

Multidisciplinary Investigations and  
Effective Prosecution of Child Abuse

Proving the Inconceivable  
to the Disbelieving

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***BALANCING THE SCALES OF  
JUSTICE FOR CHILDREN***

- ◆ Jurors' disbelief
- ◆ Second-class citizens
- ◆ Disparate sentencing
- ◆ "Explanation" needed

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**Difficulties Prosecuting Child  
Homicides**

- parent as killer
- "invisible" trauma
- delayed recognition
- multiple scenes

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**Difficulties Prosecuting Child Homicides**

- “mens rea”
- multiple suspects
- timing of injuries
- public perception

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**Difficulties Prosecuting Child Homicides**

Video

Excerpt #1 from *Trial of Louise Woodward A & E Television Networks*

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**Teamwork:  
Best Approach to Overcome Inherent Difficulties**

- ◆ *Multi-disciplinary team*
- ◆ *Respect roles of colleagues*
  - ◆ *Ego check at the door*
    - ◆ *Written protocols*
    - ◆ *Vertical prosecution*

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## The Prosecution Function

- represent “the people”
- effect justice
  - convict the guilty
  - protect the innocent
- advise law enforcement

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## Compromising the Prosecution

Overlooked evidentiary themes:

- Discrepant history
- Child-specific injury mechanism
  - Escalating violence
  - Single vs. multiple injuries

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## Compromising the Prosecution

*Use of evidence during interrogation*

- *Do not educate the defendant*
- *Do not ridicule defendant's claims*
  - *Do not argue with defendant*

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**Charging Decision**

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- Intentional
- “Unintentional”
  - homicide by abuse
  - murder by torture
  - felony murder

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**Charging Decision**

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video about charging  
decision

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**Charging Decision**

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- Accomplice
- Failure to protect
- Conspiracy

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## Timing Considerations

- Arrest
- Filing
- Preliminary hearing
- Grand jury
- Speedy trial

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## Pre-Trial Issues

### Evidentiary challenges

- searches
- confessions
- witnesses

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## Pre-Trial Issues

### searches



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**Searches**

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No homicide or child abuse  
exception to 4<sup>th</sup>  
Amendment

Mincey v. Arizona, 437 US 385 (1978)

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**Searches**

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No exploratory searches

Thompson v. Louisiana, 469 US 17 (1984)

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**Searches**

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A physically present co-occupant's  
stated refusal to permit entry renders a  
warrantless entry and search  
unreasonable and invalid as to him.

Georgia v. Randolph, 547 U.S. 103 (2006)

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## Searches

### Warrantless entry justified by

- 1.knowledge that 3-year-old child was missing and possibly in danger
- 2.small child heard moaning and crying
- 3.no response to attempts to get someone's attention in apartment

Garcia v. State, 880 S.W.2d 189 (Texas App. 1994)

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## Searches

Nothing in the Fourth Amendment required police to wait until another blow rendered someone unconscious, semiconscious, or worse before entering

Brigham City v. Stuart, 547 U.S. 398 (2006)

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## Searches

Search incident to lawful arrest is valid.

Virginia v. Moore, 128 S.Ct. 1598 (2008)

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<b>Searches</b>
<p>Records</p> <ul style="list-style-type: none"> <li>➤ Photos/videotapes</li> <li>➤ Computer</li> <li>➤ School</li> <li>➤ Telephone</li> <li>➤ Medical</li> <li>➤ Mental health</li> </ul>
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<b>Searches</b>
<p><i>Affidavit should include</i></p> <ul style="list-style-type: none"> <li>● <i>Experts' expertise and knowledge</i></li> <li>● <i>Facts about the target's prior behavior</i> <ul style="list-style-type: none"> <li>▪ <i>Temper</i></li> <li>▪ <i>Physical punishment</i></li> <li>▪ <i>Statements regarding child</i></li> </ul> </li> <li>● <i>Information regarding sought-after evidence</i> <ul style="list-style-type: none"> <li>▪ <i>Size, other physical attributes</i></li> <li>▪ <i>Degradability/fragility</i></li> </ul> </li> </ul>
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<b>Searches</b>
<p>“...[e]vidence of prior injuries...whether...directly linked to [defendant] or not, is probative on the question of the intent with which the person who inflicted the injuries acted.”</p> <p>Estelle v. McGuire, 502 US 62 (1991)</p>
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## Searches

### *Staleness Issues*

*Analysis is fact specific*

- *Temporal proximity of event*
- *Relation of evidence to crime*
- *Expert opinions cannot be generic*

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## Confessions

Since the police essentially told Miller that he would not be prosecuted for accidentally starting the fire, the officers offered an improper inducement for Miller's statements and the statements are involuntary.

Miller v. State, 18 P.3d 696, Alaska App. Ct. 2001

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## Doll Reenactment



National Center on Shaken Baby Syndrome  
<http://dontshake.com/>

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## Doll Reenactment

- **Explain reenactment process**
  - **purpose of process**
  - **use of doll**
    - **introduce doll**
    - **describe process**



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## Doll Reenactment

- **placer**
- **finder**
- **photograph/video**
  - **placement**
  - **sleep environment**



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## Plea Negotiation

### Reasons to negotiate

- **Conflicting medical evidence**
- **New-found weakness in case**
- **Resource conservation**
- **Victim requests**
- **Jury unpredictability**
- **Witness unpredictability**

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<b>Expert</b>
Someone with specialized knowledge, skill, experience or education.
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<b>Experts</b>
Expert can offer opinion <u>if</u> <ul style="list-style-type: none"><li>• it assists fact finder,</li><li>• is relevant and,</li><li>• is more probative than prejudicial</li></ul>
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<b>Experts</b>
Dr. Draper's <u>qualifications</u> : <ul style="list-style-type: none"><li>• Ph.D. in Child Development</li><li>• Worked and taught in the field of child development for twenty years</li><li>• Worked with abused and neglected children</li></ul> <p style="text-align: right;">Gilson</p>
<small>Multidisciplinary Investigations and Effective Prosecution of Child Abuse 36</small>

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**Experts**

There was no testimony regarding reliability or acceptance of Dr. Draper's theory of the effect of trauma on a child's ability to be a competent witness

Gilson

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**Experts**

- nature of injuries
- timing of injuries
- mechanism of injuries

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**Experts**

- nature of injuries
- clinical course of injuries
- how scene & statements fit
- child development

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## Experts

A & E Trial of Louise Woodward jury view of defense expert.

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## Experts

The doctor noticed Hope (the child's mother) was traumatized but thought Robbins behaved strangely, hiding his head behind Hope's and then rubbing her in an erotic caress while Hope and the doctor discussed Tristen's demise.

Robbins v. State, 27 S.W.3d 245, Aug. 30, 2000

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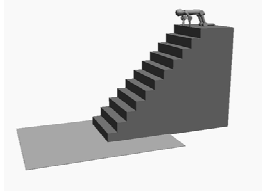
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## Demonstrative Evidence



Computer Simulation of Stair Falls to Investigate Scenarios in Child Abuse, Bertocci, et al, Archives of Pediatric & Adolescent Medicine 2001;155:1008-1014

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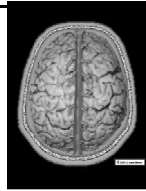
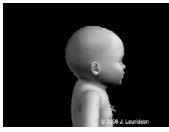
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## Demonstrative Evidence



computer simulation of mechanism of shaking and subdural hematoma

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## *Demonstrative Evidence*

### ***Mug shots or booking photos***

- *Must be relevant*
- *Must not imply criminal record*
- *Must not draw attention to its source*
- *Must not use of the word "mug shot"*

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## *Demonstrative Evidence*

- ***Bring the victim to life***
- ***Show victim's end of life***
  - ***Effect on jurors***

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**Gruesome Photographs**

Crime scene/autopsy photographs

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**Gruesome Photographs**

**Bases for admission:**

- *Prove corpus delicti*
- *Identify the victim*
- *Show nature and location of wounds*
- *Determine degree of criminal conduct*
- *Corroborate state witness*
- *Illustrate or explain testimony*
- *Corroborate the state's theory of the crime*

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**Gruesome Photographs**

- *"Those whose **work products are murdered children** should expect to be confronted by photographs of their accomplishments"*
- *"What defendant is claiming is that an individual may commit a murder so gruesome that photographs of victims and the murder scene **must be kept from the jury to insure a fair trial for the child killer. We do not agree with this reasoning.**"*
- *"A bloody, brutal crime cannot be explained to a jury in a lily-white manner **to save the members of the jury the discomfiture** of hearing and seeing the results of such criminal activity."*

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### Tips for Testifying Effectively

- listen to the question
- think about your answer
- answer the question

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### Mens rea (state of mind)

- intentionally
- knowingly
- recklessly
- negligently



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### Proving State of Mind

- size disparity
- use of weapon
- expert testimony
- delay in treatment
- false history
- other statements

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<b>Proving State of Mind</b>
<ul style="list-style-type: none"><li>• nature of injuries</li><li>• timing of injuries</li><li>• prior abuse</li><li>• awareness of consequences (prior conduct)</li></ul>
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<b>False History</b>
Defendant said the boy seemed ill while he was alone with the child in his girlfriend's home; the infant suddenly began choking and stopped breathing. Defendant said he tried reviving his son before dialing 911 . . .
<small>Multidisciplinary Investigations and Effective Prosecution of Child Abuse 57</small>

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<b>False History</b>
Defendant said that as he rushed into the kitchen carrying his son, the boy's head smacked a door frame [and] he shook the boy to wake him when he appeared to lose consciousness.
<small>Multidisciplinary Investigations and Effective Prosecution of Child Abuse 59</small>

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### **Proving State of Mind**

The victim was only 2 years old and defendant would not have had to apply great force to suffocate such a young child.

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### **“Distracted” Mother Innocent in Baby’s Death**

The mother testified she was preoccupied with some meetings coming up at work and running late for work when she left her 7-month-old daughter in her minivan.

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### **Child Dies in Car**

3-year-old and his 2-year-old sister, got into the family's car while their father was sleeping inside their home. The children were trapped inside the car by child-safety locks and might have been in the car for an hour before their father found them, investigators said.

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**Burden of Proof**

Beyond a Reasonable Doubt  
Legal formulation:  
“the kind of doubt that would make  
a reasonable person hesitate to act  
in an important decision”

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**Burden of Proof**

Beyond a Reasonable Doubt  
Working formulation:  
“the kind of doubt that allows me  
to keep my view of the world.”

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**Legal Requirements - Elements**

Extra-legal requirements:

- motive (why?)
- “but for” mindset
- prejudice, bias, stereotypes

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## Screening and Charging

probable cause vs.  
reasonable doubt

factual guilt vs.  
provable guilt

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## Screening and Charging

What we have to disprove

Legal defenses

- Mental illness
  - diminished capacity
  - insanity

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## Screening and Charging

Video clip

Mother found not guilty by reason of insanity for killing child

<http://www.youtube.com/watch?v=HOXkCN-s9sM>

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**What we have to prove**

- Identity
- Parental relationship
- Place
- Conduct

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**What we have to prove**

**Why????**

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**Motive**

- Relationship problems
- Unemployment
- Poverty

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<b>Motive</b>
<ul style="list-style-type: none"> <li>• Lack of sleep, exhaustion</li> <li>• Childcare experience</li> <li>• Post partum depression</li> <li>• MSBP</li> </ul>
<p>Multidisciplinary Investigations and Effective Prosecution of Child Abuse <span style="float: right;">76</span></p>

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<b>Motive</b>
<ul style="list-style-type: none"> <li>• <b>child's special needs</b></li> <li>• <b>substance abuse</b></li> </ul> <p style="text-align: center; margin-top: 20px;">triggering event</p>
<p>Multidisciplinary Investigations and Effective Prosecution of Child Abuse <span style="float: right;">77</span></p>

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<b>Motive Not Excuse</b>
<p>Evidence that defendant was under stress because she was raising a handicapped child and her boyfriend had just left her <u>was insufficient</u> to warrant instruction on heat of passion manslaughter in murder case arising from child's death.</p>
<p>Multidisciplinary Investigations and Effective Prosecution of Child Abuse <span style="float: right;">78</span></p>

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**Always a Motive**

Then he told the detective: "The more he screamed, the more I just kept on hitting him."

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**Always a Motive**

Defendant later said he shook the infant "too hard" after he quarreled with his girlfriend, the child's mother, about losing his job.

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**Identity**

Texas case law holds that an adult defendant with sole access to a child at the time its injuries are sustained, the is sufficient to support a conviction for murder if the child dies.

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**Parental Relationship**

Gilson stated he shared equal responsibility with Coffman in disciplining and parenting the children. Gilson said he and Coffman wanted to be a family and provide the children with two parents.

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**Parental Relationship**

Coffman stated she had given Gilson authority to discipline the children and that she, the children and Gilson were all trying to be a family.

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**Criminal Neglect**

**Types of Neglect**

- Physical
- Medical
- Environmental
- Emotional
- Inadequate Supervision

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<b>Criminal Neglect</b>
Caregiver Concerns
<ul style="list-style-type: none"> <li>• indifference to child</li> <li>• Seems apathetic or depressed</li> <li>• irrational or bizarre behavior</li> <li>• alcohol or drug abuse</li> <li>• child seen as bad, worthless, or burdensome;</li> <li>• child provides adult with             <ul style="list-style-type: none"> <li>• care</li> <li>• attention</li> <li>• satisfaction of emotional needs</li> </ul> </li> </ul>
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<b>Criminal Neglect</b>
Child Concerns
<ul style="list-style-type: none"> <li>• clothing is often             <ul style="list-style-type: none"> <li>• significantly too small or large</li> <li>• in need of repair</li> <li>• inadequate for weather</li> </ul> </li> <li>• nutrition-child is frequently             <ul style="list-style-type: none"> <li>• hungry</li> <li>• hoards, steals, or begs for food</li> <li>• comes to school with little food</li> <li>• appears listless/tired</li> <li>• emaciated or has a distended stomach</li> </ul> </li> </ul>
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<b>Criminal Neglect</b>
Child Concerns
<ul style="list-style-type: none"> <li>• poor hygiene             <ul style="list-style-type: none"> <li>• smells of urine or feces</li> <li>• dirty or decaying teeth</li> <li>• unattended medical or dental problems</li> </ul> </li> <li>• lack of supervision             <ul style="list-style-type: none"> <li>• no one home to provide care</li> <li>• cares for younger siblings</li> </ul> </li> </ul>
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## Criminal Neglect

Greatest number of pediatric burn patients are infants and toddlers younger than 3 years of age burned by scalding liquids.

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## Final Thoughts



A & E The Killer Within Victim's Friend Speaks

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