

**Cross-Examination
of a Child Abuse Expert:
Guide on Do's and Don'ts**

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Learning Objectives

- How to effectively use an expert
- How to identify and evaluate key neurologic information in child abuse cases
- How to proceed if an independent child abuse expert is unavailable

Basics of Experts

- Types of Experts
 - Definition
 - Public
 - Private
- Purpose of Experts
 - Investigate
 - Analyze
 - Provide Opinion



Things to Look for in an Expert

- Can they qualify as an expert?
- Do they have the ability to provide a report?
- Is the expert qualified in the local community?



Case Scenarios

- Intentional Child Abuse
 - Physical Abuse
 - Acts of Cruelty
- Neglectful Child Abuse
 - Failure to Protect
- Is it Child Abuse?

B Petition on Laura
Is this Child Abuse?

B1: On or about September 5, 2011, the child was brought to Children's Hospital where it was discovered the child had small subdural hematomas which injuries are of such a nature, as would ordinarily not be sustained except as the result of the unreasonable or negligent act or omissions of the parent of the child. And, there is substantial risk that the child will suffer serious physical harm or illness

B2: On or about September 15, 2011, it was also discovered that the child had increased extra axial fluid over her frontal lobe which injuries are of such a nature, as would ordinarily not be sustained except as the result of the unreasonable or negligent act or omissions of the parent of the child. And, there is substantial risk that the child will suffer serious physical harm or illness

B3: Father's previous substance abuse puts this young child at risk of harm or illness as a result of the failure or inability of the parent to adequately supervise or protect the child

Case #1- Laura DOB: 11/17/2010

Birth history: 28 week gestation twin pregnancy, BW 2 lbs., 4 oz.
Apgar scores: 9 at 1 min., 9 at 5 min.
NICU x 10 weeks
Intubated only 1 day, nasal oxygen-few weeks,
neonatal apnea- rx'd caffeine
No CNS bleed or seizures
No supplemental oxygen at discharge

Postnatal course: Followed for retinopathy of prematurity
April, 2011- New RH in left eye (2 ½ mos. corr.age)
Admin to hospital- suspected child abuse
CT scan- small subdural hematoma
Increased extra-axial fluid over frontal lobe
MRI- 3 small foci of subdural hematoma

Child removed from home for suspected child abuse

Case #1- Laura DOB: 11/17/2010

Two noteworthy events:
One month before admin.- Dad fell with baby in his arms
No head injury or LOC
Two weeks before admin.- Laura had choking spell
Given chest compressions and back slaps
Recovered without incident

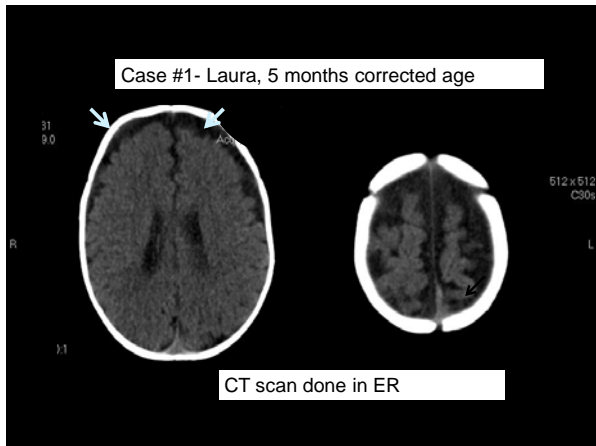
Review of systems: Negative

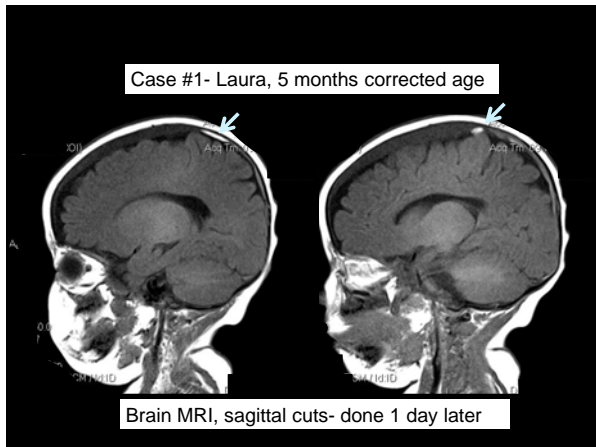
Family history: Mother- 35 years old, bank supervisor
Father- 32 years old, self-employed, web designer
No other children

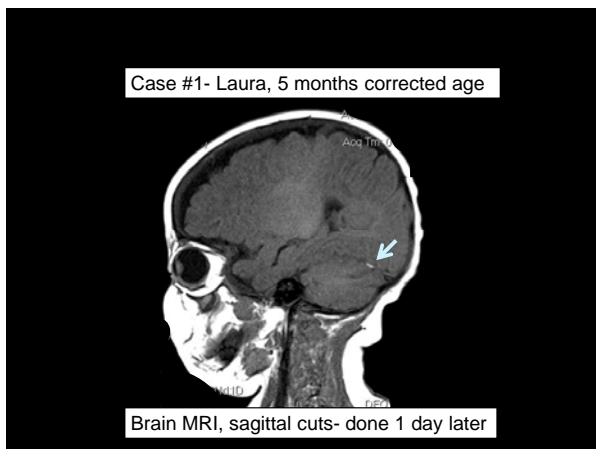
Case #1- Laura DOB: 11/17/2010

5 months old, corrected age

Exam: Healthy, active infant. Wt: 7.3 kg (75%), ht: 65 cm (75%),
HC: 42.5 cm (50%), Ant. fontanelle: open, <0.5 cm
Cranial nerves: Normal
Motor: Normal, unable to sit, no contractures
Reflexes: Normal
Sensory: Normal, withdraws to finger/toe pinch







B Petition for Jonathan
Is this intentional or negligent?

B1: On or about August 20, 2011, the child was brought to Children's Hospital where it was discovered the child had several subdural hematomas at different stages of healing which injuries are of such a nature, as would ordinarily not be sustained except as the result of the unreasonable or negligent act or omissions of the parent of the child. And, there is substantial risk that the child will suffer serious physical harm or illness.

B2: On or about August 20, 2011, while in the care of the grandmother, the child exhibited signs of distress including, irritability and vomiting. The mother and father were informed of the child's condition by the grandmother and failed to seek medical attention immediately for the child. And, there is substantial risk that the child will suffer serious physical harm or illness.

Case #2- Jonathan DOB:7/1/2009

Birth history: Uncomplicated, full term pregnancy, BW 7 lbs., 8 oz.
Vaginal delivery. No perinatal problems.
Normal developmental milestones

At 15 months, went to park with grandmother. Fell and bumped his head. No LOC. Later, irritable, tired and vomited.
In ER, CT scan- "subdural hematomas of different ages"
Admitted for suspected child abuse

Hospital course: Seen by neurosurgeon and ophthalmologist
RH observed in both eyes
Skeletal survey- Normal
Metabolic tests- Normal

Child was removed from home for suspected child abuse

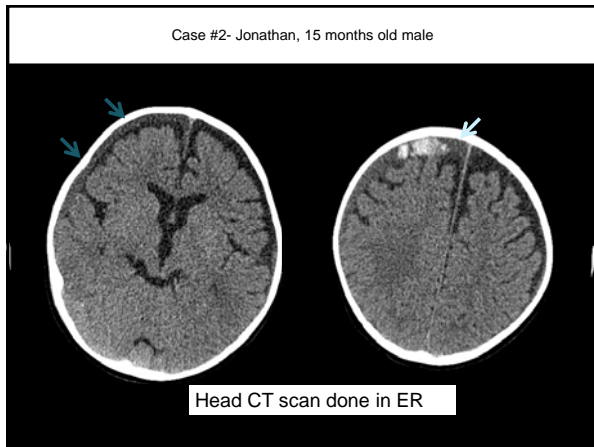
Case #2- Jonathan DOB:7/1/2009

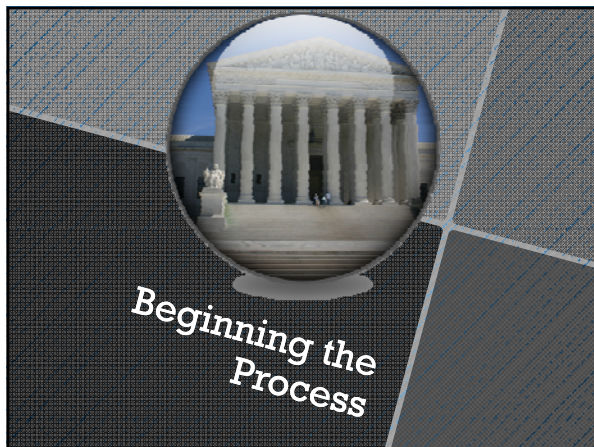
Two noteworthy facts:
Jonathan had growth spurt at 6 months. HC> 98%
During play or anger, rocks back and forth in stroller, thrusting head backwards with some force

Past medical history: No prior hospitalizations or surgeries.
Complete review of systems- negative

Family history: Mother is 22 years old, store manager for Victoria Secrets
Father is 30 years old, attorney, investment advisor
No other children

Case #2- Jonathan DOB:7/1/2009
16 months old
Exam: Happy infant, Wt: 14 kg (>98%), Ht: 83 cm (75%), HC: 52.5 cm (>98%)
Dad's HC: 60.4 cm (>98%), Mom's HC: 54.5 cm (50%)
Cranial nerves: Normal
Motor: Normal
Reflexes: Normal
Gait: takes 1-2 steps alone
Review of video shows Jonathan's vigorous rocking behavior

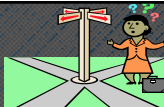




Lawyer's Responsibility

- Identify when you need an expert
- Know the law and the burdens
- Identify the type and kind of expert needed

Choosing an Expert




- Child Abuse Specialists
- Child Neurologists
- Pediatric Neurosurgeons
- Orthopedic surgeons
- Critical Care Specialists
- Developmental Pediatricians


Neuroanatomy Lessons

- Take the mystery out of medicine
- Explaining neuroanatomy puts everyone on same playing field
- Understanding neuroanatomy is the blueprint for understanding the evidence and expert's opinion
- Rules of neuroanatomy can not be violated

What attorneys need to know about neurology

- What is the key neurologic information that an attorney can look for in a child abuse case?





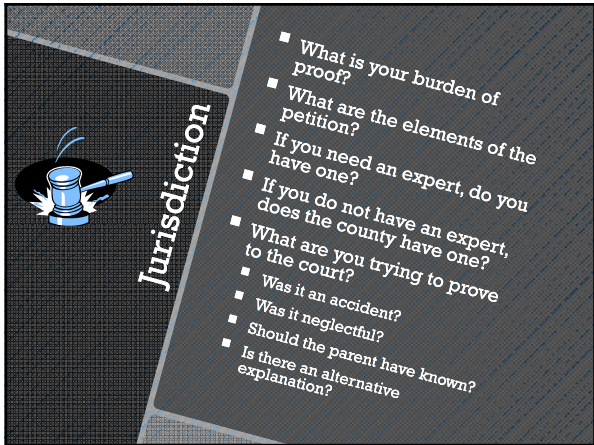
Detention

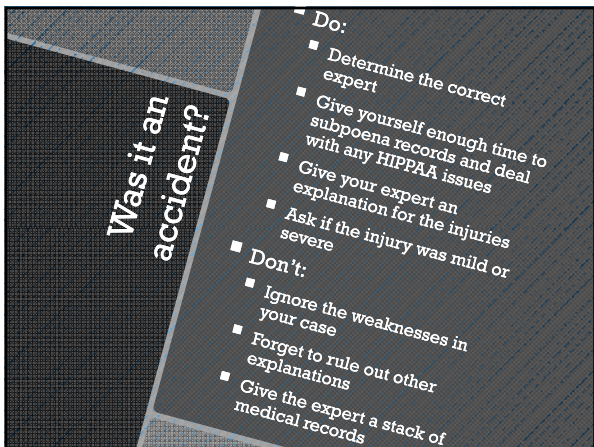
- What is the burden of proof?
- What are the issues you see?
- Do you need an expert?
- Should this be contested?
- What are the risks of setting contested at this point?

Between Detention and Jurisdiction

- Do:
 - Read the reports and talk to your client
 - Assess if the facts line up
 - Determine if you need an expert
- Don't:
 - Solely rely on the social worker's report







Was it Neglect?

- Do:
 - Ask your expert what injuries the parent would have seen?
 - Would there have been bruising?
 - Would there have been other injuries seen by the naked eye?
- Inquire when the parent took the child to the doctor
- Don't:
 - Assume the opposing expert's diagnosis is correct
 - Ignore cultural and/or religious issues
 - Ignore environmental factors

It is not all about Jurisdiction

- Remember: Any information you gather can be used for the Dispositional hearing as well
- Remember: The burden of proof is higher at the Dispositional hearing
- Remember: Ask your expert about any services that may be available to help the child and family



Getting the Expert Ready for Trial

Preparing the Expert

- Meet with Expert before court appearance
- Reiterate need for simple, straightforward talk
- Review purpose and focus of his/her testimony
- Identify evidence /issues most critical to the case
- Prepare Expert for cross-examination

Qualifying the Expert

- Current position
- School and training
- Years of medical experience
- Publication record/ awards
- Previous court experience
- Have expert explain any relevant medical term or condition

Questions to Ask on Direct Exam


- Do you have a specialty in the field of child abuse?
- What type of training have you received to prepare you for this specialty?
- Have you worked specifically with (insert type of abuse in your case)?
- How many child abuse cases have you handled that involved (specific the type of injury in your case)?
- In those cases, did you render an opinion as to whether child abuse had occurred?

Making Your Expert Attractive

- Courtroom talk
- Courtroom behavior

Courtroom Talk

- Simple, straight forward talk
- Explain medical terms
- Keep answers short
- Stay focused



Medical Terms – Guide to Questioning

- Explain in a way a 5th grader can understand
- Good questions to ask:
 - What is it?
 - How common is it?
 - Have you seen it before?

Presentation of Medical Information

- Use projected brain scans to illustrate your points
- Take the time to clarify new facts/new perspective
- A clear explanation does more than 20 testimonies

Courtroom Behavior


- Make good eye contact
- Don't be overly confident or too relaxed
- Maintain your composure
- Avoid worrying about the effect of your answer
- Stop talking when you hear "objection"

Making Your Expert Effective

- Prepping your Expert
- Strategies to Examine an Expert
- Strategies to settle or unsettle an expert

Strategies to Examine an Expert

- "Lost in the woods"
- "Rush to judgment"
- Building a case



"Lost in the Woods"


- Not clear where to start or where to go
- Fails to review facts that support expert's opinions
- Key points are not clearly established or presented



"Rush to Judgment"

- Offering expert's opinion before all the facts are lined up, e.g. tell me what you think about...
- Giving the punch line before the joke is finished
- Over-explaining






Building a Case

- Line of questioning that:
 - builds on previous answers
 - leads irrevocably to inevitable conclusion, i.e. expert's opinion
- Steps to take:
 - Explain simple medical term/disorder
 - Agree on key facts of the case
 - Review possible interpretations
 - Explain why one explanation makes more sense
 - Explain theory that ties all the facts together

Setting an Expert

- Ask for another example
- Ask questions that give expert an opportunity to restate or clarify his/her position or opinion, e.g.
 - Could you explain this another way?
 - Do you mean to say that...?
 - What's the significance of...?



BUT WAIT!!!!!!!
I don't have an expert!

Unsettle an Expert

- Investigate and Research expected testimony of expert
- Challenge experts credentials
- Obtain concessions
- Challenge impartiality
- Challenge Assumptions

Questions to ask on Cross-Exam

- You are being paid to render an opinion in this case?
- There are other explanations that may have caused this injury?
- The study that you have relied on is not an established authority on the subject of child abuse?
- You made some assumptions in formulating your opinion?

Case #1- Laura DOB: 11/17/2010

Expert Opinion:
Evidence does not support child abuse

More plausible explanation available:

1. Medical disorders put child at risk for RH
- Retinop. of prematurity puts her at risk
2. Dad's resuscitation= Minor trauma that caused RH and hematoma
3. Accidental trauma causes unilateral RH
4. Extra-axial fluid over brain- normal variant
Risk factor for hematoma
5. "Small foci of hematoma"- atypical for child abuse

Case #2- Jonathan DOB:7/1/2009

Expert opinion:
Abnormal neurologic exam- macrocephaly
Neurologic condition: Benign external hydrocephalus (BEH)

BEH is a risk factor for subdural hematomas and RH

1. BEH causes increased extra-axial fluid spaces
- Meningeal veins can rupture with minor trauma
2. Parents provide explanation and video of minor head trauma
- Rocking behavior mimics acceleration/decelerations of shaken baby syndrome
3. RH produced by sudden and recurrent incr. in cranial pressure



Questions?
Ask the Experts!
