent in killing his former girlfriend. Several of the Supreme Court justices recognized that abusive relationships that end in murder might in and of themselves show the requisite intent "to isolate the victim and to stop her" from proceeding with criminal prosecution.

Bringing the Issues Back Home

It appears that Illinois lawmakers were careful to conform our new law to fit within the parameters of the Supreme Court ruling. How the new Illinois law could play out in either of the potential Drew Peterson cases has yet to be seen. The legislators are also careful to deny that the law is specifically designed to apply only or especially to the potential Peterson cases, because our State Constitution does not allow laws aimed at specific individuals. In fact, there are numerous similar cases in Illinois to which the law will apply and, sadly, the need for such a law is not limited to Drew Peterson. The Illinois law has laid the groundwork for admissibility of statements made prior to one's death, and hopefully this law will survive the inevitable constitutional challenges. It seems only just. ■

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