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Good Things Come To Those Who Seek: Ten Tips For Finding Information On Defense Experts

by James Dean May¹

At some point during their careers, most prosecutors will be reviewing defense counsel's list of witnesses and find the name of an unfamiliar defense expert such as "Dr. Hufflepuff." The listing of an unknown defense expert can cause the *fear of the unknown* and raise doubts about what was a relatively solid case mere moments ago. Did I overlook some theory? Did my experts miss something? What is defense counsel hoping to exploit? Or is this person just a walking smoke-screen with an advanced degree?

There is no reason to be unnerved by the listing of an unfamiliar defense expert. Any prosecutor or investigator willing to do some digging will almost always be rewarded. If there is information on an expert to find, the following ten tips will help.

1) Ask Your "Friends"

Get in touch with your friends and allies, the prosecutors, investigators and medical professionals you know and work with regularly. Let them know that you need information on Dr. Hufflepuff. You never know who might be able to help you out. Chances are, someone knows someone who knows something about the defense expert you face. Start with prosecutors and investigators you know well. If you don't find any solid leads consider constructing a new network by giving those acquaintances from law school who are now involved in litigation and prosecution a call. Contact the district attorney or county prosecutors offices from the region the expert calls home. Contact your state district attorneys association. Contact APRI's National Center for Prosecution of Child Abuse (See *infra* tip #10).

2) Ask Your "Enemies"

Consider contacting individuals you ordinarily would never think about approaching for information. For example, if there are defense and civil attorneys with whom you have polite working relationships, give them a friendly call. You never know what you might discover. The acquaintance you made years ago who was working on behalf of assault and robbery defendants is now also an accomplished plaintiff's lawyer. He may remember an unpleasant cross-examination of the psychology expert, Dr. Hufflepuff, from an old case. In this scenario the adage "the enemy of my enemy is my friend" holds

INSIDE:

Stalking Conference -2

Kids Online -7

*Governor's Task Force On
Children-at-Risk -8*

Upcoming Training -9

Anti-violence law -11

*Vaccination or Shaken
Baby Syndrome? -13*

2000 STOP Conference "Stalking The Stalker"

by Barbara Albiston



Madison Riley

Granddaughter of Doug Graves
POST Academy Training Specialist

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If you would like to contribute an article or if you have any questions or comments regarding PROTOCOL, please contact us at:

*Editor, Protocol Newsletter
P.O. Box 700,
Meridian, ID. 83680*

*or send e-mail to:
joni.waybright@post.state.id.us*

*or telephone (208) 884-7321
or fax (208) 884-7295
Thank you!*

The Idaho Peace Officer Standards and Training (POST) Academy hosted a statewide conference on stalking September 12-14, 2000. Funded through a STOP grant, the training was intended to heighten awareness of the problems of stalking in Idaho and show what can be done to stem this rising tide of domestic violence.

Facilitated by the San Diego Stalking Strike Force, local personnel from law enforcement, corrections, judicial and advocacy programs spent three days at the Nampa Civic Center participating in discussions and lectures concerning every aspect of this crime.

The San Diego Stalking Strike Force is made up of professionals from the fields of law enforcement, prosecution, forensic psychology, and mental health.

High profile stalking cases, like Madonna and David Letterman, make the general public aware of the problem, but not aware of how embedded it is in society. According to keynote speaker J. Reid Meloy, Ph.D., in 1995, 8% of American women (1 out of 12) and 2% of men (1 out of 50) have been stalked within their lifetimes. A new 2000 study showed that 15% of women in Louisiana stated that they have been stalked at least once.

Stalking is an equal opportunity crime. People of all ages, ethnicity, and geographic regions have been victims. The majority of victims are female with male perpetrators, but there is a noticeable increase of female stalkers within the past few years.

Stalkers are in the middle spectrum between criminals and the psychiatric persona. They have personality disorders but are NOT psychotic. The stalker is preoccupied with relationships and attachments. Obsessional Followers (Stalkers) fall into the following five categories.

1. **Rejected:** These stalkings are the most violent and longest in duration. There was a sexual intimacy between the people involved.
2. **Intimacy Seekers:** The perpetrators have a belief that they have the right to a relationship with the victim.
3. **Incompetent:** The stalker does not know how to act properly with women in society.
4. **Resentful:** The perpetrator is a workplace stalker who feels he has been "harmed" in some way.
5. **Predator:** This person is among the most violent, and the victim is usually sexually assaulted.



Violence rates exceed 50% for the Rejected and Predator categories. Duration of stalking for the Intimacy Seekers averages three years.

An alarming figure in the current findings is that the highest rates of violence (25% -40%) are found in stalking cases. Some form of stalking precedes approximately 1,350 deaths per year.

Another threat on the increase is workplace violence. The notion of it being only a manager's problem needs to be changed to an "us" problem. Workplace violence is "NOT about 'crazy guys with guns,' but about fear," said presenter Steve Albrecht, Ph.D.

The federal Occupational Safety and Health Administration (OSHA) sent out guidelines on boundaries to workplace violence. It characterized them in three types:

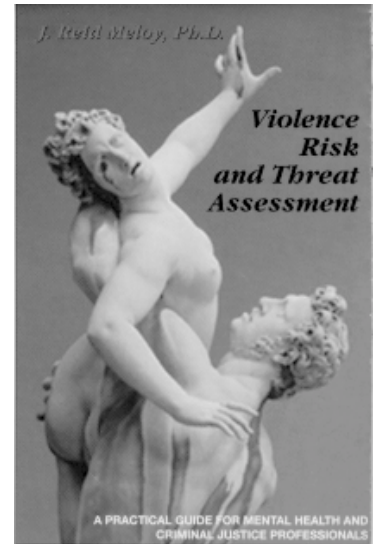
1. Crook or victimizer;
2. Connective entities such as students, suppliers, etc.; and
3. Current/former employee or spouse/partner of an employee.

The most prevalent type of stalker in society is actually Type 1, but the media zeroes in on Type 3.

Not only is the World Wide Web a good source of information, but it is also becoming another weapon in the stalker's arsenal. Kerry Wells and Wayne Maxey of the San Diego District Attorney's office presented chilling statistics of how "hate stalking" has escalated. The first case involved 49 Asian students at University of California, Irvine. The perpetrator was easily identified and convicted to one year in custody and subsequent probation. In 2000, 25,000 e-mails were sent to ethnic students at Stanford University by an assumed single perpetrator. The e-mail was so diffused among nationwide servers that the person has yet to be identified.

California Deputy Attorney General Morgester has said that if one applies the ratio of 1 in 20 females and 1 in 45 males to cyberstalking, the number of stalkers equals 91,000 with 696,000 victims.

At the beginning of the conference, each participant was given a binder with handouts of additional information and a revised Stalking Diary. The diary is an effective way for victims to record all incidents of harassment. The eight separate journal sections help the victim to maintain chronological listings of events to aid in the prosecution of the stalker. The diaries were printed under a STOP grant and are available at no cost to agencies statewide. For more information on the Stalking Diary or to place an order for your agency, please contact POST Academy, ATTN: Doug Graves, P.O. Box 700, Meridian, ID 83680-0700 or call (208) 884-7049. <>



Additional Reading:
Violence Risk and Threat Assessment
A Practical Guide For Mental Health and Criminal Justice Professionals
by J. Reid Meloy, Ph.D.

UPCOMING ATTRACTIONS:
In our next issue of Protocol we will feature our Multi-disciplinary Team in Region VI and highlight different teams in each upcoming issue!



Cops & Kids Photos by Doug Graves



true as you discover that he would be overjoyed to order you a transcript if it would help you stick it to Dr. Hufflepuff.

Another variation on this idea, if you have adequate financial resources, is to contact one of the expert witness services that advertise in bar journals, newspapers and trade publications. Tell them you heard about Dr. Hufflepuff and would like information on her and you are wondering whether she is one of the experts they market. You may be able to purchase a file on the doctor, saving valuable time and effort that you otherwise would have expended gathering basic information.

3) Ask the Expert's Enemies

The world of academia is highly competitive. Many experts gain notoriety by criticizing other well-known experts in their field. With national recognition comes criticism on a national level, and many defense experts have made enemies because they have chosen not to be diplomatic. Remember the adage from tip number two and exploit it. Look for reviews of the expert's work. (See *infra* tip #6). Contact other experts at the national level, explain your situation and ask them for their opinion on the expert you face. Just because Dr. Hufflepuff is from California and Dr. X is from the East Coast does not mean that they do not know each other. If the conversation goes well ask if he or she would be willing to be a consultant on Dr. Hufflepuff's testimony. If you have financial resources, consider bringing in your consultant to sit near the front of the courtroom and take notes for you to use on cross-examination. The defense expert may be more guarded and reserved with his professional opinions when delivering them in the presence of another recognized expert sitting in court listening attentively.

Another efficient tactic is to hire the employer or supervisor of the defense expert, who happens to disagree with his employee, and place this person at the prosecution table. The content and tone of the defense expert's testimony may dramatically shift in your favor under such circumstances.

4) "Ask" Opposing Counsel: Pretrial Motions & Discovery

If you do not have the good fortune of prosecuting in a state with a reciprocal discovery rule then you will need to be more proactive. File a pretrial motion that asks the court to require defense counsel to produce all information on any anticipated expert testimony. Argue to the court that disclosure of such information is in the best interests of judicial economy in that it will save time during trial. First, you will not have to ask for a continuance to address new developments in defense theories. Second, you will be able to prepare your cross-examination adequately in advance. Third, you must know who the potential experts are in this case so that you will know whether you need to file a motion in limine. If the expert's credentials are questionable, or the theory the expert expounds lacks the requisite acceptability in the scientific community, the court should hold an evidentiary hearing to determine the admissibility of such proffered testimony.

5) Let Your Fingers Do the Walking: Get the Expert on Speakerphone

Call the expert, introduce yourself, and inquire whether you may ask some questions over speakerphone about her opinion on the case. One key to generating valuable impeachment material is the speakerphone. Make sure that you have a witness (preferably a sworn law enforcement officer or your own expert consultant) listening carefully to the conversation so that you can call this witness to impeach the defense

Ten Tips *continued*

expert's testimony should it change significantly at trial. There are two fundamental course the conversation can take. Either the expert will speak with you or she will not. Either way, you have gained something.

If the expert chooses to speak with you, ask her what she expects her testimony to disclose. You may discover weaknesses in your case that you need to strengthen. You may learn about the expert as a person and her demeanor as a witness. For example, you might observe that the expert has a million-dollar vocabulary, is impatient, condescending and pompous and as such, will not be well received by a jury. Remain the polite and humble "student," and take careful notes that you can use later when researching the basis for her opinion or as you prepare the cross-examination of this witness.

Alternatively, should the expert refuse to speak with you then you have generated impeachment material by virtue of the refusal. "Isn't it true that you refused to speak with me when I telephoned you on the ___ day of ___? In fact, the basis of your refusal was that you were told not to speak with anyone about defense's theory in this case, correct? No? Is the reason you would not speak with me because you would not be paid for that time the way the defendant has been paying?"

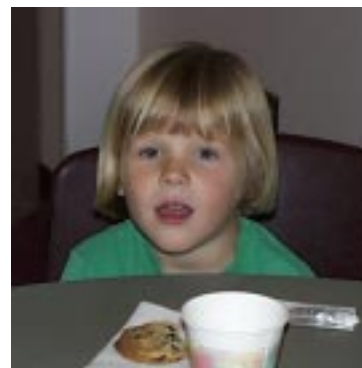
6) Go To The Library

While perhaps time-consuming, a trip to a good library can produce valuable information on a defense expert. If you have no information except the correct spelling of the defense expert's name, you will still be able to conduct card catalog, computer catalog, and "books in print" searches to see if she has had any work published. Many reference librarians are research masters and can be instrumental in finding publications and other information. (See *infra* tips 7 & 8). If you already have the expert's C.V. or publications list you can obtain her books and articles, analyze them, and begin to draw conclusions concerning her level of expertise on the issues in your case. Do not limit your searches to "author" searches. Perform other searches such as subject searches that require listing the expert's name in book reviews and other evaluations of the expert's work. This path may lead you to the expert's enemies – your new allies.

7) Search Computer Databases

There are a number of research services that offer access to their databases for a fee. Your office or local library may already have a subscription to one of them. Two of the most powerful research services are LEXIS/ NEXIS and Westlaw. While these services are commonly thought of as "legal" research services, both provide access to an astounding number of non-legal publications including newspapers and medical publications. Conveniently, many defense experts seek the spotlight whenever possible and covet their names in print.

Suppose you have access to LEXIS/ NEXIS and you know that the defense counsel lists a "Dr. Huffenpuff." You could begin your search in the legal databases. Once you have found that "Dr. Huffenpuff" has testified in a few cases, contact the counsel of record in those cases and ask if it would be possible to obtain a transcript of the doctor's testimony. Inquire about the doctor's demeanor in court. Begin your search in the NEXIS news database. If the doctor is in the newspapers, ascertain her credentials and construct your searches in the medical databases to determine if she has published



Cops & Kids Photos by Doug Graves

Ten Tips continued

articles of interest. Most medical doctors also have a separate listing in a database referencing their specialist credentials, educational background, areas of practice and address. With only the correct spelling of the doctor's name, discovery of her medical training, specialty certification, address, all news articles and every reported appellate-level case in which her name appears is possible.

8) Go Surfing on the Internet

Many defense experts have their own websites and have devoted substantial financial resources to ensure that their name is easily accessible using any search engine. Simply type the expert's name in quotation marks and click. If you have exhausted all other avenues of inquiry without success, you should be aware that relatively new defense experts frequently exploit the Internet by marketing their services and self-published books on the World Wide Web. While the more conventional avenues of search, as mentioned above, may lend a more objective analysis of an expert's credentials, self-serving marketing efforts on the Internet will usually provide useful information.

Another important feature of the Internet is that it provides a way to visit libraries around the world from your desk. Many universities' complete library collections are catalogued online. Any search strategy may be conducted over the Internet with relative ease by accessing a university's website and then clicking on the relevant library icons.

9) Investigate Their Backgrounds!

You may not have to go through all the preliminary work of figuring out who the expert is and the reputation earned. Defense counsel often is required under relevant rules or statute to provide you with the expert's materials, publications and C.V. Sometimes the expert simply hands over the information that results in the undoing of the defense's case. Evaluate the C.V. carefully. Some people buff and puff their resumes to some degree, but many defense experts need a serious reality check in this regard. If the C.V. lists a shared Pulitzer Prize, check that claim out with the Pulitzer Prize Committee. You may discover that the doctor is mistaken about receiving the honor. If the C.V. boast she is a member in good standing with a number of organizations, confirm the existence and character of her membership with those organizations.

After you have obtained the expert's qualifications, study the C.V. for information that exists based on results from your other avenues of inquiry. If certain items are missing, are they missing because they are simple mistakes or calculated omissions? "Doctor, this is not a complete list of your publications, is it? Isn't it true that you omitted several of your publications from the list you present to the court in this case? In fact, it is true that you authored seven articles for hard-core pornography magazines that do not appear anywhere on this list, isn't it? You discussed these omitted articles with defense counsel? Who told you to omit these articles from your C.V.?"

10) Call the APRI's National Center for Prosecution of Child Abuse

Whenever you face an unknown or renowned defense expert, even if you have already successfully uncovered information on the expert, you may want to contact APRI's National Center for Prosecution of Child Abuse. The National Center has files on many experts who are routinely called by defense counsel. Many of the files are comprehensive and include materials such as transcripts, news articles and other items useful to an attorney preparing a cross-examination. Some files contain transcripts from cases where the cross-examination of the expert was extremely effective.

Preparation is the key component in successfully cross-examining an expert witness. The first important step in adequate preparation is acquiring accurate and relevant information on the expert proffered by the defendant. <

The author, James Dean May, is a Staff Attorney with APRI's National Center for Prosecution of Child Abuse. Research credits belong to the American Prosecutors Research Institute.

Kids Online

Shannon could hear the footsteps behind her as she walked toward home. The thought of being followed made her heart beat faster. “You’re being silly,” she told herself, “no one is following you.” To be safe, she began to walk faster, but the footsteps kept up with her pace. She was afraid to look back and she was glad she was almost home. Shannon said a quick prayer, “God please get me home safe.” She saw the porch light burning and ran the rest of the way to her house.

Once inside, she leaned against the door for a moment, relieved to be in the safety of her home. She glanced out the window to see if anyone was there. The sidewalk was empty. After tossing her books on the sofa, she decided to grab a snack and get online. She logged on under her screen name ByAngel213. She checked her Buddy List and saw GoTo123 was on. She sent him an instant message:

ByAngel213: *Hi I’m glad you are on! I thought someone was following me home today. It was really weird!*

GoTo123: *LOL You watch too much TV. Why would someone be following you? Don’t you live in a safe neighborhood?*

ByAngel213: *Of course I do. LOL I guess it was my imagination cuz’ I didn’t see anybody when I looked out.*

GoTo123: *Unless you gave your name out online. You haven’t done that have you?*

ByAngel213: *Of course not. I’m not stupid you know.*

GoTo123: *Did you have a softball game after school today?*

ByAngel213: *Yes and we won!!*

GoTo123: *That’s great! Who did you play?*

ByAngel213: *We played the Hornets. LOL. Their uniforms are so gross! They look like bees. LOL*

GoTo123: *What is your team called?*

ByAngel213: *We are the Canton Cats. We have tiger paws on our uniforms. They are really ‘kewl’.*

GoTo123: *Did you pitch?*

ByAngel213: *No I play second base. I got to go. My homework has to be done before my parents get home. I don’t want them mad at me. Bye!*

GoTo123: *Catch you later. Bye*

Meanwhile, GoTo123 went to the member menu and began to search for her profile. When it came up, he highlighted it and printed it out. He took out a pen and began to write down what he knew about Angel so far. Her name: Shannon; Birthday: Jan. 3, 1985; Age:13; State where she lived: North Carolina; Hobbies: softball, chorus, skating and going to the mall. Besides this information, he knew she lived in Canton because she had just told him. He knew she stayed by herself until 6:30 p.m. every afternoon until her parents came home from work. He knew she played softball on Thursday afternoons on the school team, and the team was named the Canton Cats. Her favorite number 7 was printed on her jersey. He knew she was in the seventh grade at the Canton Junior High School. She had told him all this in the conversations they had online. He had enough information to find her now.

Shannon didn’t tell her parents about the incident on the way home from the ball park that day. She didn’t want them to make a scene and stop her from walking home from the softball games. Parents were always overreacting and hers were the worst. It made her wish she was not an only child. Maybe if she had brothers and sisters, her parents wouldn’t be so overprotective.

By Thursday, Shannon had forgotten about the footsteps following her. Her game was in full swing when suddenly she felt someone staring at her. It was then that the memory came back. She glanced up from her second base position to see a man watching her closely. He was leaning against the fence behind first base and he smiled when she looked at him. He didn’t look scary and she quickly dismissed the fear she had felt. After the game, he sat on a bleacher while she talked to the coach. She noticed his smile once again as she walked past him. He nodded and she smiled back. He noticed her name on the back of her shirt. He knew he had found her. Quietly, he walked a safe distance behind her. It was only a few blocks to Shannon’s home, and once he saw where she lived he quickly returned to the park to get his car. Now he had to wait. He decided to get a bite to eat until the time came to go to Shannon’s house. He drove to a fast food restaurant and sat there until time to make his move.

continued on page 12

The Governor's Task Force On Children At Risk

The Governor's Task Force on Children at Risk, a non-partisan, broadly representative organization with concerns related to children at risk in Idaho, is dedicated to providing informed recommendations to the Governor of the State of Idaho regarding the full scope of issues related to child abuse and neglect.

The Task Force's responsibilities are:

1. To review existing systems and procedures and encourage improvements in the investigative, administrative and judicial handling of cases of child abuse and neglect, particularly child sexual abuse, to limit the trauma to the child victim;
2. To evaluate, propose, and encourage cooperation between persons and agencies involved in cases of child abuse and domestic violence evaluations;
3. To investigate and recommend optimum models of prevention, evaluation, and treatment of victims and offenders;
4. To establish procedures for the review of child fatalities and substantial or severe injuries where the circumstances of the death or injury suggest the possibility of child abuse; and,
5. To study, propose, and encourage means to establish a highly professional, stable work force devoted to working with child abuse cases and issues.

The Task Force is very interested in any and all input you may have on the issues that pertain to the responsibilities of the Task Force. Should you have information or concerns that you would like to bring before the Task Force, please contact any of the following members. Write to the address below, or telephone (208) 334-5689.

The Governor's Task Force
c/o Ms. Lynn Richter
P.O. Box 83720, 5th Floor
Boise, ID 83720-0036

Judge Linda Cook
Idaho Falls
(208) 529-1125

Sid Brown
Rexburg
(208) 356-7768

Shirley Alexander
Boise
(208) 334-5706

Tom Hadlow
Boise
(208) 658-2117

Rita Callery
Lewiston
(208) 746-3378

Lorene B. Frank
Hayden Lake
(208) 772-6214

Debbie Stallcup
Sandpoint
(208) 263-1602

Carlos Meza
Twin Falls
(208) 324-3361 (x-1130)

Charles Kovis
Lewiston
(208) 746-7060

Toni Jones
Sagle
(208) 263-5499

Dr. Nancy McAllister
Boise
(208) 377-4400

James Baugh
Boise
(208) 336-5353

Lynn Richter
Boise
(208) 334-5689

Upcoming Training

January 22-26, 2001 Conference San Diego, CA
15th Annual San Diego Conference On Responding To Child & Family Maltreatment, 2001
Instructors: Faculty of 150 experts Phone: 800-772-8527 Fax: 619-291-3584
Professional Education Services Children's Hospital - San Diego Center For Child Protection
3020 Children's Way, MC 5017, San Diego, CA 92123-4282



Upcoming Training:

Sexual Assault Investigation

January 8-9, 2001

POST, Classroom B
Meridian, ID (Reg.2, R2240A)

February 6-7, 2001

3818 Schreiber Way
Coeur d'Alene, ID (Reg.1, R2240B)

February 21-22, 2001

Ameritel Inn, 1440 Bench Road
Pocatello, ID (Reg.3, R2240)

This 2-day class will bring together three instructors with extensive experience in the area of Sexual Assault Investigation. The class will cover:

- > **Collection and Preservation of Evidence**
- > **Crime Scene Processing**
- > **Victim Interview**
- > **Suspect Interviews**
- > **Forensic Evidence**
- > **Charging Decision**
- > **Discovery**
- > **Expert Witness**
- > **Trial Preparation**
- > **Victim's Rights**
- > **Sentencing**

Instructors:

Sgt. Linda Scown (ASCO)
Julianne Meehan (ACP)
Pam Marcum (ISP Retired)

Class Times: 0900-1600
0830-1730 (CdA)

Cost: NONE

Linda Scown, Sgt. in Charge of Detectives for the Ada County Sheriff's Office, has been in law enforcement for 18 years. She has interacted with the Idaho Legislature on child protection law issues. She is an executive member of the St. Luke's CARES review board, member of the Ada County Multi-disciplinary team, and a board member of the Southern Idaho Coalition for the Prevention of Child Abuse.

Julianne Meehan has been an Ada County Deputy Prosecutor for 15 years. Most of those years, she prosecuted child sexual and physical abuse cases and adult sexual assault. She was the supervising attorney of the Sexual Assault Unit for 10 years. She is actively involved in training issues of child abuse and lectured on Shaken Baby Syndrome in South Carolina. She is currently supervisor of the preliminary hearing team which handles about 350 cases per month.

Pam Marcum is retired from the Idaho State Police where she was Principal Criminalist for 24 years. She specialized in Forensic Serology, managing the Sexual Assault Evidence Program. This involved training law enforcement and emergency department personnel, coroners, and other criminalists on the examination of the sexual assault victim. She is an expert in forensic DNA and related matters. She is currently a consultant to the Department of Health & Welfare where she summarizes and organizes information for the Idaho Child Review Mortality Team.

To register for this class, please go to our website at **www.idaho-post.org**. Fill in the electronic form then click on the button for your region to e-mail it to: John Parmann, Region 1; or Doug Graves, Region 2; or Gary White, Region 3. You may also register through ILETs, or print the form from our website and mail it in, or even mail in the form on page 15, to the address below:

POST Academy
P.O. Box 700
Meridian, ID 83680-0700
ATTN: Doug Graves

Clinton: Anti-violence law will curb abuse, human trafficking

By **Deb Riechmann**

Reprinted with permission of The Associated Press

WASHINGTON – President Clinton, noting that a woman is beaten in America every 12 seconds, signed legislation reinforcing the Violence Against Women Act by covering women abused by their boyfriends, helping battered immigrant women and attacking international traffic in human beings.

The new law, he said in his weekly radio address on Saturday, is “the most significant step we’ve ever taken to secure the health and safety of women at home and around the world.”

Domestic violence is the No. 1 health risk for women between the ages of 15 and 44, Clinton said. Almost one-third of women killed in the United States are victims of husbands, ex-husbands or boyfriends.

“Every 12 seconds, another woman is beaten,” he said. “That’s nearly 900,000 victims every year.”

The anti-violence bill Clinton signed also contains a provision to help stop what the president called the “insidious global practice” of trafficking in human beings.

“Every year, 1 million or more women, children and men are forced or tricked into lives of utter misery – into prostitution, sweatshop work, domestic or farm labor or debt bondage,” he said. “This is slavery, plain and simple.”

It’s not just a problem in foreign countries, he said. “Each year as many as 50,000 people are brought to the United States for this cruel purpose,” he said.

The legislation sets harsh penalties for those who trade in human beings. It requires convicted traffickers to forfeit assets and make restitution to those they have exploited. And it gives victims better access to shelters, counseling and medical care.

It also increases U.S. assistance to other countries to help track them down and punish offenders and provides sanctions for nations that refuse to act against the practice.

The law reauthorizes and strengthens the Violence Against Women Act, passed in 1994.

The new law continues providing money for grant programs to help police investigate violence against women and provide victims’ services. It expands the investigation and prosecution of crimes of violence against women and continues to fund the National Domestic Violence hot line.

It also provides new protections for mistreated immigrants; expands assistance to programs targeting dating violence; and gives more money to American Indians who are victims of domestic violence.

“Domestic violence is a criminal activity,” Clinton said. “It devastates its victims and affects us all. It increases health costs, keeps people from showing up to work, prevents them from performing at their best.”

Clinton used the bill as an example of bipartisanship and then urged Congress to complete its work on the federal budget.

“It’s time for Congress to set partisanship aside on the last two unfinished bills, and complete a budget with smaller class sizes, modern classrooms, family tax cuts and a higher minimum wage,” Clinton said.

LAW AT A GLANCE

The Victims of Trafficking and Violence Protection Act, which President Clinton signed into law Saturday, includes these provisions:

- Continues until 2005 funding provided in the 1994 Violence Against Women Act for support services for battered women and for police investigations of domestic violence.
- Provides new assistance for victims of dating violence and for American Indian victims of domestic violence.
- Establishes new felony criminal offenses for trafficking in human beings and imposes penalties requiring offenders to forfeit assets and make restitution to those they have exploited.
- Gives victims of the trade in human beings better access to shelters, counseling and medical care.
- Increases U.S. assistance to other countries to help them track down and punish human trafficking offenders and provides sanctions against nations that refuse to act against the practice.
- Allows victims of international terrorism and their families to collect court-awarded money from the frozen assets of foreign countries.

— The Associated Press (This appeared in The Idaho Statesman, 10/29/00.)



Shannon was in her room later that evening when she heard voices in the living room. “Shannon, come here,” her father called. He sounded upset and she couldn’t imagine why. She went into the room to see the man from the ballpark sitting on the sofa.

“Sit down,” her father began, “this man has just told us a most interesting story about you.” Shannon moved cautiously to a chair across from the man. How could he tell her parents anything? She had never seen him before today!

“Do you know who I am Shannon?” The man asked.

“No,” Shannon answered.

“I am a police officer and your online friend, GoTo123.”

Shannon was stunned. “That’s impossible! GoTo is a kid my age! He’s 14 and he lives in Michigan!”



The man smiled. “I know I told you all that, but it wasn’t true. You see, Shannon, there are people online who pretend to be kids; I was one of them. But while others do it to find kids and hurt them, I belong to a group of parents who do it to protect kids from predators. I came here to find you to teach you how dangerous it is to give out too much information to people online. You told me enough about yourself to make it easy for me to find you. Your name, the school you went to, the name of your ball team and the position you played. The number and name on your jersey just made finding you a breeze.”

Shannon was stunned. “You mean you don’t live in Michigan?”

He laughed. “No, I live in Raleigh. It made you feel safe to think I was so far away, didn’t it?” She nodded.

“I had a friend whose daughter was like you. Only she wasn’t as lucky. The guy found her and murdered her while she was home alone. Kids are taught not to tell anyone when they are alone, yet they do it all the time online. The wrong people trick you into giving out information a little here and there online. Before you know it, you have told them enough for them to find you without even realizing you have done it. I hope you’ve learned a lesson from this and won’t do it again.”

“I won’t,” Shannon promised solemnly.

“Will you tell others about this so they will be safe too?”

“It’s a promise!”



E-mail shared by Dave Cavallier, Information Secretary NIRMC (National Information Resource Management Center) for the BLM, taken from Kids Online (“...didn’t know if it was true but it was good information to share”). The site www.kidsonline.com is now closed but other good sites to check out include www.headbone.com and www.craniamania.com.

DTP Vaccination or Shaken Baby Syndrome?

The Role of Irresponsible Medical Expert Testimony in Creating a False Causal Connection

by David L. Cadwick, M.D.¹ and Rob Parrish, J.D.²

Background and Introduction

In recent years, a disturbing defense has surfaced in criminal cases involving Shaken Baby Syndrome (SBS). This defense alleges that the child (who usually has typical SBS pathology) was, in fact, injured by an injection of DTP (diphtheria, tetanus toxoids and pertussis) vaccine rather than by an abusive act by another person. Although numerous articles have dismissed the theory that the vaccine can cause permanent brain damage in infants, physicians who have qualified as “experts” about children’s brain injuries and diseases have testified that SBS pathology can be produced by the DTP immunization injection. Prosecutors of shaken baby cases should be aware of this untrue defense and be prepared to exclude this irresponsible medical testimony.

Shaken Baby Syndrome describes a constellation of injuries which includes a disturbance of consciousness accompanied by recent subdural bleeding.³ Brain swelling and retinal hemorrhages are present in many cases and about half of the cases have findings of extracranial injury.⁴ Death or permanent brain damage are frequent outcomes in SBS. The mechanism of injury in SBS is generally believed to be accelerating or decelerating movement of the head involving great force and occurring in shaking or slamming of the child.⁵ Some cases have evidence of impact injuries and may be termed Shaken Impact Syndrome,⁶ but are otherwise identical to Shaken Baby Syndrome cases. The definition of SBS requires the exclusion of accidental injury and disease as causes of the pathology. The pathology may be found at autopsy, and in fatal cases, it includes the presence of recent subdural bleeding and brain swelling often of a severe degree. The same findings can be determined in surviving children by the use of imaging techniques and other tests done during the early stages after initial presentation.

The pathology described for SBS is due to mechanical injury, and there are very few possible exceptions. Somewhat similar pathology has been ascribed to spontaneous bleeding in the subdural space that may occur with certain congenital malformations or with blood coagulation problems. However, no medical papers exist which propose that this pathology could be related in any way to DTP immunization.

Can Immunizations Cause Brain Damage?

The possibility that reactions to various vaccines might produce brain damage has been a subject of medical concern for decades. Because such events are either rare or non-existent, scientific analysis of risk has been difficult and expensive; however, at times these concerns appeared to be causing avoidance of immunizations and high expenses for vaccine manufacturers.⁷ These considerations led to the passage of the National Childhood Vaccine Injury Act in 1986.⁸ That legislation established a no-fault insurance program to compensate children who appear to have been injured by vaccines, but without requiring them to sue and establish a casual connection.

An auto-immune mechanism for vaccine injury has been proposed because it is demonstrable in some cases of rabies immunizations in which an antigen containing brain tissue is used.⁹ However, the DTP vaccine contains no such materials and the demyelinating pathology caused by rabies vaccine has not been linked to other types of immunization. This is one of the problems that make study of this subject difficult. No specific pathology for DTP-associated brain injury has ever been found or even proposed.¹⁰

Very recent studies have not provided evidence to support a causal relationship between DTP immunization and serious acute neurological illness resulting in permanent neurological injury.¹¹ A recent article from Great Britain flatly dismisses the theory that pertussis vaccine can cause permanent brain damage in infants, and notes that the “scare following publication of the mistaken theory that pertussis vaccine was a significant cause of brain damage is an example of what can happen when preliminary research is made public.”¹² Another study found that even among children who reportedly experienced a previous adverse reaction to a vaccination, revaccination resulted in another adverse reaction in only 17% of the children, and none were serious enough to require hospitalization.¹³ Recent work also summarizes the U.S. experience over the last few years since the shift to the general use of an acellular pertussis vaccine (DpaT) would produce fewer reactions than the old one, and this has proved to be the case. No new information about a relationship to pertussis vaccine reactions to the pathology seen in SBS was acquired in this study.¹⁴

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Shaken Baby *continued*

The DTP Defense in SBS Cases: A False Causal Connection

The idea that DTP injection might produce the pathology seen in SBS has begun to appear in testimony during the last few years in spite of the fact that it has not appeared in a peer-reviewed medical article. “Expert witnesses” seeking to link SBS cases to DTP immunization must create a false causal connection. This involves sophistry and a willingness to ignore all requirements for the determination of causality. These “experts” can sometimes make this connection in a courtroom where the triers of fact are medically naïve.

The DTP defense was raised unsuccessfully in the criminal prosecution of Dr. Malcolm Scoon, a New York anesthesiologist who was convicted of manslaughter for causing the death of his five-month-old daughter. Mariah Scoon exhibited all the classic signs and symptoms of Shaken Baby Syndrome. Scoon claimed that his daughter died as a result of infection, which in turn was caused by a vaccination received one week prior to her death. The jury rejected this claim and the case is pending on appeal.

In another case,¹⁵ the defense also claimed that shaken baby injuries were caused exclusively by an abreaction to a vaccine the twelve-week-old victim had received earlier on the day of his hospitalization. The expert witness called by the defense offered an opinion that the DTP shot may have contributed to death, and claimed that less than violent shaking might have caused his death. The County Coroner testified that if the baby had died as a result of the pertussis toxin, he would have present petechial hemorrhages throughout the brain, not acute subarachnoid and subdural hemorrhage as was seen in this victim. The Court of Appeals found the defense expert’s speculation was not credible and upheld the defendant’s conviction of manslaughter.

In one of the few reported cases where the defense was successful in a jury trial, William Carey of Whitehouse, New Jersey, was acquitted of endangering his five-month-old son’s welfare in a 1998 trial. The defense theory was that the victim had a preexisting bleeding disorder which was aggravated by the immunization, but even the defense attorney conceded that his expert witnesses did not explain the existence of bilateral, diffuse retinal hemorrhages, and he was surprised the prosecutor did not spend more time on that issue in closing arguments.¹⁶

The Role of Irresponsible Expert Testimony

Irresponsible medical expert testimony has been defined by

a number of authors and recently reviewed.¹⁷ One important form is “unique causal theory.” Here the “expert” connects a cause and an effect in a way which has never been described in peer-reviewed medical literature. In short, the “expert” invents the causal relationship for use in court in spite of the fact that it has no other existence. Other forms of irresponsible expert testimony that may arise in a case with this defense include providing testimony outside of the witness’s demonstrable area of expertise, inventing nonexistent medical findings in the case being litigated, omitting pertinent facts, and outright false statements.

Medical expert testimony to the effect that the DTP immunization might produce pathology of the type seen in SBS is clearly irresponsible. Although there is sometimes a temporal connection between reaction of a toddler or infant to a vaccination and inflicted head injuries, this is not particularly surprising given the additional stress of caring for a child who feels mild symptoms resulting from the vaccination. This temporal connection between head injuries and vaccination should not be mistaken for proof of a direct causal connection – such reasoning is not scientific, logical, or reliable enough for courtroom proof. In the absence of empirical evidence supporting the view that abreaction to DTP or other vaccines can directly cause the constellation of brain damage, intracranial bleeding and ocular damage, witnesses who purport to be able to draw such a conclusion should be prohibited from testifying in court.

Confronting the “DTP Defense”

In spite of the fact that no medical papers propose that the pathology described for SBS could be related in any way to DTP immunizations, the “DTP Defense” should concern prosecutors. In highly contested child abuse criminal trials, even speculative possibilities can be sufficient to raise a reasonable doubt concerning a perpetrator’s guilt, since juries do not want to believe that caretakers are capable of violent assault on helpless children. Judges in most jurisdictions have the tools available to limit or exclude such irresponsible testimony, which is scientifically unreliable and thus inadmissible. A motion *in limine* should be filed to keep an expert witness from offering irresponsible and unreliable testimony in a trial. If the testimony cannot be excluded, prosecutors and attorneys in child protections cases should be prepared to confront such irresponsible medical testimony with clear and detailed refutation from well-qualified experts. Preventing this type of untrue defense from being used is key to achieving verdicts based upon evidence as opposed to unsupportable speculation. <>

Shaken Baby Bibliography

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- 5 In some case very similar pathology has been observed in certain types of motor vehicle injury events which appear to mimic the events of SBS. Unintentional injuries such as motor vehicle injuries or long falls are routinely excluded by history-taking and other investigative methods before SBS is diagnosed.
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- 7 See D. Ridgeway, *Disputed Claims for Pertussis Vaccine Under the National Vaccine Injury Compensation Program*, 46 J. INVESTIGATIVE MED. 168 (1998). The VICP is a no-fault insurance program that provides for compensation to the parents of children who appear to have been injured by vaccines without requiring them to sue vaccine manufacturers or physicians who administer vaccines. It was never intended to provide compensation to parents whose children suffer from mechanical injuries to the brain; however, in recent years, a number of such claims have been filed with the Program. These cases have been litigated before Special Masters with variable results. In at least some of these cases, the Special Masters have rejected the claim because of the absence of persuasive evidence of a causal connection between the vaccination and the brain injury suffered by the child. See also D. Ridgeway, *No-Fault Vaccine Insurance: Lessons from the National Vaccine Injury Compensation Program*, 24 J. HEALTH POL. POL'Y L.59 (1999). "Assertions that pertussis vaccine caused unexpected infant death (other than anaphylaxis), seizure disorders, and long-term neurological damage are inconsistent with epidemiological research." The VICP has a number of benefits, which included an improvement in immunization rates following its initiation. *Id.*
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APPLICATION TO ATTEND POST TRAINING

Name of School: **SEXUAL ASSAULT INVESTIGATION**

Date(s) of School: REG 2: January 8-9 REG 1: February 6-7 REG 3: February 21-22	POST, Classroom B, Meridian (R2240A) 3818 Schreiber Way, Coeur d'Alene (R2240B) 1440 Bench Rd., Ameritel Inn, Pocatello (R2240)
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Name of Attendee

Name of Attendee

Address

Phone Number

City, State, Zip

Dept. Head Signature

Agency

Idaho Peace Officer Standards & Training
P.O. Box 700
Meridian, ID 83680-0700

PROTOCOL
