

**5TH ANNUAL STATE COURT ADMINISTRATIVE OFFICE CHILD WELFARE ISSUES
CONFERENCE**

**ADDRESSING INVISIBLE INJURIES: CHILD NEGLECT, EXPLOITATION,
AND EMOTIONAL ABUSE**

**April 1-2, 2009
Kellogg Hotel and Conference Center
East Lansing, Michigan**

**Concurrent Workshops – Session B
10:30 – 12:00**

INVESTIGATING AND BUILDING A NEGLECT/ABUSE CASE FOR COURT

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“People only hear what they understand”

- Jason Bloom, Jury Consultant

The reality of the courtroom is that the “truth” in the courtroom is whatever the trier of fact believes it to be. Is that “fair” – “fair” is a place they sell cotton candy. This is why the evidence and the way it is presented must be understood by the jury in order to be heard.

EVIDENCE

Direct Evidence

- Direct evidence is evidence of what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining. (CJI2d 4.3).

Circumstantial Evidence

- Circumstantial evidence is evidence that normally or reasonably leads to other facts.

For example, if you see a person come in from outside wearing a raincoat covered with drops of water that would be circumstantial evidence that it is raining. (CJI2d 4.3)

Testimony

- The case worker testimony is a narrative which highlights the strength of the case. The testimony should be given in a professional, objective manner and have a conversational flow.
- The testimony and investigation should appear objective in attempting to find the truth and protect the innocent.
- The case worker should speak clearly, dress professionally, avoid arguing, and be very prepared.
- The case worker should be familiar with the questions concerning foundations of exhibits and demonstrative evidence.
- The case worker can testify to the nature of the investigation and how the investigation led to a theory of the case. The investigation is the gathering of information. The content of that information is “**hearsay.**”

Hearsay

- An out of court statement offered for the truth of the matter asserted.
- Generally, testifying to what was said by someone else is inadmissible.
- This can include non-verbal conduct which is meant to assert something, e.g., a nod.
- Statements said out of court can be defined as non-hearsay or there may be a hearsay exception to the statement.
- The attorney should be aware of who said what and who saw what.
- An admission of a party-opponent is defined as non-hearsay.
- Various other exceptions may include excited utterance, business records, statements made for purposes of medical diagnosis, and present sense impression.

Exhibits and Foundations

- Any item introduced by a party to be published by the trier of fact must be motioned into court after proper foundation has been laid.
- Photographs - is the photograph a “fair and accurate representation” of the scene it depicts at that date and time.
- Documents – the document must be relevant and foundation must be laid as to the credibility of the document. Hearsay applies to documents.
- Diagrams – a diagram must be a “fair and accurate representation” of what it depicts. If the diagram is depicting specific measurements it may have to be to scale.

Demonstrative Evidence

- Demonstrative evidence should be used to clearly or memorably convey the theme or concept of the case.
- There are five broad purposes for the use of demonstrative evidence: (1) to organize facts and themes, (2) to explain scientific or technical information, (3) to make your

facts and themes “stick” (i.e., more memorable), (4) to reinforce key concepts or themes and (5) to refresh jurors’ memories in long trials. Demonstrative evidence is not a substitute for evidence. (*Using Demonstrative Evidence to Win by Trey Cox, Trial Practice Journal, Volume 22, No. 3 Fall 2008*)

- Charts, graphs, pie charts, and diagrams can summarize information which allows the jury to visualize the results allowing them to easily understand the point.

Lay Witnesses v Expert Witnesses

- Testimony is governed by rule MRE 701:

“If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.”

- The lay witness is not allowed to speculate, draw conclusions, or hypothesize;
- Expert testimony is governed by rule MRE 702:

“If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.”

- The expert witness has the power to speculate, draw conclusions, and answer hypothetical questions.

CORROBORATIVE EVIDENCE

- The effective investigation of a difficult fact pattern depends on finding evidence that supports facts known with additional authority.
- This corroborative evidence can be found by way of any of the previously discussed types of evidence.
- The evidence should support or disprove facts already known. The more facts which support an issue for the jury, the easier that fact is understood by the jury. Facts which disprove a known fact create confusion for the trier of fact.

THE FACT PATTERNS

SEXUAL ABUSE

An eight year old female child reports at school that her mother's live-in boyfriend has sexually molested her over the course of the last three months. The assaults have happened on weekends when her mother is working and the live-in boyfriend has the day off. Her brother is not home because he is usually at his biological father's house. The assaults have happened in the living room of the home, the basement, and in the back seat of his car at a local park in town.

Discussion and Notes:

Parental Discipline v Child Abuse

A 15 year old female comes to school with what appear to be whip marks on her face and one on her back. She indicates her father (parents divorced) came to pick her up for the weekend at her mother's house. An argument ensued about a cell phone bill which led to a physical confrontation. A friend of the girls tells you at school that the 15 year old and her father are always fighting and she has seen her crying while speaking on the phone.

Discussion and Notes:

Domestic Assault Scenario

A referral is received indicating that a 10 year old child was present when law enforcement arrested the father after a domestic report complaint. Neighbors report that they often hear fighting and the 10 year old on the porch of the residence covering his ears. The 13 year old sibling states that the house is situated in a manner which does not allow them to hear family members in their respective rooms.

Discussion and Notes:

Lack of Supervision

Caretaker represents that her sister is constantly leaving her three children with her, even after she has been told that caretaker is not responsible for babysitting. Caretaker indicates they use to have an agreement that she would look after her sister's children but the family had a falling out and sister has been told to find a new caretaker. Caretaker indicates that sister says she is working at Arby's, however she believes her sister is back on drugs. The oldest child indicates that caretaker told his mom that unless she lets caretaker borrow her car for the weekend, she is not going to watch her kids for the rest of the week. The oldest child says caretaker said this yesterday.

Discussion and Notes:

Failure to Protect

Mother indicates that 8 year old child is lying when the child states that she has been molested by mom's live-in boyfriend. Mom says her work schedule would not allow child to ever be left alone with boyfriend. Mother also indicates that although she sleeps sometimes during the day, the arrangement of the house would allow her to hear if anything is going on. Mother does admit that her child has been home sick at times with live-in boyfriend and herself at the residence. Mom says that child is lying because her biological father and step-mother have planted all these ideas in the child's head. Mom says that biological father just got custody changed and gets to see the child every weekend and this is when all of this nonsense started happening.

Discussion and Notes:

