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## MEMORANDUM

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**TO:** Attorney of Record  
**FROM:** Martin A. Ginsburg, RN, LNC  
**SUBJECT:** Wrongful Death – Compressive Asphyxia  
**DATE:** 09NOV15

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Mr. Attorney,

Per your instructions and at your request; this memorandum is a summary of the information contained in the Medical Examiner's report, defense witness depositions and their correlation to the discussions with your expert witness preparatory to the witness' deposition.

As you mentioned in our initial discussion of this tragic case, this matter presented substantial challenges related to identifying on-point research available. As your expert has noted, there is little quality research information available, owing to the nature of the manner of death in this case.

Your expert has indicated that the mechanism of injury in this matter is similar to strangulation. I would caution in the strongest terms against permitting that analogy to be proffered by the expert. The rationale for this admonishment is as follows:

1. Strangulation occurs when either or both of blood flow or air flow are disrupted in the region of the neck:
  - 1.1. In the case of air flow disruption, blood flow disruption is frequently concurrent;
  - 1.2. With blood flow disruption – nearly universal in strangulations – there is no more than 9 seconds of consciousness following application of strangulation pressures.
2. Compressive asphyxia, as described in the Medical Examiner's findings, is not analogous to strangulation:

- 2.1. Compression of the thoracic (chest) cavity results in a progressive decrease in tidal volumes (air breathed in);
- 2.2. This progressive decrease in volume results, after time, in a lack of sufficient air movement to sustain life;
- 2.3. Compressive asphyxia is the manner of death applied by reptiles such as snakes known as constrictors;
  - 2.3.1. This includes boa constrictors, corn snakes, rat snakes, and anacondas;
3. While strangulation typically results in near immediate unconsciousness and little suffering, compressive asphyxia can take several minutes to render a victim unconscious while recognizing throughout this protracted process that death is both certain and imminent.

The fear, anxiety, panic, and pain of such a manner of death ought be highlighted by your expert.

I have included as attachments the two chapters from the most definitive text on the subject I have encountered and highlighted the relevant portions to review with your expert. I feel confident that when presented with the descriptions of differentiation your expert will agree that this argument will better serve your client's interests.

Additionally, in reviewing the deposition transcripts of the two witnesses I find the linguistic nuance of that testimony troubling. While I recognize that an attorney may suggest phrasing or otherwise "coach" a witness when seeking a description, the terminology used is not one generally seen in regular use – it is reserved for persuasive speech settings or dialogue in a script. This scripting is troubling not only in that the description may not fully comport with the witnessed events or opinions at the time but that, as has been widely recognized in both criminal and civil courts, this scripted response may have overcome and supplanted the witness' memory of events.

Specifically the phrase "looked right through me" is one not heard in conversational settings but, rather, in scripted speech. If this is simply a case of mimicry it may be overcome during later examinations of these witnesses. If, however, this is

“coached” testimony that has already degraded the witness’ ability to independently recall events, that issue is one solely within your purview and for which I have no recommendation likely to be of assistance.

Understanding that this review is preparatory to a deposition and time is short; it would likely be helpful to secure a full and detailed review of the complete record, including video captured at the scene by security cameras as well as EMS run records to better delineate time frames for onset of injury to loss of consciousness, the critical argument you have identified. Despite the added time required, more detail is likely to support this cause of action. If seasonal supplementation is appropriate, such a summary – including medical literature review for future implications – may be of benefit.

Please advise of additional information needed or questions I can answer.

Respectfully,

Martin A. Ginsburg, RN, LNC  
Paralegal

Enc: CH 14 Textbook on Mechanics of Death in Trauma  
CH 17 Textbook on Mechanics of Death in Trauma