Prosecuting Child Physical Abuse and Homicide Cases: How Things Have Changed Since the Creation of APSAC

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Criminal prosecution of cases involving the physical abuse of young children or in which children have passed away as a result of inflicted injuries continues to present challenges not often encountered in other forms of criminal prosecution. It has always been accepted that almost all acts of child abuse occur in secrecy, with no other eyewitnesses unless the witness is also involved in the abuse or is too young to provide reliable testimony.

> Where there is child abuse, there will invariably be secrecy. The great disparity of power and control between the abuser and the child assures that there will be little, if any, direct evidence. Even in cases where the victim survives, the child's age and vulnerability make it unlikely that he or she could be expected to testify competently. In these cases, it is probable that evidence of prior abusive conduct by a caretaker may be the only available link between the specific nature of the child's injuries and the caretaker who has offered either no explanation or an inadequate explanation for those injuries. (*State v. Tanner,* 1983, p. 547)

Almost without exception, this leaves prosecuting attorneys with the difficult task of proving what happened, who did it, and when it happened through circumstantial evidence. In some cases it is clear that someone inflicted an injury or set of injuries upon the child; however, in other cases the injuries may have been the result of accident or may have been inflicted by another person and only thorough investigation allow proof beyond a reasonable doubt that they were caused by abuse.

Since the formation of the American Professional Society on the Abuse of Children (APSAC) in 1987, the process of criminal investigation and prosecution of child abuse cases has undergone a dramatic transformation for the better. During the 1980s, prosecutors were limited in the tools available to illustrate expert witness testimony in the courtroom, and most were just beginning to learn about complex medical entities such as subdural and retinal hemorrhages in young children. Through providing increases in opportunities for interdisciplinary training, networking, and professional cross-training, APSAC has played a tangible role in improving the way the criminal justice system handles child abuse cases. Although much has been accomplished, the future presents tremendous challenges as well.

The key to successful prosecution is twofold. First, expert witnesses provide their opinions concerning what most likely caused the entire collection of injuries suffered by the victim and when they were most likely caused. Such expert opinions are not formed or expressed in a factual vacuum but rather must be informed by the history provided by the caregivers of the child surrounding the time the child went from "fine" to "symptomatic." Such history is often collected by the medical professionals involved as a normal part of their diagnostic process, but often that history changes over several tellings or when the caregivers are interviewed by social services workers or law enforcement investigators. Discrepant accounts that don't adequately explain the nature and severity of a child's entire collection of injuries have always been considered the "cardinal sign" of abuse, both in the medical profession and in the justice system.

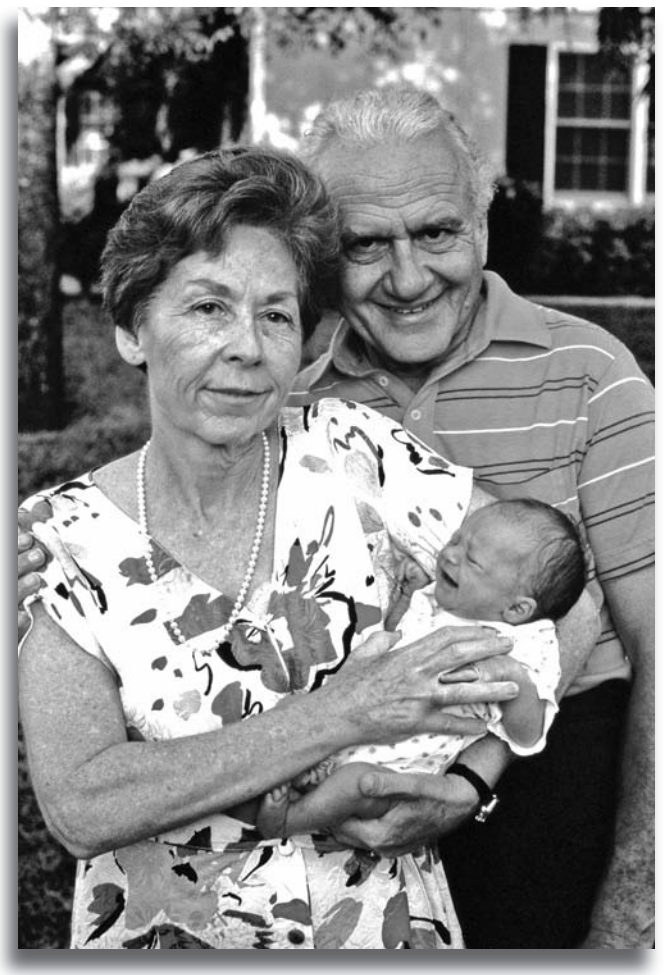
> A significant discrepancy between the physical findings and the history is the *cardinal sign* of abuse. The evaluator must remember that an explanation for an injury should not change when it is questioned or challenged. If the history differs from parent to parent, or when challenged, it is very likely fabricated. (Monteleone & Brodeur, 1998, pp. 8, 20)

Though this was written specifically for medical evaluators, it applies directly to criminal justice professionals, who realize that insufficient histories provided by perpetrators help to show not only that the victim was abused but also the identity of the abuser.

Prosecutors have learned over the last several decades how important the offering of those stories can be to a successful prosecution, especially in sorting between potential perpetrators of the abuse. Expert medical opinions are much stronger if they are informed by the entirety of investigative facts discovered by both the child protective services workers and the law enforcement investigators in the case. Thus, open sharing of information is essential to a successful prosecution.

Second, the prosecutor must prove beyond any reasonable doubt who it was that committed the acts of child abuse that resulted in the collection of the child victim's injuries and what mental state they were acting with at that time. When the proof is almost completely circumstantial, this can be the most difficult part of such criminal cases in the courtroom. Just as medical expert opinion is strengthened by sharing of all information, so the prosecutor's task of proving the "whodunit" of the case is simplified by learning from the medical experts what the likely nature and onset of symptoms would be for the injured child. While abusive caregivers generally don't tell the truth as to exactly how the child was injured, they lack understanding of the significance of the onset and progression of the symptoms and thus usually *do* tell the truth about when the child first became symptomatic and what symptoms were observed after the child's health or welfare changed. Timing the cause of the injuries is primarily informed by the history of symptoms provided by all caregivers for the child (Alexander, Levitt, & Smith, 2001).

To prove both essential parts of their criminal case, prosecutors must be well informed about the medical issues involved in each case. That means they must obtain training concerning the cause of childhood injuries provided by medical experts who have training and experience in the field of child maltreatment. In each case, that general knowledge must be enhanced by detailed discussions with the medical experts involved in that case. As Brian Holmgren, an expert prosecutor who has handled these cases for several decades has noted, the "child abuse prosecutor's paradox" involves the simple truth that the more severely the child abuse victim is injured the easier it will be for the prosecutor to prove both what happened and who committed the abuse beyond a reasonable doubt. The more difficult cases to prove involve children who although injured by another person, have fully recovered from those injuries and whose initial symptoms were less than clear as to their cause. For example, young children with milder closed head injuries may be described as "fussy, lethargic, didn't want to eat as much, or vomiting." Since these symptoms can be caused by a long list of other things, they are considered nonspecific symptoms of abuse, although they certainly might be the result of inflicted injury. In addition, the timing of the onset of those symptoms can be over hours or even days, making it difficult to pinpoint when the injuries were first caused. A child with a severe closed head injury, on the other hand, will almost invariably develop some type of symptoms very soon after the neurologic insult and those symptoms will progress along a fairly predictable path until the child is brought for medical care.



One of the most important advances in the prosecution of child physical abuse and homicide cases in the last two and a half decades is the improvement in technology that allows prosecutors to more thoroughly explain complicated medical concepts and terminology to a jury of laypersons or to judges untrained in such medical issues. Courtroom practice has evolved from the relative "dark ages" when we would circulate 8"x10" photographs of the victim's injuries among the members of a jury while the expert witness had already moved on in her testimony to some other topic. Sometimes we all would wait while each juror slowly consideredeach photo. Later, we used of slides or overhead projectors so that at least everyone in the courtroom was seeing the same thing contemporaneously with the expert's explanation of the injuries. Now we use computers and projectors to not only allow simultaneous showing of the photographs of the child's injuries but also to illustrate internal anatomy and to put into motion the expert's opinion as to the likely mechanism that resulted in injury (Lauridson & Parrish, 2006). Given the fact that modern society has evolved into a group of visually-oriented learners, technology has provided indispensable tools for courtroom proof and persuasion. Almost all of these tools were developed as a direct result of the professional connections created through cross-training and networking.

While prosecutors have vastly improved the way they handle these cases in court, the medical profession has also made great strides in understanding the underlying scientific basis for expert medical opinions as to all forms of child maltreatment. It remains vital for

the two groups of professionals to train each other as to what expert opinions are supported by sound medical science and what legal restrictions are placed on such expert opinions. The American Board of Pediatrics recently formulated a set of subboard certification criteria and certified a new group of subspecialists in Child Abuse Pediatrics, an important stride toward recognition of those who truly specialize in the field of child maltreatment (Block & Palusci, 2006). Defense challenges to the scientific reliability of medical opinions about the meaning of certain diagnostic entities have also accelerated, and an increasing number of "irresponsible experts" are more than willing to express opinions in a courtroom on behalf of criminal defendants who reflect the views of a small minority (Chadwick & Krous, 1997). Unfortunately, that group of individuals has recently been effective in convincing an uninformed and questionably-motivated law professor to write several specious articles concerning the diagnostic entity known as the shaken baby syndrome which in turn have been picked up by certain media to influence the general public to believe that there is no such thing as a collection of injuries that allows well-qualified experts to identify that closed head injuries in young children were inflicted by some other person (Tuerkheimer, 2009; Tuerkheimer, 2010). Prosecutors must not be scared away by ill-informed and poorly written and researched articles, because Dr. Sandeep Narang has recently refuted everything written by Professor Tuerkheimer and the underlying bases for her conclusions. Dr. Narang, a pediatrician with the University of Texas Health Sciences Center at San Antonio, Texas, does an excellent job putting Tuerkheimer's misinformation into proper context and exposes the complete lack of credibility of the authors and writings upon which Tuerkheimer's articles and assumptions were based (Narang, 2011).

As the field of medicine has become more and more specialized, one of the biggest challenges to successful criminal prosecution of child physical abuse and homicide cases is the problem of "reinventing the wheel." Even prosecutors in large metropolitan areas may not have the experience or training to handle a complicated case and may be assigned only one or two child physical abuse or homicide cases within their career as a prosecutor. Some prosecutors' offices have specialists who are well-trained and highly experienced to handle child abuse crimes, but even in special victim units, the likelihood is that most of the experience prosecutors gain will be in the sexual abuse of children with only occasional cases of child physical abuse or homicide by abuse. The problem in rural jurisdictions, where the prosecutor must handle criminal cases of all kinds, may be even more pronounced. There is a solution provided by agencies such as the National Center on Prosecution of Child Abuse (www.ndaa.org/apri) and by professional associations such as APSAC (www.apsac.org). Both have developed significant bodies of information available to handle these cases, lists of prosecutors with significant experience who are willing to consult with others, and even training materials, transcripts of frequently-encountered defense experts, and lists of medical experts available for consultation.

Thanks to the networking and training efforts of the American Professional Society on the Abuse of Children and many other allied groups and agencies, there will never be a need for a prosecutor handling her first case to "reinvent the wheel." No substitute exists for the hard work of learning every detail of every case to prosecute it effectively in court. However, there are resources available so that the learning process does not have to be unreasonably arduous and many professionals willing to be a sounding board for any issues unique to individual cases.

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