

FORFEITURE AFTER *GILES*:
THE RELEVANCE OF "DOMESTIC VIOLENCE CONTEXT"

by
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Giles v. California, the United States Supreme Court's most recent pronouncement impacting the prosecution of domestic violence, has exposed deep judicial ambivalence about the newly transformed Confrontation Clause. This Article endeavors to guide lower courts in the task of implementation and to chart a course for the evolution of prosecutorial treatment of battering, concluding that Giles represents a significant opportunity for those concerned about the constraints Crawford v. Washington and Davis v. Washington had seemed to place on the prosecution of abuse. For the first time, the Court has identified "the domestic violence context" as a relevant construct, thereby compelling lower courts to grapple with the particularities of violence between intimates. This is a remarkable shift in relatively short order, and it allows us to glimpse the possibility of a jurisprudence informed by the realities of battering.

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I. INTRODUCTION

A trio of cases decided by the United States Supreme Court in the past five years has impacted the prosecution of domestic violence in an unprecedented manner. The cases—*Crawford v. Washington*,¹ *Davis v.*

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¹ 541 U.S. 36 (2004).