

Investigation and Prosecution of Child Abuse Cases



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Abuse

Pinwheels to Prevent Child Abuse

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Mission

- Provide prosecutors, law enforcement and allied professionals with:
 - National Training Courses
 - Customized State and Local Trainings
 - Technical Assistance
 - Publications

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How NDAA Can Help You

- Trial strategies
- Expert witness data base
- Legal research
- Media responses
- Legislative inquiries
- Victim witness assistance
- Statistics
- Statutory summaries

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National Conferences and Trainings

- Equal Justice
 - Collaborative conference Family Justice Center Alliance
- Fatalities: Abusive Head Trauma
 - Indianapolis May 2-6, 2011
- Unsafe Havens I and Unsafe Havens II
 - Portland June 20-24, 2011 and Columbia April 18-21, 2011
- ChildPROOF
- Safety Net
- Tribal and Rural Communities

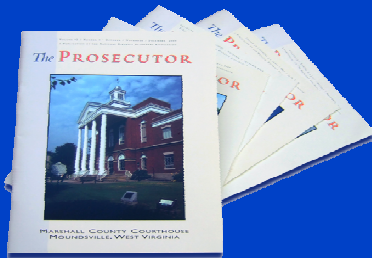
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Publications

- Update Articles
- Update Express Articles(On-Line)
- TFCSE Case Law Update
- Statutory Compilations
- Book Chapters

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The Prosecutor Magazine



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Agenda

- Challenges
- MDT Approach
- Investigation
- Interviews , Credibility, and Corroboration
- Defenses
- Putting it all together

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Challenges to Cases

- Credibility of : victim, witness, defendant
- Who is victim, witness, defendant
- Disclosure date
- In consistent statements
- Children who don't talk
- Victims who protect suspect
- Incomplete police work

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Challenges to Cases

- No physical evidence
- No biological evidence
- Identifying defendant
- Uncooperative victim
- Parent is Suspect
- Non-offending caregiver not helpful
- Time

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What We Want Sitting in the Defendant's Chair



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What We Usually Get



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What's Your Approach

- Open minded
- Believe what the victim tells you until find out otherwise
- Look for inconsistence and address them
- Record victim and defendants interviews
- How do I get this into a classroom

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Why MDT Investigations are so Important?



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MDT Approach

An opportunity for professionals to collaborate and conduct joint interviews, which minimize the number of times the details of a case needs to be retold



Attended by police, prosecutors, child protective services social workers, and professionally trained forensic interviewers, Guardian ad Litem, Foster Care, etc

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Multi-Disciplinary Teams

An effective Multi-disciplinary Team is dependant on a shared understanding of its goals and mission but also on shared knowledge of the general practices and procedures the team will follow in its efforts to investigate and prosecute child abuse cases as well as provide vital intervention services to child abuse victims and their families

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Multi-Disciplinary Teams Benefits

- The use of a skilled forensic interviewer
- Elimination of duplicative efforts
- Comprehensive information sharing
- Promote proper and expedient collection of evidence
- To reduces secondary trauma to the victim and family, associated with the investigative process

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How Assaults Are Reported

Discretionary: people who are not legally required report

- parents - best case scenario
- friends
- other children

Mandatory: people legally obligated to report

- | | |
|--------------------|---------------------|
| teachers | school counselors |
| doctors | government agencies |
| health care | clergy |
| child care workers | any law enforcement |

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Corroboration

Areas to Explore

- Sensory Detail: Sights, sounds and smells that make it real for the jury
- Surrounding Details: Seemingly insignificant facts that can make all the difference
- Behavioral Changes/Emotional indicators: Changes in the child's demeanor and mood

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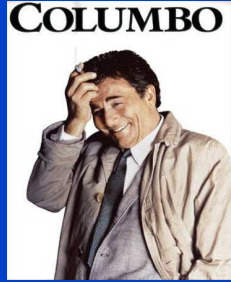
Why Do We Need Corroboration?

- Often, victim is the only witness to the crime
- Sexual and physical abuse occurs in private
- Delayed disclosure
- No physical evidence

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How and Where to Find Corroboration

- Search warrants
- Crime Scene
- Witness interviews
- Suspect interview
- Medical records
- School records



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Behavioral Changes/Emotional Indicators

- Behaviors often seen as a result of CSA:
 - Aggression, acting out
 - Regression, pseudo-maturity
 - Change in dress or grooming habits
 - Eating problems
 - Developmentally inappropriate sexual behavior
 - PTSD symptoms, self-injurious behavior

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Behavioral Changes/Emotional Indicators

- Depression
- Unusual or excessive fears
 - Desire to feel protected, inability to separate from trusted caregivers
- School related problems
 - Sudden drop in academic achievement, appearance of listlessness or unexplained hostility



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Investigation

- Read the initial report at least three times
- What kind and how many crimes do you have?
- Know the players
- Complete a criminal history for witnesses and suspect
- Check the victim's school for history
- Obtain evidence from computers, phones, or you will lose
- Anticipate defense

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Investigation

- Child Protective Services
- Has CPS already made contact with the child
- Obtain CPS caseworker, phone number and email-documentation of contact
- Prior CPS investigations
 - Nature of Prior investigation



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Medical/SANE

- Most protocols recommend that the victim of acute abuse/assault should be examined as quickly as possible after disclosure if disclosure occurs within 72 hours of the event
- The "72-hour" rule is based on data regarding the timing of sperm and semen recovery and degradation of biological evidence



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Medical/SANE

- Pre-verbal children will be unable to give history
- Frightened or threatened children may give partial or no history
- In drug facilitated Sexual Assault, the victim may have no or only partial recollection of events
- History of oral contact may yield saliva, which can be used to identify the perpetrator.

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What You Can Get from a Medical Exam

- Sexually Transmitted Diseases
 - Syphilis or gonorrhea not perinatally acquired.
 - HIV infection (not acquired perinatally or through IV routes)

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What You Can Get from a Medical Exam

- Physical/Genital Findings
 - Markedly abnormal hymenal opening for age with associated findings of
 - Hymen disruption, including absence, hymenal remnants, healed
 - Transections or scars, without adequate accidental or surgical explanation

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Remember
**MOST SEXUALLY ABUSED
CHILDREN HAVE A
NORMAL PHYSICAL
EXAMINATION!!!**

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One Party Consent

- One Party Consent Call - A recorded call between the victim and suspect that is monitored by police
- During the call the victim discusses and confronts the suspect with details of the abuse
- Purpose is to gain true admissions from suspect

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One Party Consent



One Party Consent Call

- Can be used in any type of criminal investigation
- When your state laws/department policy allow the use of one party consent calls
Pennsylvania:
 - When physical evidence/witnesses are limited or non-existent
 - When victim is of sufficient age and mental/emotional state to make the call
 - - If Victim a minor get parent consent

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What can you gain from the call?

- Full confession from the suspect
- Partial admissions from suspect
- Insight into the suspects mind/way of thinking. You can use this in the development of interrogation themes
- Victim can gain a sense of control and validation
- A great piece of evidence to play to the jury from the suspect himself

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Interview the Suspect

- Don't need confession, but do want to lock into a story
 - Can get ridiculous statements that help as much as a confession
 - Thought that 8 year old 50 pound daughter was my 35 year old 250 pound wife
 - Tripped on a blanket and my finger went inside her vagina
 - She wanted me
 - Was examining her to see if she was still a virgin

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Interview of Suspect

- Confront each denial
- Emphasize child's love
- Emphasize suspect's love
- Focus on suspects pervious abuse
- Corroborate what the child said
- One party consent calls

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Suspect

- Complete background check
- Marital status: type relationship
- Prior marriage: interview ex's
- Children prior marriage/relationship-type of relationship
- Type of employment
- Home environment current and past
- Predator? Mistake?

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DNA

- Ask permission
- Prior arrest (DWI)
- Warrant
- Arrest
- Obtain defendant's objects e.g. toothbrush
- Collection of DNA sample on Sexual Assault case is a must
- DNA can be uploaded into CODIS-other victims

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Investigate for Other Offenses

- Men who molest girls average 19.8 victims
- Men who molest boys average 150.2 victims

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Corroboration Failure to Thrive Cases

- Review victims entire medical history.
- Conduct a thorough search of the home
 - Medicine
 - Evidence of financial situation (alcohol, cigarettes, pet food, cable TV)
- Condition of the other children in the home (i.e. is child a “target” child?)
- Does the child improve when removed?

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Corroboration Physical Abuse Cases

- Description of the scene of the crime
 - Where was the child found?
 - Where was the child moved from?
 - Where the injury allegedly occurred (suspect’s story)
 - Where the injury could have occurred

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**Corroboration
Physical Abuse Cases**

- Photograph/videotape/diagram all possible scenes and mechanisms
- Measure all objects/distances mentioned by suspects, as well as any that might be possible defenses later

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**Corroboration
Physical Abuse Cases**

- Photograph all parts of body – absence of injury/symptoms as important as presence
- Photograph hands and legs (parachute reflex develops at nine months, child puts out hands to protect)
- Bilateral photographs to show contrast (compare non-injured opposite side of the body to contrast, e.g., swelling)

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**Corroboration
Physical Abuse Cases**

- Family/Caretaker Interviews.
 - What they observed
 - When and what they were told by other family members
 - When and what they were told about the child's injuries

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**Corroboration
Physical Abuse Cases**

- Other witness interviews.
 - All hospital staff that had contact with family/caretakers
 - Civilians who may have had contact with/overheard family (e.g. people in emergency room, waiting room)
 - Neighbors, teachers, babysitters, daycare workers, etc

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**Corroboration
Physical Abuse Cases**

- Interview medical personnel
 - Amount of force needed to inflict injury
 - Effect of delay in seeking treatment
 - Consistency of injuries with story offered

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**Corroboration
Burn Cases**

- Interview medical personnel
 - Nature of the burns (splash, immersion, contact) consistent or inconsistent with the history provided?
 - Depth of burns
 - If water burn, length of time for burn to occur
 - Child's capability to self inflict/level of pain
 - Indication of clothing worn when burn occurred

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Corroboration Burn Cases

- Ease of turning on the faucet
- Measurement of tubs/sinks – compared to child's reach
- Has suspect changed the water heater setting?
- Thorough interview of the caretaker
 - Victim's reaction when burned
 - Suspect's reaction when victim burned

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Hearsay

“Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

FRE 801(c)

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Hearsay Hearsay Evidence: Why Bother?

- Victim is unavailable, uncorroborated confession
- Recantation
- Reduces importance of child's testimony

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Hearsay
How does this apply to what I do?

- Police
- Social Workers
- Forensic Interviewers
- Protective service Workers
- Doctors
- Prosecutors

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Hearsay
Considerations

- Do I want the statement admitted?
- Is the statement hearsay?
- If the statement is hearsay, does it fall under a “firmly rooted” exception?

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Hearsay
Statements Which Are Not Hearsay

- Statements which are not assertions (talking in sleep, reflexive behaviors)
- Statements not offered for the truth of the matter asserted
- Prior consistent statement by witness offered to rebut claim of recent fabrication
- Admission by party opponent

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Hearsay Exceptions

- Present Sense Impression - ARE 803(1)
- Excited Utterance - ARE 803(2)
- Statement of then Existing Mental, Emotional or Physical Condition – ARE 803(3)
- Stmt for Purpose of Medical Diagnosis or Treatment - ARE 803(4)
- Business Records Exception – ARE 803(6)
- Child Hearsay When Declarant is Available at Trial and Subject to Cross – ARE 803(25)

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Defenses Sexual Abuse Cases

- | | |
|--------------------|---------------------|
| • Suggestibility | • Accident |
| • Retaliation | • Self Inflicted |
| • Custody | • Medical Condition |
| • Recantation | • SODDI |
| • Mental Illness | • Cultural Defense |
| • SODDI | |
| • Reasonable Doubt | |
| • Memory | |

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Preparation

- Analyze the case for probable defenses
 - Defendant's statements
 - Defense attorney's motions
 - Suspect/Victim/Family Dynamic
- Look for weaknesses in your case
 - Victims statement
 - Recantation

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Preparation

- Training
- Develop knowledge of:
 - Specific Case law
 - Literature (NCPA, other research)
 - Learn general methods and approach for attacking research
- Attend critical portions of the investigation (autopsy, interviews, scene)
- Learn use of proper terms

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Memory/Suggestibility

What is suggestibility?

- The degree to which one's memory or recounting of a event is influenced by suggested information or misinformation
 - Actual changes or distortions in memory
 - Alterations in the recounting of the event without an actual change in memory

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Memory/Suggestibility

Research

- Prior to 1979, a shortage of research
- From 1979-1992, more than 100 studies
- Much of the literature was pro-child
- Memory/Suggestibility Children Ten+ Not More Suggestible Than Adults

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State v. Michaels

136 N.J. 299; 642 A. 2^d 1372 (1994)

- Multiple pre-school victims
- Michaels convicted of 131 counts
- Convictions reversed



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Memory/Suggestibility Inappropriate Interview

Michaels (cont.)

- 4 1/2 year old told "lots of other kids" revealed abuse
- Child told the interview would end once the child "cooperated"
- When child announced he "hated" the investigator, the investigator told the child he "secretly" liked the interviewer

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Memory/Suggestibility Inappropriate Interview

Michaels (cont.)

- The sooner you cooperate the sooner you can leave
- "Do you want to help us keep her in jail"

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Memory/Suggestibility
Inappropriate Interview

Michaels (cont.)

- **Investigator:** Come on, do you want to help us out?
- **Child:** No!
- **Investigator:** Tell me what happened...I'll make you fall on your butt again.

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Memory/Suggestibility
Inappropriate Interview

Michaels (cont.)

- **Investigator:** I'll let you play with the tape recorder. I need your help again, buddy. Come on.
- **Child:** No.

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Memory/Suggestibility
Inappropriate Interview

Michaels Aftermath

- The cat's out of the bag. Child testimony viewed with suspicion
- In a child abuse case, it is reversible error not to allow a defense expert to testify "regarding the techniques employed by (the police officer) and the prosecutor in their examinations of the child." *Pyron v. State*, 237 GA .App. 198, 514 S.E. 2d 51, 1999

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Memory/Suggestibility

Defense Attorney Backlash
Second Wave of Research

- Defense Attorneys attaching research to motions
- Research reflects high profile cases
- Research is given great weight by some courts

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Other Defenses: Mental Illness

- Does the child have a history of mental illness?
- Defendant may be the reason
- Bring in the family dynamics
- Bring in the defendant's psychological manipulation
- Victim was targeted because she was vulnerable

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Mental Illness

- Psychological symptoms may be the result of abuse
- Expert testimony about victim's particular condition
- Victim is a good historian about other events
- Victim's abilities in school/home ok

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Retaliation

- Parent/Step-Parent, New Partner, Baby Sitter, Teacher, Counselor
- Authority Figure
- Usually Older Child
- Discipline

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Retaliation

- Desired Result vs. Actual Result
 - Foster Care
 - Ostracized/Embarrassment
 - Financial Hardship for family
 - Painful and embarrassing exam
 - Testify before twelve strangers and all of the other people that victim had to tell
 - If it were a lie, s/he'd have left

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Retaliation

- Expose how the victim would have to know about and manipulate the entire criminal justice system
- Establish history of discipline without allegations resulting

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Custody/Divorce

- Confirm Chronology
 - Disclosure prompts divorce
 - Divorce prompts disclosure
 - What/who prompted disclosure (common prompts, e.g., dad filing for visitation, may be a motive for mom to lie, but it is also a prompt for true disclosure)
 - Get police reports and court records for dates

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Custody/Divorce

- To whom did victim disclose initially and under what circumstances?
 - Language at disclosure?
 - Ability of child to disclose peripheral and sensory details
 - Was non-offending parent initially supportive?

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Custody/Divorce

- Public perception
- Reality: 2% of cases involve custody
- Same validation rate within that 2% as with other sexual abuse allegations

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Recantation

- Can't have it both ways
- The child has lied
- Explain why kids recant:
 - Secrecy
 - Lack of support
 - Pressure to recant
 - Fear of repercussions
 - Threats

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Recantation

- Assess recantation by:
 - To whom it was made?
 - Demeanor/Exact words
 - Surrounding circumstances
 - Obviously false statements within recantation?
 - Expert testimony: Child Sexual Abuse Accommodation Syndrome (CSAAS)

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Recantation CSAAS

- Pattern of five behavioral characteristics often observed in child victims of sexual abuse:
 - Secrecy
 - Helplessness
 - Accommodation
 - Delayed disclosure
 - Recantation

Roland Summit (1983)

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Recantation CSAAS

- Children do not necessarily report abuse right after it happens
- Relationship between child and perpetrator is parent/caretaker-child
- Opts not to report for fear of hurting other parent, sending perp. to jail, or not being believed
- Once child feels distance from the offender, child may disclose the matter
- Counter intuitive actions – victim returns to the abuser, compliant victim

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Reasonable Doubt

Lack of Medical/Physical evidence

- Call a doctor anyway (studies show that 85%-95% of confirmed abuse cases have no medical findings)
- “Normal is normal”
- No trauma to female sexual organ after a vaginal canal birth
- Age/sexual development of child

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Reasonable Doubt

- “I know he did it, you just didn’t prove it.”
- Address in voire dire – victim’s testimony is enough
- Child is credible
 - Consistent testimony vs. Identical testimony
 - Delay in disclosure understandable
 - Demeanor
 - Corroboration of victim’s statement
 - Clothes, Photos of the room where abuse took place
 - Suspect interview/statement

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Defenses
Physical Abuse Cases

Accident

- Injuries inconsistent with explanation
 - Mechanism
 - Force
 - Pattern
- Foreseeable nature of the injury
 - Disregarding the risk

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Accident

- Surrounding circumstances
 - Nature, number, location and constellation of injuries
 - What was said when injury inflicted
 - Triggering event – motive
 - Prior acts
 - Failure to obtain treatment
 - Failure to mention to injuries
 - “Baby don’t cruise, baby don’t bruise”

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Accident
Abusive Head Trauma

- Have medical experts narrow time frame as much as possible
 - If expert cannot/will not, try to establish witnesses to last known well period of child and who was with baby at onset of symptoms.
 - Establish time frame/caretakers when other injuries occurred
 - Evaluate motive (e.g., target child), past abuse

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Abusive Head Trauma

- Learn all you can about child's medical history
 - Diagnoses
 - Treatment
 - Genetic issues/family history

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Abusive Head Trauma

- Admitting notes
- History and progress notes
- Nursing notes
- Discharge summary
- Social worker's notes
- Lab reports
- Medical Records
- Doctors' orders
- Consultation notes
- X-Ray/CT Scan/MRI records

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Abusive Head Trauma

- Did caretaker act like child had medical problems before he/she was charged?
 - Take to doctor or administer treatment
- Innocent explanation (CPR caused retinal hemorrhages)
 - Why was there need for CPR?
 - Are other symptoms injuries consistent with CPR and the need to administer it?

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Abusive Head Trauma

- Shook to revive due to seizure or unconscious state
 - Did child have seizure history?
 - What caused unconscious state?
 - Appropriate force to revive?

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Other Medical Condition Defense

- Consult with medical personnel
 - Non-injury symptoms of claimed condition
 - Whether contrary medical evidence exists
 - Necessary medical history of condition

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Other Medical Condition Defense

Osteo Imperfects or Temporary Brittle Bone Disease

- Actual OI incidence is rare
- Consider family history, clinical indicators, elimination test
- Fractures stop when child removed?
- Consider type of fractures

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Other Medical Condition Defense

- Sickle Cell Anemia
 - Send defense expert’s opinion to your expert early!
- Whether claimed condition amounts for ALL injuries

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SODDI

- Establish:
 - What did suspect know
 - When did he know it
- Obtain timeline of symptoms/behaviors
- Who had access to child
- Attempt to get medical assistance
- Last visit to family doctor

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Cultural Defense

- “That’s how we do it where I come from”
- Is it true?
- Is it culture or is it abuse? Both?
- Are there areas where the defendant is not following cultural dictates?
- Hid conduct from others in culture
- Focus on conduct

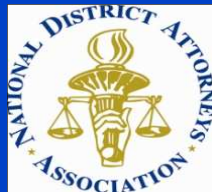
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Final Thoughts

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