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# SOS (SAFEGUARD OUR SURVIVAL): UNDERSTANDING AND ALLEVIATING THE LETHAL LEGACY OF SURVIVAL- THREATENING CHILD ABUSE

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## INTRODUCTION

### I. THE PREVALENCE OF CHILD ABUSE IN AMERICA

Every year, as many as eleven million children under the age of seventeen suffer severe physical abuse at the hands of their parents or guardians.<sup>1</sup> In addition, approximately seven percent of all abused children suffer serious psychological abuse,<sup>2</sup> while some form of neglect is found in around eighty percent of all child abuse cases.<sup>3</sup> Moreover, an additional 3.3 million children are traumatized as indirect victims of domestic abuse, by witnessing the physical violence perpetrated against their siblings or between their parents.<sup>4</sup>

Even worse, the number of children who die from child abuse at the hands of their parents is steadily increasing. Fifteen years ago, approximately 600 children were killed by their parents.<sup>5</sup> Only six years later, the number of children who died from parental abuse doubled to

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1. PAUL MONES, *WHEN A CHILD KILLS* 36 (Simon & Schuster, Inc. 1991) (defining severe physical abuse as abuse that carries a high risk of serious injury or death and noting that the means of inflicting the abuse sometimes includes kicking, punching, beating, stabbing or shooting).

2. U.S. Dep't of Health and Human Services (2005), Administration for Children and Families, *Frequently Asked Questions About Child Abuse and Neglect*, <http://www.acf.hhs.gov> (last visited Sept. 12, 2007).

3. Bill Davis, Keynote Address at the Child Abuse Prevention Conference in Dallas, Texas: Child Abuse a National Epidemic (2006).

4. PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY, AM. PSYCHOLOGICAL ASS'N, *VIOLENCE IN THE FAMILY* 11 (1996); *see also* Davis, *supra* note 3, at 1 (estimating that a child will be abused in some manner in America every ten seconds).

5. Mones, *supra* note 1, at 36; *see also* Anna E. Waller et al., *Childhood Injury Deaths: National Analysis and Geographic Variations*, 79 AM. J. PUB. HEALTH 310, 311, 314 (1989) (noting that, as of 1989, child abuse was the leading reason for injury-related deaths of babies under one year of age).

1,100 youngsters annually.<sup>6</sup> By 2003, an average of more than four children died each day, a total of 1,500 deaths annually.<sup>7</sup> Over three-quarters, 78.7%, of these children were under four years of age and almost one-half, 43.6%, had not reached their first birthday.<sup>8</sup> Eighty-four percent of the children who died were abused by only one of their parents, while seventeen percent suffered abuse at the hands of both of their parents.<sup>9</sup>

As shocking as these tragic statistics may be, it is widely believed that these figures are conservative because of the possibility of misdiagnosing death from parental abuse as accidental or as the result of sudden infant death syndrome.<sup>10</sup> Indeed, some child advocates estimate that as many as 5,000 children were killed during 2006 as a result of some form of child abuse.<sup>11</sup>

Infants and children suffer physical injuries and death at the hands of their parents in a myriad of ways. According to a study by Sociologist Richard Gelles, approximately 1.5 million children suffered “very severe violence” (defined as kicking biting, punching, beating up, choking, burning, scalding, and threatening with or using a gun or knife), 6.9 million children suffered “severe violence” (defined as the previously described acts of severe violence plus being hit with an object), and sixty-two percent of all children suffered “family violence” (defined as acts intended or perceived as intended to cause physical pain or injury).<sup>12</sup> The Handbook of Clinical Child Psychology described parents “beating, squeezing,

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6. Childabuse.com, Child Abuse Statistics, <http://www.childabuse.com/newsletter/stat0301.htm> (referencing U.S. Department of Health and Human Services, Children’s Bureau, *Child Maltreatment 1998*) (last visited Sept. 22, 2007)).

7. U.S. Dep’t of Health and Human Services, Administration for Children and Families, *Child Maltreatment 2003*, <http://www.acf.hhs.gov/programs/cb/pubs/cm03/index.htm>, at ch. 4 (last visited Sept. 22, 2007) [hereinafter *Child Maltreatment 2003*].

8. *Child Maltreatment 2003*, *supra* note 7, at ch. 3-4 (noting that the sexes of the deceased children were almost evenly divided, with 51.7% of the victims being girls and 48.3% being boys).

9. *Child Maltreatment 2003*, *supra* note 7, at ch. 3 (noting that 40.8% of the children were abused only by their mother and 18.8% were abused only by their father).

10. United States Advisory Board on Child Abuse and Neglect, A Nation’s Shame: Fatal Child Abuse and Neglect in the United States, <http://ican-ncfr.org/documents/Nations-Shame.pdf>, at xxviii, 2, 9 (last visited Sept. 22, 2007) (concluding that a more realistic estimate was that about 2,000 children, or five youngsters every day, die from abuse, that an additional 18,000 children become permanently disabled from near-fatal abuse, and that 142,000 suffer serious injuries); *see also* Mones, *supra* note 1, at 36 (citing the National Committee for the Prevention of Child Abuse and Neglect, which estimated that the actual number of children killed by their parents or guardians may be as high as 5,000 deaths annually).

11. Davis, *supra* note 3 (estimating that a child will be abused in some manner in America every ten seconds).

12. STRAUS & RICHARD J. GELLES, PHYSICAL VIOLENCE IN AMERICAN FAMILIES (Hampton ed. 1991).

lacerating, binding, burning, suffocating, poisoning, or exposing [their children] to excess heat or cold.”<sup>13</sup> In addition, parents sometimes abused their children by biting them<sup>14</sup> or by stabbing them.<sup>15</sup>

One legal commentator, who surveyed dependency cases, described the following additional kinds of abuse:

The reported cases tell us that in the name of discipline children are beaten with belts, electrical cords, sticks, coat hangers, bats, and studded weapons. They are locked in rooms without food or heat and forced to carry excrement or to eat urine-soaked food. They have plastic bags placed over their heads, are knocked into walls, are scalded, or immersed in freezing water . . . . They are injured, they are scarred, and they die.<sup>16</sup>

13. State v. Nemeth, 694 N.E.2d 1332, 1339 (Ohio 1998) (citing HANDBOOK OF CLINICAL CHILD PSYCHOLOGY 1220 (1983)); M. Paulson & P. Blake, *The Abused, Battered and Maltreated Child*, 9 TRAUMA 136 (1967) (explaining that in 1963, a study based on nationwide newspaper reports of physical abuse, listed 662 different kinds of injuries received by abused children, including broken bones, internal injuries, and brain damage); R.H. Brown et al., *Medical and Legal Aspects of the Battered Child Syndrome*, 50 CHI.-KENT L. REV. 45, 48, 84 (1973) (summarizing a study of 444 physically abused children hospitalized at Cook’s County Children’s Hospital from March of 1967 through March of 1973, and revealing the following most commonly sustained injuries, as well as the number and type of injuries resulting in the death of the unfortunate youngsters).

MAJOR INJURIES		CAUSE OF DEATH	
Welts, bruises, hematomas	329	Subdural hematomas	16
Multiple scars	118	Ruptured internal organs	8
Fractures (often multiple)	112	Burns	5
Burns	102	Malnutrition	4
Scratches, lacerations	101	Skull fracture	2
Malnutrition	47	Gas inhalation	1
Subdural hematomas	32	Evisceration	1
Ruptured internal organs	15	Buried in yard	1

*Id.*

14. See, e.g., Albritton v. State, 221 So. 2d 192, 192 (Fla. Dist. Ct. App. 1969) (involving a sixteen-month old bitten by her mother’s boyfriend on the shoulder and picked up by the boyfriend “almost off the floor . . . with his teeth”); Bludsworth v. State, 646 P.2d 558, 559 (Nev. 1982) (describing a situation where a stepfather, who ultimately killed his two-year-old stepson, bit the boy on the boy’s scrotum); see also Davis, *supra* note 3, at 6 (noting that if there are multiple bite marks, concentrated around the breasts, buttocks and genital area, the bites are usually indicative of sexual abuse).

15. See, e.g., People v. Anderson, 406 P.2d 43, 48 (Cal. 1965) (describing how a mother’s live-in boyfriend lethally stabbed her ten-year-old daughter sixty times, including cutting the child’s tongue and inflicting one cut which extended from the child’s rectum through her vagina).

16. Kandice K. Johnson, *Crime or Punishment: The Parental Corporal Punishment Defense—Reasonable and Necessary, or Excused Abuse?*, 1998 U. ILL. L. REV. 413, 481-82 (1988).

## II. ESTABLISHING AN SOS (SAFEGUARD OUR SURVIVAL) TEAM TO PROTECT CHILDREN WHO SUFFER SURVIVAL-THREATENING ABUSE

Child abuse is an extremely complex, multifaceted, intractable problem, with no simple solutions. However, it seems clear that the children who most desperately need help are the ones whose very lives are at stake because of the lethal severity of their abuse. The repetitive nature of child abuse predetermines that, if a child is not fully protected the first time survival-threatening maltreatment occurs, the abuse “will not only continue but will become more severe.”<sup>17</sup> Use of the term “survival-threatening” reflects the reality that, even if the initial injury is not life-threatening, it may nonetheless be survival-threatening, since the abuse is almost certain to escalate in the future. Thus, if society does not act to protect a child at the time that abuse begins, there may not be a second chance. In fact, the only way to be sure that a child who suffers survival-threatening abuse the first time will be protected fully from permanent injury or death in the future, is to remove the child immediately, and perhaps permanently, from the lethal home environment.

To try to achieve the goal of fully protecting a child the first time the child is subjected to potentially survival-threatening abuse, this Article suggests the creation of a model program, called the SOS (“Save Our Survival”) Program, with the hope that this model program might ultimately be adopted by child protective agencies throughout the United States. Specially trained teams, known as SOS (“Safeguard Our Survival”) Teams, comprised of child protection workers, police officers, medical personnel, attorneys and social workers would staff the program. SOS Team members, who would be on call 24/7, would be notified as soon as a report is received that a child suffered a potentially survival-threatening injury at the hands of their parents or guardians. The reports would be prioritized as to whether the child allegedly has suffered abuse that is survival-threatening per se or survival-threatening in fact.<sup>18</sup>

The SOS Team’s highest priority will be to preliminarily investigate the report and, if necessary, to immediately intervene to protect the young victims of intentionally-inflicted syndromes, injuries, and conditions which are so lethal that they are classified as “survival-threatening per se.” The two deadly syndromes in this category are battered child syndrome (“BCS”) and shaken baby syndrome (“SBS”). The lethal injuries often

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17. *Landeros v. Flood*, 551 P.2d 389, 402 (Cal. 1976); *see also* DAVID BAKAN, *SLAUGHTER OF THE INNOCENTS* (William E. Henry & Nevitt Sanford eds., Jossey-Bass 1971); R.C. HELFER & C.H. KEMPE, *THE BATTERED CHILD* (Univ. of Chicago Press, 2d ed. 1974); Kempe et al., *The Battered Child Syndrome*, 181 AM. MED. ASS’N J. 17, 24 (1982).

18. The author uses the terms survival-threatening, survival-threatening per se, and survival threatening in fact to help facilitate the prioritization process.

suffered by the infant victims of these syndromes, including head injuries, multiple bone fractures in various stages of healing, and severe abdominal trauma also are considered survival-threatening per se. Infants who are diagnosed with non-organic failure to thrive also are categorized as suffering from a condition that is survival-threatening per se. Other means of abusing children classified as survival-threatening per se include poisoning, asphyxiation, dehydration, and starvation.

The next highest priority of the SOS Team, will be to preliminarily investigate the report and, if necessary, immediately intervene to protect the child victims of the intentionally-inflicted injuries and conditions categorized as potentially “survival-threatening in fact” to determine whether the less severe mistreatment has escalated to abuse that is, in fact, survival-threatening. Injuries that are potentially survival-threatening in fact include burns, extensive bruises, and abrasions. In addition, psychological abuse with physical maltreatment or serious neglect can also become survival-threatening in fact.

If there is a preliminary determination by the SOS Team that the child suffered an intentionally-inflicted, survival-threatening injury either per se or in fact, the child would immediately be taken into protective custody, triggering the start of the dependency process. Once a petition is filed on the child’s behalf alleging the abuse, the SOS attorney would then appear at the child’s Detention Hearing to assure that, while the investigation was underway, the child would either remain in protective custody or in another safe placement. The SOS Team would then thoroughly investigate the reported abuse, performing any necessary medical examinations, such as a skeletal survey, to properly assess the full extent and severity of the abuse. In addition, the SOS Team would determine whether there is a satisfactory, non-abusive explanation for how the injury occurred and try to eliminate the possibility that any non-abusive medical conditions caused the injury.

Once a thorough investigation is completed, if the SOS Team determines that the allegations of child abuse are unfounded, it would dismiss the case. If the SOS Team determines that the child has been abused, but that the injuries are not survival-threatening, either per se or in fact, then the child’s case would be transferred from the SOS Team to other child protection staff for appropriate services. For example, an older child, who has suffered less severe abuse, might be able to safely return to his or her home with appropriate supervision.

If, on the other hand, the SOS Team determines that the abuse suffered by the child is either survival threatening per se or in fact, then the child’s case would remain with the SOS Team with a presumption that the child would not return to the abusive home. The Team would help to locate a suitable alternative placement for the child and would organize and



coordinate the various resources the child would need to make a satisfactory adjustment, such as medical care, psychological treatment, educational assistance, and the like. The SOS child protection worker would prepare a comprehensive report to the juvenile court, thoroughly describing the extent of the abuse revealed by the investigation as well as the future placement plan for the child. The SOS attorney would advocate for continuing the child's removal from the abusive home and for the implementation of the protective placement plan at the court hearing.

Assuming that the child was removed from the abusive home, the case would remain under the supervision of SOS Team members, in the out-of-home placement. If it becomes clear that the child will never be safe in the home of his or her parents, then the SOS team would seek to have the child freed from parental care and control at the earliest possible opportunity to facilitate the child's possible adoption or long-term placement. This would be the most likely ultimate scenario, especially for a severely abused infant or young child. In the case of an older child, who would be able to communicate any future abuse to a SOS Team member, an eventual return home might be possible. This would require that both parents receive psychological treatment and parenting skills training so that they would be able to resume safe care of the child. If a return home was effectuated, the SOS Team would organize "wrap around" services for the child, meaning that everyone involved in the child's life—such as parents, relatives, neighbors, babysitters, teachers, coaches, counselors, and pediatricians—would work together to protect the child from future abuse. The SOS Team would continue to supervise the home placement until the child reached majority or the case was dismissed because the danger of future abuse no longer existed.

Thus, the SOS Teams would be responsible for protecting children from future survival-threatening abuse at the hands of their parents or guardians at every stage of the dependency process, from the initial report of abuse until the future safety of the children fully is assured. Although there would be an economic cost to providing SOS Teams, it would most likely be far less than the cost of medical treatment for children who suffer permanent brain damage or other disabling injuries as a result of repeated abuse. Obviously, the personal suffering endured by severely abused children, which the SOS Team's intervention would alleviate, cannot be measured in purely economic terms.

This Article will hopefully serve as an introductory guide for the SOS Team members in understanding the dynamics of child abuse and in determining whether the abuse that a particular child suffers is survival-threatening per se or in fact. The information provided might also be useful to anyone with a desire to try to understand and alleviate the lethal legacy of survival-threatening child abuse. Part I of the Article provides an

overview of the characteristics of child abuse, including its repetitive nature and the phenomenon of the “target child.” Parts II and III describe the characteristics and behaviors of both abusive parents and abused children, which may be indicative of child abuse. Parts IV and V focus on the specific kinds of abuse that most often put children at risk of permanent injury or death—those that are survival-threatening per se and those that are survival-threatening in fact. It is hoped that these detailed descriptions will familiarize both professionals and members of the general public, especially those groups mandated to report abuse, with the myriad forms of lethal child abuse, so that they will be better able to identify and immediately report suspected abuse of children to the SOS Team. It is also possible that a more simplified version of the information can be disseminated to children, perhaps by SOS Team members giving presentations at local schools, so that the potential victims will know what kind of actions by their parents constitute the kind of abuse which no child should have to endure.

#### PART I: UNDERSTANDING THE CHARACTERISTICS OF CHILD ABUSE

##### I. INTRODUCTION

Providing protection for abused children is a relatively recent endeavor, as a brief historical overview of child abuse makes clear.<sup>19</sup> In fact, it was not until the late 1800s that the United States began to actively prevent cruelty to a child and then only on the basis that the child was entitled to the same protection as would have been accorded any other member of the animal kingdom, like a dog or a cat.<sup>20</sup> Despite this rather inauspicious beginning, studies over the last 150 years reveal two threshold characteristics that are essential for the SOS Team and anyone else coming in contact with an abused child to understand—the repetitive nature of battering and the fact that only one child in a family may be targeted for abuse. The repetitive nature of the abuse explains why, even if a child’s initial injury is non-deadly, the child may nonetheless have suffered survival-threatening abuse. If the child is returned home, not only is it very likely that the child will be re-abused, it is almost certain that the abuse will be far more severe the second, third, and fourth time, until the child suffers permanent injuries or death. The phenomenon of the “target child” thus makes it clear that a particular child can be singled out for survival-threatening abuse, even if the other children in the home are well cared for and unabused. Thus, it is imperative that an SOS Team investigating a report of child abuse check every child in the family even if the children

19. HELFER & KEMPE, *supra* note 17, at 3-24.

20. Barbara R. Grumet, *The Plaintive Plaintiffs: Victims of the Battered Child Syndrome*, 4 FAM. L.Q. 296 (1970).

“on display” reveal no signs of maltreatment.

## II. A HISTORICAL OVERVIEW OF CHILD ABUSE

The willful killing of a child by a parent is not a modern-day phenomenon.<sup>21</sup> In primitive societies in other countries, infanticide was condoned widely with one-half to two-thirds of all infants killed at birth.<sup>22</sup> Early civilized communities practiced infanticide, such as those of the ancient Egyptians and Greeks.<sup>23</sup> In Roman civilization, the concept of *patria potestas* gave the father absolute power over his children.<sup>24</sup> As long as the children were in their father’s home they could be sold, tortured, or killed.<sup>25</sup> “Unwanted or defective babies could be deposited on a hillside outside the confines of the city and left there to die.”<sup>26</sup> As recently as twenty-five years ago, there were cultures in New Guinea in which infanticide reportedly still existed.<sup>27</sup>

Parents in other countries also have injured their children intentionally.<sup>28</sup> For example, 200 years ago in France, parents crippled their children in order to exhibit them in side shows, and this practice continued “until rather recent times.”<sup>29</sup> Unfortunately, even in 2006, some children in India were maimed and disfigured permanently so that they could earn more money for their parents as beggars.<sup>30</sup>

The United States also has a sordid history of parents killing or injuring their children.<sup>31</sup> “In colonial times, exclusive custody of the child was traditionally given to the father who supported the child and was entitled to the child’s services.”<sup>32</sup> Children were regarded as “evil and in need of strict discipline” and the courts recognized wide parental discretion.<sup>33</sup> In

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21. BAKAN, *supra* note 17, at 1, 4.

22. BAKAN, *supra* note 17, at 2; HELFER & KEMPE, *supra* note 17; Brown, *supra* note 13, at 53.

23. HELFER & KEMPE, *supra* note 17, at 8; Brown, *supra* note 13, at 53.

24. HELFER & KEMPE, *supra* note 17, at 8; Brown, *supra* note 13, at 53.

25. Brown, *supra* note 13, at 53; Grumet, *supra* note 20, at 296.

26. Grumet, *supra* note 20, at 296.

27. Robert W. ten Bensel, Fifth Nat’l Symposium on Child Abuse: The Physician’s Perspective and Role (1974).

28. HELFER & KEMPE, *supra* note 17, at 7.

29. *Id.*

30. Kumar, *Street Beggars In Indian Cities Resort to Very Aggressive Measures*, Indiaeyewitness.com, <http://www.indiaeyewitness.com/Channels/Issues.asp?category=National> (Sept. 22, 2007).

31. Brown, *supra* note 13, at 45-48.

32. Brown, *supra* note 13, at 53 (referencing CHILDREN AND YOUTH IN AMERICAN, A DOCUMENTARY HISTORY 1600-1865, at 123 (R. H. Bremmer ed. 1970)).

33. Broadbent v. Broadbent, 907 P.2d 43, 45 (Ariz. 1995); Gail D. Hollister, *Parent-Child Immunity: A Doctrine In Search of Justification*, 50 FORDHAM L. REV.

fact, a South Carolina statute, which was enacted in 1712, provided a defense to “[k]illing by stabbing or thrusting” if done while chastising or correcting your child.<sup>34</sup>

Cases in early American law in which a child successfully alleged abuse by a parent or custodian were very rare.<sup>35</sup> In 1675 and 1678, two cases were tried that resulted in the courts removing the abused children from parental homes.<sup>36</sup> However, it was not until 200 years later, in 1875 in New York City, that an organization was founded to assist abused children.<sup>37</sup> The catalyst for this milestone was when a young girl, named Mary Ellen, was found starved and severely beaten by her stepmother.<sup>38</sup> Because there were no facilities for caring for abused children at that time, Mary Ellen was brought under the protection of the Society for the Prevention of Cruelty to Animals.<sup>39</sup> The President of the Society, who brought Mary Ellen’s case, argued: “The child is an animal. If there is no justice for it as a human being, it shall at least have the rights of the stray cur in the street. It shall not be abused.”<sup>40</sup> Mary Ellen’s case ultimately led to the founding of the New York Society for the Prevention of Cruelty to Children,<sup>41</sup> which is regarded as the beginning of modern day treatment of child abuse.

### III. PHYSICAL ABUSE OF A CHILD IS REPETITIVE AND THE ABUSE WILL LIKELY BE EVEN MORE SEVERE THE NEXT TIME IT OCCURS

#### *A. Introduction*

Probably the single most frightening characteristic of child abuse is that parental assaults on children are not isolated, atypical events, but rather they are “part of an environmental mosaic of repeated beatings and abuse that will not only continue, but will become more severe unless there is

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489, 491-92 (1982).

34. S.C. Code Ann. § 16-3-40 (2006).

35. Brown, *supra* note 13, at 54.

36. *Id.*

37. Grumet, *supra* note 20, at 296.

38. *Id.*; see Michael D. Rosenbaum, *To Break the Shell Without Scrambling the Egg: An Empirical Analysis of the Impact of Intervention Into Violent Families*, 9 STAN. L. & POL’Y REV. 409, 411 (1998); Alan Mayor Sokobin, *Child Abuse: A Study In Comparative American and Jewish Law*, 31 U. TOL. L. REV. 401, 403 n.23 (2000).

39. Grumet, *supra* note 20, at 296.

40. ROBERT W. TEN BENDEL ET AL., CHILDREN IN A WORLD OF VIOLENCE: THE ROOTS OF CHILD MALTREATMENT IN THE BATTERED CHILD 3-28 (Mary E. Helfer, Ruth S. Kempe & Richard D. Krugman eds., 1997) (referencing Jacob Riis, CHILDREN OF THE POOR (1894)).

41. Rosenbaum, *supra* note 38, at 411; Sokobin, *supra* note 38, at 402.

appropriate medicolegal intervention.”<sup>42</sup> If the SOS Team finds that the abuse is survival-threatening, the child must immediately be removed from the abusive home; otherwise, the abuse will likely repeat and ultimately the chances are that the child will die or be disabled permanently.

*B. If Suspected Abuse is Not Reported, the Child Will Likely be Reabused*

The repetitive nature of child abuse puts a significant burden on each of us to report child abuse at the earliest possible opportunity so that the SOS Team can assure that it protects the child from further abuse. The unfortunate saga of the death of fifteen-month-old Jason Golding in *Commonwealth v. Labbe* exemplifies the repetitive and tragic results that can occur if a report of suspected abuse is not made.<sup>43</sup> In January of 1974, when Jason was only four months old, his mother’s boyfriend moved into the family home.<sup>44</sup> That same evening, Jason was taken to a hospital emergency room suffering from a dislocated arm.<sup>45</sup> Although this condition in an infant is virtually always caused by a sudden yanking, none of the medical personnel who treated Jason reported the possibility that the injury had been intentionally inflicted.<sup>46</sup>

Several times over the next few months, family friends saw the boyfriend “drop Jason or otherwise handle him roughly” and observed “extensive bruising and discoloration all over [the infant’s] body and head.”<sup>47</sup> However, none of these friends reported the abuse.<sup>48</sup> On July 19th, Jason was treated for a broken arm, which the parents said was due to a fall, but the treating physician said was “more likely to have been caused

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42. *Landeros v. Flood*, 551 P.2d 389, 402 (Cal. 1976) (providing a classic example of beatings and abuse that continued and became more severe over time). Eleven-month-old Gita Landeros was taken to the hospital with bruises all over her body and with comminuted spiral fractures of her right tibia and fibula, apparently caused by a twisting force. *Id.* at 395. The physician failed to diagnose Gita as suffering from BCS and released her to her mother and stepfather. *Id.* at 396. A little over one year later, Gita returned to the hospital with puncture wounds on her leg and back, severe bites on her face, and second and third degree burns on her left hand. *Id.* See Kempe, *supra* note 17, at 24; see also Boardman, *A Project To Rescue Children From Inflicted Injuries*, 7 SOC. WORK 43, 49 (1962) (“Experiences with the repetitive nature of injuries indicate that an adult who has once injured a child is likely to repeat. . . [T]he child must be considered to be in grave danger unless his environment can be proved to be safe”); Fontana et al., *The “Maltreatment Syndrome” in Children*, 269 NEW ENG. J. MED. 1389, 1393 (1964) (noting that “over 50 per cent of these children are liable to secondary injuries or death if appropriate steps are not taken to remove them from their environment”).

43. See 373 N.E.2d 227, 229 (Mass. App. Ct. 1978).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

by a sharp blow.”<sup>49</sup> Despite reaching the apparent conclusion that the parents had been dishonest about the cause of the fracture, the physician did not report his suspicions.<sup>50</sup> A little over one month later, in late August, Jason was taken to the emergency room with a cut tongue.<sup>51</sup> The doctor also noted an unexplained contusion on his face and neck but, once again, made no report to any child protection agency regarding his findings.<sup>52</sup> A month later, Jason was again taken to the emergency room with a sore arm, variously attributed by his parents to a fall or to his four-year-old sister “yank[ing]” her brother’s arm.<sup>53</sup> Again, no reports were made. The next day, Jason was again taken to the emergency room, this time with a bleeding, lacerated lip.<sup>54</sup> He also had new bruises on his forehead, ear, chin, and abdomen.<sup>55</sup> The boyfriend, who had been alone with Jason when he injured his lip, stated that the laceration had been caused when Jason fell in his playpen.<sup>56</sup>

It was only at this point that any of the numerous people who observed Jason’s injuries made any attempt to report the abuse.<sup>57</sup> Unfortunately, rather than make a formal report to a child protection agency, the attending physician asked a visiting nurses association “to visit the home and look into the cause of Jason’s frequent injuries.”<sup>58</sup> Tragically, this was insufficient. Only a month later, Jason was once again brought to the hospital, where he was pronounced dead on arrival.<sup>59</sup> An autopsy “revealed three lacerations of his liver, which could only have been caused by strong, direct force, and were inconsistent with a fall or injuries children could inflict on themselves or on each other.”<sup>60</sup> The autopsy further concluded that the fatal liver injuries occurred while Jason was alone with his mother’s boyfriend.<sup>61</sup>

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49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 229-30.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* (upholding the boyfriend’s conviction of manslaughter for the murder of Jason).

*C. If Reported Abuse Is Not Investigated, the Child Will Likely Be Reabused*

Jason's saga and the repetitive nature of child abuse, both underscore the importance of the SOS Team conducting a thorough investigation once a report of suspected abuse is made and taking whatever steps are necessary to guarantee the child's safety. A particularly horrific example of the lethal results from failure to investigate reports of child abuse occurred in 2003 in New Jersey, when the mummified body of a seven-year-old boy was found stuffed into a plastic container only a few feet from where his two starving brothers were kept in a locked basement with only a bucket for a toilet.<sup>62</sup> The New Jersey Division of Youth and Family Services was criticized severely for mishandling the case because the family had been investigated for child abuse or neglect ten times over a ten-year period.<sup>63</sup>

Similarly, in *Martin v. State*, only a few days before seven week old Turner Martin died of a subdural hemorrhage inflicted by his father, he was brought to a hospital with a broken rib, which his father admitted occurred when "in frustration he struck his crying baby."<sup>64</sup> A police officer was summoned to the hospital to discuss the infant's injuries with the father, but apparently no additional action was taken.<sup>65</sup>

*D. If an Investigation Reveals Survival-Threatening Abuse and the Child is Not Removed From the Home, the Child Will Likely be Reabused*

Because of the repetitive nature of child abuse, the SOS Team's only "appropriate medicolegal intervention" for a child who has been subjected to survival-threatening abuse is immediate, and probably permanent, removal from the abusive home.<sup>66</sup> Even if the parents appear cooperative

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62. Richard Lezin Jones, *2 Plead Guilty in Child's Death in New Jersey*, N.Y. TIMES, Sept. 28, 2005, at B1 (criticizing New Jersey Division of Youth and Family Services after the failure to conduct follow up on reports of child abuse results in the discovery of the mummified body of a seven-year-old boy).

63. *Id.* (noting that in September of 2005, two of the boys' cousins pled guilty to reckless manslaughter and child endangerment).

64. *Martin v. State*, 547 P.2d 396, 397 (Okla. Ct. Crim. App. 1976) (holding that sentencing Martin to twenty-five years for the death of his infant did not shock the court's conscience).

65. *Id.*

66. See *Sacramento Co. Welfare Dep't v. Roy E. (In re Patricia E.)*, 219 Cal. Rptr. 783 (Cal. Ct. App. 1985) (noting that eight-month-old Patricia was removed from her parents' home after sustaining a skull fracture, two broken wrists, a broken right ankle and various contusions and abrasions). After spending ten months in a foster home, Patricia was returned home, and then five months later she was again removed from her parents' home after suffering a fractured femur and tibia of her right leg. *Id.* See also *People v. Jackson*, 95 Cal. Rptr. 919, 920 (Cal. Ct. App. 1971) (explaining that a father beat his thirteen-month old so severely, that the child was readmitted to a hospital—three months earlier he was admitted because of a subdural hematoma—and according to the examining physician, he was "near enough to death where it would not be any

and seem desirous of having the child with them, “[a]ll too often . . . the child returns to his home only to be assaulted again and suffer permanent brain damage or death.”<sup>67</sup>

For example, in *Deborah S. v. Superior Court*, two-year-old Rafael B. might not have suffered the profound abuse he endured over the next three years if he had been permanently removed from the home of his mother when he was first found to be a dependent child.<sup>68</sup> At that time, the toddler already had sustained five fractures and suffered extensive bruising at the hands of his mother.<sup>69</sup> Instead of being placed in a safe environment, Rafael was returned to his mother.<sup>70</sup> By the time Rafael was five years old, his mother had subjected him to extensive, repetitive physical and psychological abuse, as well as severe neglect.<sup>71</sup> For example, his mother caged him in his crib, by placing a board across the top held down by a weight, while she jabbed him with a screwdriver through the crib’s slats.<sup>72</sup> She also forced him to sit in his own waste and confined him in a darkened closet for extended periods of time.<sup>73</sup> On numerous occasions, she restrained Rafael by tying his ankles and wrists together, with a sock stuffed in his mouth to prevent him from screaming.<sup>74</sup> She also neglected to feed Rafael for extended periods of time.<sup>75</sup> When Rafael finally was removed from his mother’s home, he had sustained a litany of additional injuries: fractures, in various stages of healing, of his right ankle and right elbow; broken blood vessels in his left eye; swelling in his right eye and upper lip; bruises on his legs, arms, chin, stomach, chest, buttocks and on both sides of his face; two missing front teeth; gashes under his chin; eight healed scalp lacerations and scars in various stages of healing on both of

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surprise if he expired at any time”).

67. See *Landeros v. Flood*, 551 P.2d 389, 395-96 (Cal. 1976); Ashraf Khalil, *Searing Questions About Baby’s Death*, SAN JOSE MERCURY NEWS, Nov. 26, 2006, at B5 (reporting that the treating physicians immediately determined that two-month-old Roman Quiroz’s broken arm was the result of physical abuse, nonetheless, the Fresno County Child Protective Services returned the child to the home of his widowed father—Roman’s mother died shortly after his birth of a brain aneurysm). Unfortunately, a little over one month after the doctors treated Roman for the broken arm, Roman died of “massive blunt force trauma” at the hands of his father. *Id.*

68. *Deborah S. v. Superior Court*, 43 Cal. App. 4th 741, 746 (Cal. Ct. App. 1996) (denying petition to reunite a mother with her children based on past failed attempts at reunification).

69. *Id.*

70. *Id.*

71. *Id.* at 744-45.

72. *Id.* at 746.

73. *Id.*

74. *Id.* at 745.

75. *Id.*



his legs, his right wrist and under his left eye.<sup>76</sup> Clearly, if he had simply been removed from his mother's home in the first place, none of these injuries would have occurred.<sup>77</sup>

*E. If an Investigation Reveals That the Initial Abuse is Not Survival-Threatening and the Child is Returned Home, Close Supervision Must be Provided or the Child Will Likely be Reabused*

If the SOS Team decides to return a child home who suffered non survival-threatening abuse, the repetitive nature of child abuse mandates that the SOS Team provide close supervision to prevent the abuse from recurring, especially if the victim is an infant or a young child. *DeShaney v. Winnebago County Department of Social Services*, a U.S. Supreme Court case, exemplifies the tragic consequences of returning an abused child to the parent's home without adequate supervision.<sup>78</sup> In January of 1983, when he was three years old, Joshua DeShaney was hospitalized with multiple bruises and abrasions; the examining physician suspected child abuse.<sup>79</sup> Following a meeting with a "Child Protective Team," Joshua was returned to the home of his father, Randy DeShaney, pursuant to a voluntary supervision agreement.<sup>80</sup> A month later, Joshua was again treated for suspicious injuries, which were reported to Joshua's caseworker, who concluded that there was no basis for action.<sup>81</sup> During monthly visits over the next six months, the caseworker observed "a number of suspicious injuries on Joshua's head" but, incomprehensively, did nothing other than record in her files "her continuing suspicions that someone in the DeShaney household was physically abusing Joshua."<sup>82</sup> In November of 1983, the caseworker was notified once again by emergency room personnel that they treated Joshua for injuries that the physicians believed were caused by child abuse but, again, the caseworker did nothing.<sup>83</sup> The next two times the caseworker went to the DeShaney home, she was told that Joshua was too ill to see her but, again, she took no action.<sup>84</sup> Finally,

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76. *Id.*

77. See EDGAR J. MERRILL, AMERICAN HUMAN ASS'N, PROTECTING THE BATTERED CHILD 6 (1962).

78. See 489 U.S. 189, 201-02 (1989).

79. *Id.* at 192.

80. *Id.* at 191-92 (noting that a prior report that Joshua's father "hit [his two-year-old son] causing marks" was not pursued by DSS following an interview with the father).

81. *Id.*

82. *Id.*

83. *Id.* at 193.

84. See *id.* (finding that the State of Wisconsin's failure to protect Joshua from his father's "violence, though calamitous in hindsight—simply does not constitute a violation of the Due Process Clause" but noting that "[i]t may well be that, by

as the U.S. Supreme Court describes it:

In March 1984, Randy DeShaney beat 4-year-old Joshua so severely that he fell into a life-threatening coma. Emergency brain surgery revealed a series of hemorrhages caused by traumatic injuries to the head inflicted over a long period of time. Joshua did not die, but he suffered brain damage so severe that he is expected to spend the rest of his life confined to an institution for the profoundly retarded. Randy DeShaney was subsequently convicted of child abuse.<sup>85</sup>

When Joshua's caseworker was informed of his devastating injuries, she reportedly commented: "I just knew the phone would ring some day and Joshua would be dead."<sup>86</sup>

#### IV. A "TARGET CHILD" MAY BE SINGLED OUT BY ABUSIVE PARENTS FOR SURVIVAL-THREATENING PHYSICAL ABUSE

##### *A. One Child in a Family May be Singled Out for Targeted Abuse*

In the majority of physically abusive families, a particular child, often referred to as the "target child," will be singled out as the recipient of the abuse.<sup>87</sup> Researchers theorize that the target child has become a "symbol of some kind" to the parents.<sup>88</sup> Periodically, the parents' anger explodes against this symbol, leading to severe abuse of the child. In *People v. Steger*, the California Supreme Court cited a survey of studies of "child-battering parents," which concluded that, although the abusive parent suffers "from emotional pressures which are not directly related" to the target child, the parent "focuses his own general feelings of frustration and

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voluntarily undertaking to protect [a child] . . . against a danger it concededly played no part in creating, the State acquired a duty under state tort law to provide him with adequate protection against that danger"); *see also* *Mammo v. State*, 675 P.2d 1347, 1350 (Ariz. Ct. App. 1983) (upholding a wrongful death action against the State of Arizona and the Department of Economic Security, where the mother and live-in-boyfriend beat her child to death finding, based on Arizona statutory law, that "a duty arose on the part of DES to act with reasonable care when it received information . . . concerning the threatened child"); *Brodie v. Summit County Childrens' Servs. Bd.*, 554 N.E.2d 1301, 1309 (Ohio 1990) (finding that the Childrens' Services Board had a duty to investigate and "prevent further child abuse or neglect" in a case involving a twelve-year-old girl who was hospitalized in a comatose condition after enduring two years of severe abuse by her father, despite repeated reports of maltreatment).

85. *DeShaney*, 489 U.S. at 193.

86. *Id.* at 209 (Brennan, J., dissenting).

87. *See* *Brown*, *supra* note 13, at 47, 60; *see also* *Deborah S. v Superior Court*, 43 Cal. App. 4th 741, 744 (Cal. Ct. App. 1996); *Boardman*, *supra* note 42, at 45; *Fontana*, *supra* note 42, at 1392; *MERRILL*, *supra* note 77, at 6; Kelly C. Wooster, *The California Legislative Approach to Problems of Willful Child Abuse*, 54 CAL. L. REV. 1805, 1806 (1966); ARNOLD SCHUCHTER, DEP'T OF JUSTICE, PRESCRIPTIVE PACKAGE CHILD ABUSE INTERVENTION (1976).

88. *See* *Boardman*, *supra* note 42, at 45.

anger on the one child, and expresses his emotions through an immature and uncontrolled display of physical abuse of the child.”<sup>89</sup>

Any child in the family can be singled out for abuse, however, there are some categories of children who are especially at risk of becoming a target child.<sup>90</sup> Although the majority of victims are normal infants, a higher incidence of target children has been found among physically disabled, premature, multiple-birth, adopted, foster, and step-children.<sup>91</sup> Mentally deficient children, hyperactive children, or children with “an irritating personality”<sup>92</sup> are also frequently targeted. If the child is unwanted, or the parent sees the child as “bad” or as a “burden,” the child is also at greater risk.<sup>93</sup> One study found abuse to be most frequently directed towards the youngest child in the family, perhaps because the child was an unwanted addition.<sup>94</sup> Infants who are fussy, cry constantly, or are difficult to comfort may prove too demanding for an immature parent, resulting in targeted abuse.<sup>95</sup> The abuse is seldom provoked by the child’s own behavior or, if it is, the punishment is grossly inappropriate and excessive for the child’s misconduct.<sup>96</sup>

The tragic case of Elisa Izquierdo exemplifies both the target child syndrome and, once again, the ramifications of placing a child with an abusive parent without adequate supervision.<sup>97</sup> Born addicted to crack, Elisa was placed initially with her father, who was devoted to her.<sup>98</sup> When her father was unable to pay the tuition for Elisa at a private Montessori

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89. 546 P.2d 665, 671 (Cal. 1976); John Caffey, *The Parent-Infant Traumatic Stress-Syndrome*, 114 AM. J. OF ROENTGENOLOGY 218, 218-29 (1972); Paul Mullin Ganley, Note, *The Battered Child: Logic in Search of Law*, 8 SAN DIEGO L. REV. 364, 375 (1971); see also *People v. Phillips*, 75 Cal. Rptr. 703, 705 (Cal. Ct. App. 1981) (describing a mother’s murder of one of her two adopted daughters, and the near murder of the second, despite being a devoted mother to her two biological sons).

90. See Caffey, *supra* note 89, at 227 (discussing the higher incidence of abuse in certain groups of infants).

91. *Id.* at 229; see, e.g., *Phillips*, 175 Cal. Rptr. at 705.

92. See Brown, *supra* note 13, at 47-48; *Please Keep Me Safe* (Promise House 2006), pamphlet distributed at a presentation at the Prevent Child Abuse Texas Conference, Dallas, Texas (Feb. 20-21, 2006) [hereinafter *Please Keep Me Safe*].

93. *Id.* at 47-48.

94. See J. M. Cameron et al., *The Battered Child Syndrome*, 6 MED. SCI. & L. 2, 14 (1966) (describing age and order of birth as social aspects that correlate to instances of abuse).

95. Caffey, *supra* note 89, at 223.

96. Merrill, *supra* note 77.

97. See DOUGLAS E. ABRAMS & SARAH H. RAMSEY, CHILDREN AND THE LAW IN A NUTSHELL (2d ed. 2003) (describing Elisa Izquierdo’s death at the hands of her mother, who was later sentenced to fifteen years to life in prison); see also David Van Biema, *Abandoned to Her Fate*, TIME, Dec. 11, 1995, at 32; Frank Bruni, *Benefactor Offered to Slain Girl*, N.Y. TIMES, Nov. 26, 1995, at 39.

98. See ABRAMS & RAMSEY, *supra* note 97, at 126.

preschool, the staff told Prince Michael of Greece, a benefactor of the school, about her plight.<sup>99</sup> Prince Michael met Elisa, found her to be a “lively, charming and beautiful” girl, and ultimately agreed to pay her full private tuition through twelfth grade.<sup>100</sup> Elisa’s life seemed to have turned around except for the fact that, when Elisa visited her mother and stepfather on weekends, she was abused physically, although the mother’s five other children were not abused.<sup>101</sup> Only Elisa was the target child.<sup>102</sup> Because of the abuse, Elisa’s father was trying to limit the visits with her mother, when he was stricken with cancer and died.<sup>103</sup> Unfortunately, despite the allegations of abuse, Elisa was placed with her mother following her father’s death.<sup>104</sup> For the next year, Elisa was beaten, sexually abused, and tortured.<sup>105</sup> Child protective services received at least eight reports of abuse but did nothing.<sup>106</sup> Finally, at the age of six, Elisa’s mother killed her by throwing her against a concrete wall.<sup>107</sup>

Daytwn Bennett was another target child, whose mother beat him with a broomstick and ultimately starved him to death.<sup>108</sup> At his death, five-year-old Daytwn weighed only thirty pounds and scars covered his body.<sup>109</sup> A caseworker, who was involved with the family because of prior abuse of Daytwn, visited the home thirteen times in the nine months before the boy’s death.<sup>110</sup> His four siblings had not been abused physically and the family lived in a neat and clean apartment.<sup>111</sup>

*B. If the Target Child Is Removed from the Home, Another Child in the Family May Become the “New” Target Child*

If the target child is removed from the family home, a sibling will sometimes be singled out as the new target child. This presents a difficult

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99. *Id.*

100. *Id.* at 126-27.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *See id.* at 128; *see also* Dennis Saffran, *Fatal Preservation*, CITY J. (Summer 1997), available at [http://www.city-journal.org/html/7\\_3\\_fatal.html](http://www.city-journal.org/html/7_3_fatal.html) (arguing that keeping abused children in their homes can lead to their death).

109. *See* ABRAHMS & RAMSEY, *supra* note 112, at 128.

110. *Id.*

111. *Id.*; *see also* Michael Brick, *As Time Stands Still in Court, Justice for a Broken Girl Waits*, N.Y. TIMES, Sept. 23, 2006, at A1 (describing the death by starvation of seven-year-old, target child Nixzmary Brown).

problem when considering intervention. Often, the juvenile court faces a situation in which a target child appears before the court on a petition alleging physical abuse. At the same time, the target child's siblings also appear before the court on a petition alleging that they have no parent or guardian exercising proper care or control due to their sibling's abuse. At the very least, it seems clear that the abuse of one child should be a sufficient basis for making any siblings who stay in the home dependent children of the juvenile court, to be sure that they remain safe.

The California Appellate Court decision in the case of *In re Biggs* provides strong case law support for intervention on behalf of the non-abused sibling of a target child.<sup>112</sup> In that case, seven-year-old David, residing with his mother, was found to be in an almost constantly bruised and battered condition due to physical abuse and cruelty at the hands of the mother's live-in boyfriend.<sup>113</sup> The mother did nothing to protect her son from the beatings nor did she protect her four-year-old, non-abused daughter, Serenia, from witnessing the abuse.<sup>114</sup> The appellate court not only found that the mother's "failure to protect her son from the consistent cruelty of another" adequately supported David's dependency and removal from the home, but the court also found that there was "substantial" evidence to declare Serenia to be a dependent child and remove her from the mother's home as well.<sup>115</sup>

Noting that the boyfriend previously had abused another unrelated child, the appellate court also did not agree that the situation could be rectified as far as Serenia was concerned by simply removing David from the home and allowing Serenia to continue to reside with her mother and the boyfriend.<sup>116</sup> The court felt that, as long as the boyfriend was in the home, "there remained the strong possibility that he would transfer his sadism to any other juvenile available."<sup>117</sup> The court concluded that "[s]o long as that possibility exists, the juvenile court's obligation to the minor requires that Serenia be removed as a possible victim."<sup>118</sup>

Similarly, in *In re Edward C.*, seven-year-old Marlee suffered "severe repeated beating[s]" as punishment for "such childhood infractions as bed wetting and inability to remember a Sunday school lesson," which the

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112. County of L.A. Dep't of Pub. Soc. Servs. v. Robinson (*In re Biggs*), 94 Cal. Rptr. 519 (Cal. Ct. App. 1971) (finding that a child present during the abuse of a sibling was sufficient to render that child a dependent of the juvenile court).

113. *Id.* at 520.

114. *Id.* at 524.

115. *Id.*

116. *Id.* at 343.

117. *Id.*

118. *Id.*

California Court of Appeals felt “amply demonstrate[d] the father’s pitiless and unreasonable approach to discipline.”<sup>119</sup> Marlee’s two siblings, nine-year-old Eric C. and six-year-old Edward C., were not similarly abused.<sup>120</sup> The court noted that it “could reasonably infer” that if Marlee was no longer in the home, one or both of the boys would be substituted “as an object of [the father’s] ruthless drive for religious perfections by some standard known only to him.”<sup>121</sup>

*C. Non-Abused Children in the Family May Be Victims of Psychological Trauma from Witnessing the Abuse Inflicted on Their Target Child Sibling*

Unfortunately, non-abused children in the family suffer psychological trauma from witnessing the abuse inflicted on their target child sibling. There can be little doubt that children frequently witness the abuse of their siblings. In one study, almost two-thirds, or 62.2%, of the other children residing in the home were present at the time the abuse of their sibling occurred.<sup>122</sup> Even if these non-abused siblings of a target child can safely remain in the home, it is essential that counseling be provided to help the non-abused children deal with the psychological trauma they may have suffered by witnessing the abuse of their “target child” siblings. Recognizing this concern, the California Appellate Court in *Biggs* commented that the mother’s “neglect in protecting David physically [was also] neglect in not protecting Serenia emotionally.”<sup>123</sup> Similarly in *Edward C.* the court noted that there was “evidence that the boys not only watched the vicious treatment of their . . . sister, but were admonished that the beatings were on the command of the Lord.”<sup>124</sup> The court concluded that it was “difficult to conceive that the brothers could not be emotionally or psychologically scarred by witnessing the constant acts of cruelty upon their sister.”<sup>125</sup>

In fact, there is increasing evidence that children who witness physical abuse of their siblings—or domestic violence between their parents—suffer from collateral damage and experience the same psychological problems as

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119. *Edward C. v. Edmond C. (In re Edward C.)*, 126 Cal. App. 3d 193, 203, (Cal. Ct. App. 1981).

120. *Id.* at 198.

121. *Id.* at 203.

122. D. GIL, *VIOLENCE AGAINST CHILDREN: PHYSICAL CHILD ABUSE IN THE UNITED STATES* 122 (1970).

123. *In re Biggs*, 94 Cal. Rptr. at 523.

124. *In re Edward C.*, 126 Cal. App. 3d at 203.

125. *Id.* (noting that it is “reasonable to infer that continued exposure to the threat of physical force will inhibit the healthy emotional development necessary to a progression from childhood to independent manhood”).

children who are abused directly.<sup>126</sup> Child witnesses end up with the same confused feelings as the abused sibling and share the same combination of love and fear of the abuser.<sup>127</sup> Children who witness domestic violence also manifest the same symptoms as directly abused children, such as fear, confusion, guilt, anxiety, loss of self-esteem, and depression.<sup>128</sup> Both direct and non-direct victims also experience similar behavior problems, including bedwetting, nightmares, eating disorders, and learning disabilities.<sup>129</sup> In addition, they may demonstrate higher levels of aggression along with dysfunctional behavior and disobedience.<sup>130</sup> Moreover, children who witness family violence are at a greater risk for substance abuse problems.<sup>131</sup>

The devastating psychological effects on an unabused child whose parents engaged in “systematic inhumane treatment” of a sibling were clearly shown in the case of *Stuart v. Tarrant County Child Welfare Unit*.<sup>132</sup> In that case, Jeremy Stuart was the only surviving child of Lloyd and Susan Stuart.<sup>133</sup> The mother claimed that Jeremy’s younger brother, Jamie, died of “infant death syndrome” when he was ten months old.<sup>134</sup> “Jeremy’s younger sister, Michelle, died at age three from severe burns [she] sustained in a fire in the Stuarts’ camper.”<sup>135</sup> Although the parents were aware that Michelle occasionally climbed onto the camper’s gas stove to get to the floor, the parents had left Michelle unattended in the camper, “sitting on a mattress located above [the] lighted gas stove,” while they took Jeremy out to help sell flea market goods.<sup>136</sup> Michelle climbed down

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126. See, e.g., AUDREY MULLENDER ET AL., CHILDREN’S PERSPECTIVES ON DOMESTIC VIOLENCE, LONDON (Sage 2002); H.L. Bragg, *Child Protection in Families Experiencing Domestic Violence*, U.S. Dep’t HHS/ACYF/Office of Child Abuse and Neglect: Washington, D.C. (2003); R.J. Magan et al., *Domestic Violence in Child Welfare Preventative Services: Results from An Intake Screening Questionnaire*, 22 CHILD. & YOUTH SERVS. REV. 251-74 (2000); M. Matthews, *Practice Implications At the Intersection: Domestic Violence in Family and Child Welfare Courts*, N.A.C.C. CHILD. L. MANUAL (2005).

127. See Rose Marie Penzerro, Associate Professor of Social Work, UT-Pan American, Presentation at the 20th Annual Conf. on the Prevention of Child Abuse: Families Experiencing Domestic Violence and Child Abuse, slide 4 (Feb. 20-21, 2006).

128. *Id.*

129. *Id.* One study estimated that forty-five percent of A.D.H.D. children had been exposed to domestic violence. *Please Keep Me Safe*, *supra* note 92.

130. JENNY GOMEZ, THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND ADDICTION (The Betty Ford Center 2006), presented at the Prevent Child Abuse Conference, Dallas, Texas (2006).

131. *Id.*

132. 677 S.W.2d 273 (Tex. App. 1984).

133. *Id.* at 277.

134. *Id.*

135. *Id.*

136. *Id.*

onto the stove and caught her clothing on fire, causing third degree burns over ninety percent of her body.<sup>137</sup> Medical personnel noted that Michelle was in an extremely malnourished and emaciated condition, that her teeth had been loosened and that there was a visible amount of dried blood in Michelle's mouth; none of these conditions could have been caused by the fire, rather they were the result of severe parental abuse.<sup>138</sup> Jeremy described some of the ways in which he observed his parents punish Michelle, including beating her and "pinning her in a towel so that she was unable to move."<sup>139</sup>

Psychological testing of Jeremy, following Michelle's death, revealed that, "as a result of witnessing" the "inhumane treatment" of his sister by his parents, Jeremy became "an abnormally fearful and anxious child."<sup>140</sup> In addition, the tests "were suggestive of (1) educational experience deprivation; (2) a language development delay; or (3) language delay caused by experience deprivation."<sup>141</sup> The appellate court found no error in the trial court's conclusion that "Jeremy's fears and anxieties evidenced emotional damage to him, and that if the Stuarts were allowed to continue to exercise parental rights, Jeremy's emotional well-being would be further endangered."<sup>142</sup>

PART II: UNDERSTANDING THE CHARACTERISTICS AND BEHAVIOR OF  
PHYSICALLY ABUSIVE PARENTS WHICH MAY BE RISK FACTORS FOR  
CHILD ABUSE  
I. INTRODUCTION

In addition to understanding the characteristics of child abuse, it is helpful for the SOS Team, as background information, to be aware of the general demographic characteristics of abusive parents. The Team should be familiar with specific traits which indicate that parents are at an increased risk of abusing their children. Obviously these traits do not in any way prove that a specific parent has abused his or her child; rather, the traits can act as red flags for the SOS Team that abuse may have occurred.

Numerous studies demonstrate that parents who were abused physically themselves as children are far more likely than unabused parents to pattern the behavior they learned from their parents and abuse their children.<sup>143</sup> In

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137. *Id.*

138. *Id.* at 277-78.

139. *Id.* at 278.

140. *Id.* at 279.

141. *Id.* at 281.

142. *Id.* at 279.

143. See, e.g., C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 J.A.M.A. 17, 18 (1962) ("There is also some suggestion that the attacking parent was subjected



addition, parents who abuse one another are far more likely to abuse their own children, as compared to parents who do not engage in domestic violence.<sup>144</sup> Parents who are substance abusers are also at increased risk of abusing their children when their inhibitions are released while under the influence of drugs or alcohol.<sup>145</sup> Moreover, abusive parents tend to have very unrealistic expectations of their children, which may put the children at risk of abuse when they do not, or cannot, live up to their parent's demands.<sup>146</sup>

Parental behavior, when they bring their injured child into a medical facility for treatment, may also be instrumental in helping the treating physician and the SOS Team determine whether the harm has been inflicted accidentally or intentionally. The most important indication that an injury is intentional is the failure of the parents to provide a medically satisfactory explanation regarding how the harm occurred.<sup>147</sup> Parents who behave in an abnormal way toward their injured child may also alert the treating physician to the possibility of child abuse.<sup>148</sup>

## II. AN OVERVIEW OF THE DEMOGRAPHIC CHARACTERISTICS OF PHYSICALLY ABUSIVE PARENTS

The vast majority of physically abused children are battered by one or both of their parents.<sup>149</sup> According to a recent survey by the U.S.

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to similar abuse in childhood.”).

144. Penzerro, *supra* note 127, slide 3.

145. *See* Commonwealth v. Day, 569 N.E.2d 397, 399 (Mass. 1991) (recalling testimony given by an expert on Battered Child Syndrome indicating that drug use is involved in more than sixty percent of child abuse cases).

146. *See, e.g.,* People v. Walkey, 223 Cal. Rptr. 132, 137 (Cal. Ct. App. 1986) (recounting expert testimony indicating that abusive parents often have unrealistic expectations of their young children).

147. *See* Kempe, *supra* note 17, at 18-19 (explaining that parents of abused children often either give historical data to physicians that is markedly different from the medical findings of the physician or completely deny all knowledge of the child's injury).

148. ABRAMS & RAMSEY, *supra* note 97, at 125 (“Parents may react inappropriately to news of an injury's severity, such as by appearing relatively calm to the diagnosis of a fractured femur.”).

149. *See, e.g.,* AMERICAN HUMANE ASSOCIATION, *Child Abuse and Neglect in America: What the Data Say* 1 (2004), [http://www.amerhumane.org/children/factsheets/data\\_abuse.htm](http://www.amerhumane.org/children/factsheets/data_abuse.htm) (describing that in 2001, parents were responsible for physical abuse of their children 80.9% of the time). Other studies found the following percentages of responsibility of parents for the physical abuse of their children: I. Silver, *Child Abuse Syndrome: A Review*, 96 MED. TIMES 803, 812 (1968) (seventy-two percent); Vincent DeFrancis, *Child Abuse: Preview of A Nationwide Survey*, AM. HUMANE ASS'N (1963) (seventy-five percent); Bryant et al., *Physical Abuse of Children—An Agency Study*, 42 CHILD WELFARE 125, 127 (1963) (eighty-six percent); GIL, *supra* note 122 (eighty-seven percent); MERRILL, *supra* note 77 (ninety percent). If the parent is not responsible, the abuser is usually an immediate family member who lives in close association with the injured child such as a sibling, boyfriend, relative,

Department of Health and Human Services, 78.2% of the children who died from physical abuse were killed by their parents.<sup>150</sup> Nearly seventeen percent of the children studied were abused by both of their parents,<sup>151</sup> 18.8% were only abused by their fathers<sup>152</sup> and 40.8% were only abused by their mothers.<sup>153</sup> It is likely that mothers are the most frequent abusers because they are most apt to be at home alone with their children for prolonged periods of time. Predictably, the same applies to men. Abuse by a male relative increases when he is unemployed or home alone with his children.<sup>154</sup> In addition, studies reveal a “‘repeated pattern’ of partners of single mothers” abusing their children “while the mothers are at work.”<sup>155</sup> Indeed, single parenthood itself is a risk factor for child abuse,<sup>156</sup> undoubtedly because the single parent often has no one to alleviate or share some of the difficulties of child rearing.

One study showed that fathers are more apt to abuse their sons whereas mothers are more apt to abuse their daughters.<sup>157</sup> Another survey of newspaper articles regarding child abuse, conducted by the American Humane Association, determined that injuries inflicted by the father were more serious and involved more fatalities than those inflicted by the mother.<sup>158</sup> “Often one parent is the active batterer while the other parent passively accepts the action . . . [in some circumstances] because the parent feels too weak and inadequate to interfere” with the abuse.<sup>159</sup> The passive parent may also suffer from a lack of parenting skills or from feelings of inadequacy or apathy.<sup>160</sup>

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guardian or foster parent. *See also* Brown, *supra* note 13, at 50.

150. CHILD MALTREATMENT, *supra* note 7, at ch. 4 (indicating in the same study that non-parental perpetrators caused the death of 17.7% of abused children).

151. *Id.* at ch. 3; *see, e.g.*, People v. Aeschlimann, 104 Cal. Rptr. 689, 690-93 (Cal. Ct. App. 1972) (describing how both the mother and father of the victim were observed on numerous occasions severely beating their eleven-month-old child before the infant’s death from a lacerated duodenum caused by the abuse).

152. CHILD MALTREATMENT, *supra* note 7; *see also* Duley v. State, 467 A.2d 776, 781 (Md. Ct. Spec. App. 1983) (affirming a conviction of a father who murdered his two-month-old daughter).

153. CHILD MALTREATMENT, *supra* note 7.

154. *Id.*

155. Commonwealth v. Day, 569 N.E.2d 397, 399 (Mass. 1991) (reversing trial court conviction of defendant due to court’s error in admitting expert testimony on the profile of individuals who typically abuse children into evidence).

156. *Please Keep Me Safe*, *supra* note 92.

157. Cameron, *supra* note 94, at 19 (relating results of a study of twenty-nine children).

158. DeFrancis, *supra* note 149, at 5.

159. Harvey J. Egar & Anthony J. Popeck, Comment, *The Abused Child, Problems and Proposals*, 8 DUQ. L. REV. 136, 143-44 (1969) (noting that in other circumstances the passive parent does not act because they do not want to be involved in the abuse).

160. *Please Keep Me Safe*, *supra* note 92.

A one-year national survey of hospitals revealed some other general characteristics of physically abusive parents.<sup>161</sup> The study found that some parents who inflict abuse were of low intelligence.<sup>162</sup> Educational achievement varied among abusing parents.<sup>163</sup> Most of the abusers were between twenty-one and thirty years of age and approximately fifty percent were unmarried when they gave birth to their children.<sup>164</sup>

In *State v. Tanner*, the Utah Supreme Court concluded that a parental abuser, like the mother who killed her three-year-old daughter, “is likely to be an emotionally immature individual from almost any walk or stratum of society, a person who probably suffers from the pressures of marital difficulties or economic circumstances or other emotional pressures not directly related to the child himself, so that the child becomes merely a focus for generalized frustration or anger and an outlet for the poorly controlled aggressiveness of the parent.”<sup>165</sup>

Several of the characteristics noted by the Utah Supreme Court in *Tanner* are similar to the factors that some experts call the “child battering profile.”<sup>166</sup> These factors may be useful to the SOS Team in identifying parents who are at risk of abusing their children. The profile includes the following five “family characteristics” that may be associated with child abuse: “(1) stress derived from economic hardship and conflict between the parents; (2) isolation of the family; (3) violence against the mother; (4) obtaining medical care from different physicians and hospitals; and (5) singling out of a particular child for abuse.”<sup>167</sup> If admissible, expert

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161. Kempe, *supra* note 143, at 17-18 (supplementing with additional information from seventy-seven District Attorneys’ offices from a similar time period).

162. *Id.* at 18; *see also* Cameron, *supra* note 94, at 18.

163. Kempe, *supra* note 143, at 18 (“However, from the scant data that are available, it would appear that in these cases [of parental abusers with good education] there is a defect in character structure.”).

164. Cameron, *supra* note 94, at 15.

165. 675 P. 2d 539, 541-42 (Utah 1983), *superceded on other grounds*, *State v. Walker*, 743 P.2d 191 (Utah 1987); *see also* Allen H. McCoid, *The Battered Child & Other Assaults Upon the Family: Part One*, 50 MINN. L. REV. 1, 18-19 (1965).

166. *See, e.g.*, *Commonwealth v. Day*, 569 N.E.2d 397, 399 (Mass. 1991); *see also* *State v. Loebach*, 310 N.W.2d 58, 62-63 (Minn. 1981) (“[B]attering parents often exhibit similar characteristics such as low empathy, a short fuse, low temper, short temper, low boiling point, high blood pressure, strict authoritarianism, uncommunicativeness, low self-esteem, isolation and lack of trust.”).

167. *Day*, 569 N.E.2d at 398 (holding that the admission of expert testimony by Dr. Eli Newberger regarding the profile constituted grounds to reverse a defendant’s manslaughter conviction in the death of his live-in girlfriend’s eighteen-month-old daughter from “blunt trauma to the head and neck” because evidence of a “‘child battering profile’ does not meet the relevancy test, because the mere fact that a defendant fits the profile does not tend to prove that a particular defendant physically abused the victim”); *see also* *People v. Wade*, 750 P.2d 794, 797-98 (Cal. 1988), *cert. denied*, 488 U.S. 900 (1988) (explaining that defendant, who beat his wife’s ten-year-old child to death, stated that he was “under pressure, was seeing a psychiatrist, had been a prisoner of war in Vietnam, and was on welfare”); *Loebach*, 310 N.W.2d at 62

testimony regarding these factors may also be valuable in the prosecution of abusive parents.<sup>168</sup> Proponents of using expert testimony regarding the profile in the criminal context feel that the evidence should be admissible to overcome the obstacles faced by district attorneys in prosecuting the abuser in a battered child case.<sup>169</sup> As the Minnesota Supreme Court explained in *State v. Loebach*, the victim of child abuse is

usually an infant and therefore particularly defenseless. Children who are abused are also almost wholly dependent on those who inflict the abuse. The victims' age and dependence act to prevent them from testifying against abusing caretakers. Finally, abuse almost always occurs when the child is in the exclusive care of a battering caretaker. These features of abuse cases make it very difficult to establish a defendant's guilt by means of direct evidence.<sup>170</sup>

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(noting that the abusive parents were isolated and had minimal contacts with other people); *State v. Nemeth*, 694 N.E.2d 1332, 1337 (Ohio 1998) (acknowledging that abusive parents generally become adept at concealing the abuse from the public); *Tanner*, 675 P.2d at 547 ("Where there is child abuse, there will invariably be secrecy.").

168. See, e.g., *Tanner*, 675 P.2d at 551 (affirming conviction of defendant even though trial court admitted expert testimony regarding evidence of victim's battered child syndrome and noting that evidence of defendant's patterned behavior toward child was appropriate).

169. See, e.g., *Duley v. State*, 467 A.2d 776, 782-83 (Md. Ct. Spec. App. 1983) (holding that evidence of the "child battering profile" was erroneously admitted because the record did not establish that the doctor was qualified to testify as an expert but that the error was harmless); see *People v. Walkey*, 223 Cal. Rptr. 132, 137 (Cal. Ct. App. 1986) (considering the admissibility of expert testimony regarding the similar "battering parent syndrome" ("BPS") to help identify people who were likely to abuse their children). Expert testimony in *Walkey* listed factors indicating BPS, including "having been abused oneself in infancy or childhood. . . . social isolation, unreasonable expectations of young children (including toilet training at a very early age) and stress." *Id.* The appellate court ultimately found that the trial court's admission of expert testimony regarding BPS was erroneous, because it impermissibly allowed the jury to infer that the defendant was a battering parent and, therefore, must have caused the death of a friend's two-year-old son. *Id.* Ultimately, however, the court found that the error was harmless because the prosecution's case against the defendant was so strong that it would have supported a conviction of Walkey for second-degree murder. *Id.* Subsequently, several courts from other states also have found that expert testimony regarding the child battering profile or the battering parent syndrome constitutes inadmissible character evidence because it might allow the jury to conclude that, because the defendant fit the profile of a group having a higher incidence of child abuse, the defendant is more likely to have committed the crime; see also *Sanders v. State*, 303 S.E.2d 13, 18 (Ga. 1983) ("[U]nless a defendant has placed her character in issue or has raised some defense which the battering parent syndrome is relevant to rebut, the state may not introduce evidence of the syndrome."); Thomas N. Bulleit, Jr., Note, *The Battering Parent Syndrome: Inexpert Testimony as Character Evidence*, 17 U. MICH. J. L. REFORM 653, 666 (1984); Gregory G. Sarno, *Admissibility at Criminal Prosecution of Expert Testimony on Battering Parent Syndrome*, 43 A.L.R. 4th 1203, 1207 (1986).

170. *State v. Loebach*, 310 N.W.2d 58, 63-64 (Minn. 1981) (rejecting testimony that the defendant had difficulty controlling his temper and was easily frustrated as a youth because a jury might "convict a defendant in order to penalize him for his past misdeeds or simply because he is an undesirable person . . . [or] overvalue the character evidence in assessing the guilt for the crime charged" but sustaining defendant's third

### III. UNDERSTANDING THE SPECIFIC CHARACTERISTICS OF ABUSIVE PARENTS WHICH MAY BE RISK FACTORS FOR CHILD ABUSE

#### *A. Parents Who Were Physically Abused Themselves as Children are at Risk of Physically Abusing Their Own Children*

If there is one attribute that seems to be characteristic of almost all abusive parents, it is that they were maltreated by their own parents when they were children.<sup>171</sup> In fact, in *People v. Walkey*, where a live-in boyfriend killed his girlfriend's son, the California appellate court acknowledged that "the most important single factor" in the profile of a child abuser is "having been abused oneself in infancy or childhood" and pointed out that when the boyfriend was a child, he was disciplined by his own parents by being hit with a board and by being bitten.<sup>172</sup> According to one study, an abused child's chances of becoming an abusive adult are "in some instances a thousand times greater than [those of] an unabused child."<sup>173</sup> More recent estimates are that as many as eighty-five to ninety percent of physical child abusers were themselves physically abused as children.<sup>174</sup>

Psychiatrists theorize that physical punishment by parents encourages

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degree murder conviction for beating his three-month-old son to death because there was "overwhelming evidence of [his] guilt even without the 'battering parent' testimony").

171. See, e.g., *People v. Wade*, 750 P.2d 794, 796, 798 (Cal. 1988) (stating that the mother's husband, who beat her ten-year-old daughter to death, was physically and sexually abused from the age of three by his mother's boyfriend and also was locked in a closet for hours); *People v. West (In re F.W. & C.W.)*, 634 N.E.2d 1123, 1124-25 (Ill. App. Ct. 1994) (noting that a mother, who beat her fourteen- and sixteen-year-old children, had childhood scars as a result of being beaten by her own mother, which she did not consider abuse because her mother "was merely trying to teach her what was right"); *State v. Conlogue*, 474 A.2d 167, 172-73 (Me. 1984) (referencing Dr. Lambert's opinion that "abused children often become abusive parents" and noting that a mother, who abused her one-and-a-half-year-old daughter, had been an abused child herself, thus the mother's "own history of child abuse would predispose her to abuse her own child"); *Loebach*, 310 N.W.2d at 62 (referencing Dr. Robert ten Bensel's testimony that "adults who abuse their children were often abused themselves" and a former case worker's testimony that the abusive father's mother, who raised him by herself, had abused him "until he was old enough to fight back"); *State v. Wilkerson*, 247 S.E.2d 905, 907-08 (N.C. 1978) (repeating a witness' testimony that a father, who beat his two-year-old son to death, said that his own mother abused him).

172. *Walkey*, 223 Cal. Rptr. at 133, 137.

173. ABRAMS & RAMSEY, *supra* note 97, at 336 (noting that the Gelles' own research indicated that there was "only" about a fifty percent chance that an abused child will become an abusive parent); see also Richard J. Gelles, *Family Violence: What We Know And Can Do*, in UNHAPPY FAMILIES: CLINICAL AND RESEARCH PERSPECTIVES ON FAMILY VIOLENCE 1, 5-7 (Eli H. Newberger & Richard Bourne eds., 1985).

174. Davis, *supra* note 3, at 8; see also Kempe, *supra* note 143, at 18 (finding that data from some cases indicates that abusive parents were themselves subject to abuse when they were children).

the violent behavior of their children, “both [by] frustrat[ing] the child[ren] [and by] giv[ing] [them] a model to imitate and learn from.”<sup>175</sup> Consequently, when the children become parents, they practice on their progeny the same destructive techniques that their parents once used on them.<sup>176</sup> As the Minnesota Supreme Court noted in *State v. Loss*, “a child who is frequently beaten while growing up may develop the same pattern of discipline for his or her own children in later life.”<sup>177</sup> Without intervention these patterns are transmitted from one generation to another.<sup>178</sup>

*B. Parents Who Engage in Domestic Violence Against One Another are at Risk of Physically Abusing Their Children*

Child abuse and domestic violence among the parents often go hand in hand.<sup>179</sup> In one in four homes where a child is mistreated, there is domestic violence among the parents as well.<sup>180</sup> Similarly, in fifty to seventy-five percent of the homes where there is domestic violence, some form of child maltreatment exists.<sup>181</sup> Domestic violence is also an important predictor of future child abuse; in seventy percent of the cases where there is domestic violence among the parents, the child ultimately is abused also.<sup>182</sup>

175. DAVID N. DANIELS ET AL., *VIOLENCE AND THE STRUGGLE FOR EXISTENCE* 81 (Little, Brown, & Co. 1970). Moreover, a recent study on monkeys raised by abusive mothers “suggests that growing up in an abusive household can alter brain chemistry in a way that makes some youngsters prone to mistreating their own children when they grown up” by “permanently lower[ing] the brain’s production of an important regulator of emotions called serotonin” making them “more prone to acts of rejection, impulsive aggression and violence.” *Abuse Alters Victims’ Brains*, WASH. POST, Nov. 4, 2006, at A11 (citing a study by Dario Maestripieri reported on November 1, 2006 in the journal *Behavioral Neuroscience*).

176. 204 N.W.2d 404, 408 (Minn. 1973) (referring to medical testimony of patterns of behavior that typify a physically abusive person).

177. *Id.*

178. *See State v. Loebach*, 310 N.W.2d 58, 62 (Minn. 1981) (quoting expert testimony indicating that physical abuse often is transmitted from one generation to the next); Kempe, *supra* note 17, at 18 (stating that psychologists and social anthropologists have recognized that patterns of child rearing are passed down from generation to generation).

179. *See, e.g., Deborah S. v. Superior Court*, 50 Cal. Rptr. 2d 858, 859-60 (Cal. Dist. Ct. App. 1966) (citing allegations by the county department of social services that the father, who severely abused his son, and who had previously inflicted injuries on the child’s mother); *Turner v. District of Columbia*, 532 A.2d 662, 664, 666 (D.C. 1987) (finding that a father, who starved his five-month-old son to death, also beat and kicked the baby’s mother); *Loebach*, 310 N.W.2d at 59, 62 (discussing a father who beat his three-month-old son to death, had also slapped the infant’s mother and broken her nose); *Loss*, 204 N.W.2d at 405, 407 (finding that a father, who beat to death his six-month-old son, previously had abused the mother when he lost his temper).

180. Penzerro, *supra* note 127, slide 3 (noting that when caseworkers are trained to screen for domestic violence this statistic increases to one in two homes).

181. *Id.*

182. *Please Keep Me Safe*, *supra* note 92.

A particularly horrific example of the combination of domestic violence and child abuse occurred in the case of *People v. Stuart*, where the mother's live-in boyfriend, Gene Stuart, beat her three-year-old son to death.<sup>183</sup> Stuart had "a ten year-history of seemingly endless incidents of beatings, chokings, assaults, rapes and tortures, some at the point of a gun or knife, inflicted upon all the former wives, girlfriends and children whom [Stuart] was able to bring within his control."<sup>184</sup> Stuart's first wife testified that, during their first three years of marriage, Stuart physically abused her more than thirty times, including choking her and striking her arms, head, and back.<sup>185</sup> When Stuart learned that she was pregnant, he "bound her to the bed and beat her stomach with his fists and forced the handle of a spatula up her vagina in an attempt to abort her pregnancy."<sup>186</sup> Another particularly egregious incident occurred when she was recovering in the hospital from "a month-long coma."<sup>187</sup> Although Stuart was barred from the hospital because of his previous abuse, he entered "late at night" and "removed [his former wife's] frail 86-pound body from her hospital bed, along with catheter, IV's, and drainage bags, to the bathroom where he raped her."<sup>188</sup>

Another woman, who lived with Stuart for three months, told of one incident when "Stuart cut clothing off of her with a butcher knife. On another occasion . . . he tried to drown her in a lake . . . [and] held her until her lungs began to fill with water, then he released her."<sup>189</sup> In fact, Stuart "often choked his victims into submission, including his own son by a former marriage who was choked until the boy lapsed into unconsciousness."<sup>190</sup>

Stuart's second wife, Vicki Nelson, said that Stuart started beating her about three weeks after they were married and that the abuse became an "'every-other day' occurrence."<sup>191</sup> She described one incident when she was pregnant and Stuart knocked her out.<sup>192</sup> She awoke to find that she

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183. 715 P.2d 833, 835 (Idaho 1986).

184. *Id.* at 846.

185. *Id.*

186. *Id.*

187. *Id.* (noting that the former wife had been "run over and left on the road by an unknown driver while she was attempting to . . . hide from [Stuart] since he was just released from incarceration" due to her report to the police of Stuart's abuse of her as well as burglary and auto thefts).

188. *Id.*

189. *Id.* at 877.

190. *Id.* at 846 (noting that Stuart also sodomized and forced oral sex upon his son).

191. *Id.* at 877.

192. *Id.*

was tied in bed.<sup>193</sup> Stuart “covered her face with a pillow” and hit her in the abdomen.<sup>194</sup> When she passed out, he would remove the pillow, “revive her with a wet washcloth and repeat the abuse.”<sup>195</sup>

*C. Parents Who Are Substance Abusers Are at Risk of Physically Abusing Their Children*

Gene Stuart, who had a felony conviction for violation of the Uniform Controlled Substance Abuse Act,<sup>196</sup> also exhibited what is considered by some experts as the number one risk factor for a child being abused—parental substance abuse from alcohol and/or drugs.<sup>197</sup> For example, in *Turner v. District of Columbia*, Keith Lynn Roddy, who starved his four-month-old son to death, was on probation for a heroin offense and sold “the household furniture in order to obtain drugs.”<sup>198</sup> In *Deborah S. v. Superior Court*, another father, who did nothing while his wife severely beat their son, had a history of substance abuse and was on felony probation for smuggling drugs into jail.<sup>199</sup>

In *Commonwealth v. Day*, child abuse expert Dr. Eli Newberger testified that in Massachusetts “more than 60% of cases of child abuse reported to the [Department of Social Services] ‘involved’ the use of drugs.”<sup>200</sup> Dr. Newberger also noted a pattern in child abuse cases that single parents, usually the mothers, have “several partners who bring alcohol and drugs into the household.”<sup>201</sup> One example of this pattern was exemplified in

193. *Id.*

194. *Id.*

195. *Id.* (noting that Stuart “poked her in the chest with his finger, choked her, knocked her to the floor and struck her in the face with his fists [for] smoking, watching television or taking showers without him” and that Stuart once beat her because she had received a set of luggage for Christmas from her parents). In addition, Stuart once locked her two-year-old daughter in the bathroom for nine hours. *Id.*

196. *Id.* at 886 (citing *Jury Returns Murder Verdict*, TRIB., at A6, which noted that Stuart also had felony convictions for rape and for telephone fraud).

197. NAT’L CTR. ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIV., NO SAFE HAVEN: CHILDREN OF SUBSTANCE ABUSING PARENTS 13 (1998) [hereinafter NO SAFE HAVEN] (referencing a 1997 survey of 915 professionals in the child welfare system nationwide). In a subsequent report, the National Center estimated that 23.8% of American children (or seventeen million) live in a household where a parent or other adult is a binge or heavy drinker and 12.7% (or 9.2 million) of these children live in a household where a parent or other adult uses illicit drugs. NAT’L CTR. ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIV., FAMILY MATTERS: SUBSTANCE ABUSE AND THE AMERICAN FAMILY ii (2005) [hereinafter FAMILY MATTERS]; see *State v. Loebach* 310 N.W.2d 58, 61 (Minn. 1981) (noting that Robert Loebach was “obviously intoxicated” on the night that he beat his three-month-old son to death).

198. 532 A.2d 662, 663-65 (D.C. 1987).

199. 50 Cal. Rptr. 2d 858, 860 (Cal. Ct. App. 1996).

200. 569 N.E.2d 387, 389-99 (Mass. 1981) (supporting a behavioral pattern identified with battered child syndrome).

201. *Id.* at 399.



*State v. Elliott* where John Elliott, who beat to death his girlfriend's two-year-old daughter, was described as having "substance abuse problems."<sup>202</sup>

It is perhaps no surprise that substance abuse by the batterer is also the number one risk factor for domestic violence among parents because, in both cases, the use of drugs or alcohol reduces inhibitions and distorts perception, increasing the likelihood that abuse will occur.<sup>203</sup> Indeed, it is estimated that fifty percent of battering spouses have addiction problems<sup>204</sup> and about forty percent of children from homes where their mother was battered believe that their fathers had a drinking problem and were more abusive when they were inebriated.<sup>205</sup> Unfortunately, the victims of domestic violence, usually the mothers, are also more likely to become substance abusers to deal with the pain, anxiety, and fear of their situation.<sup>206</sup> If the battered women themselves have substance abuse problems, they are less likely than women without such problems to have the "cognitive, emotional, and financial resources" to protect themselves and their children.<sup>207</sup>

*D. Parents Who Have Unrealistic Expectations for Their Children May Be at Risk of Physically Abusing Their Children*

Abusive parents also often have unreasonable expectations of their progeny and punish them very harshly when their children are unable to meet the parental demands.<sup>208</sup> Frequently, these unrealistic expectations involve toilet training or bed wetting.<sup>209</sup> Sometimes the punishment

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202. 475 S.E.2d 202, 207-08 (N.C. 1996) (citing expert testimony indicating that coming off crack cocaine inhibits the ability to conform behavior to the dictates of the law).

203. Gomez, *supra* note 130.

204. *Id.*

205. *Id.*

206. *Id.* (noting that abused women are also more likely to receive prescriptions for, and become dependent on, tranquilizers, sedatives, stimulants, and painkillers). Unfortunately, the children of substance abusers are also at an increased risk of becoming addicts themselves, because they tend to follow their parent's pattern of self-medication as a coping mechanism. *Id.* Moreover, again patterning their parent's behavior, these children also are considered to be at high risk for physically abusing, and particularly, neglecting their own children. *Id.*

207. *Id.*

208. See HELFER & KEMPE, *supra* note 17, at 95 (stating that abusive parents have completely disproportionate expectations from their children); SELWYN M. SMITH, BATTERED CHILD SYNDROME 211 (1976) (explaining that abusive parents often demand premature high performance and disregard a child's limited abilities).

209. See, e.g., *Edward C. v. Edmond C. (In re Edward C.)*, 178 Cal. Rptr. 694, 697 (Cal. Ct. App. 1981) (describing child abuse imposed for bed-wetting); *State v. Crawford*, 406 S.E.2d 579, 581-82 (N.C. 1991) (describing abuse stemming from bed-wetting); *State v. Tanner*, 675 P.2d 539, 547-48 (Utah 1987) (describing child abuse imposed for failure in toilet training).

involves bizarre and demeaning abuse. For example, in *In re Edward C.*, seven-year-old Marlee's father made her "sleep in her underwear on a plastic sheet . . . with no bedding in [sixty-]degree weather as a punishment for wetting" her bed.<sup>210</sup> Similarly, in *State v. Crawford*, Sara West was punished by her mother's boyfriend, Jonathan Crawford, for wetting her bed, by having to sleep in the urine-soaked bed and having to wear her urine-soaked underwear on her head when she was two or three years old.<sup>211</sup>

In other cases, even very young children sometimes are punished in violent and brutal ways for normal problems in these areas.<sup>212</sup> For example, in *United States v. Bowers*, a two-and-a-half-year-old child suffered bruises on her scalp, face, chest, back, and right lung, a fractured skull and collar bone and a "lacerated heart" at the hands of her mother because she was not responding well to toilet training.<sup>213</sup> In *State v. Taylor*, a stepfather, who ultimately beat his twenty-three-month-old stepdaughter to death, reportedly "spanked the child very hard, often hard enough to leave bruises, when she soiled herself or misbehaved;" on one occasion, he slapped her so hard for wetting her pants that she struck her head against the armrest of a couch and went into convulsions.<sup>214</sup>

Abusive parents may have unrealistic expectations of their children's behavior in other areas as well.<sup>215</sup> For example, two-year-old Kessler Wilkerson's father made him stand "'spread eagle' against a wall for long periods of time" because the toddler "had no manners."<sup>216</sup> Similarly, in *State v. Stuart*, two-year-old Robert Miller was expected by his mother's live-in boyfriend to learn proper table manners, which included looking only at his plate while eating, replacing his fork on the table and using his napkin after every bite.<sup>217</sup> When Robert exhibited unacceptable behavior, or wet his pants, the boyfriend would withhold food from him, jab him in the chest with his finger, causing numerous little round bruises on his chest,

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210. *In re Edward C.*, 178 Cal. Rptr. at 697; see *Tanner*, 675 P.2d at 547-48 (finding that three-year-old Tawnya Tanner's mother made her sit in a tub of cold water until the child could not stand and rubbed her face in her soiled pants).

211. *Crawford*, 406 S.E.2d at 579, 581-82.

212. See, e.g., *United States v. Bowers*, 660 F.2d 537, 528-29 (5th Cir. 1981); *State v. Taylor*, 515 P.2d 695, 697-98 (Mont. 1973).

213. 660 F.2d at 527-29; see also *People v. Steger*, 546 P.2d 665, 667 (finding that three-year-old Kristen Steger's stepmother beat her to death over a one-month period to discipline Kristen for disobedience, such as wetting her pants and sticking out her tongue).

214. 515 P.2d 695, 697-98 (Mont. 1973).

215. See, e.g., *State v. Wilkerson*, 247 S.E.2d 905, 907-08 (N.C. 1978); *State v. Stuart*, 715 P.2d 833, 835-36 (Idaho 1986).

216. *Wilkerson*, 247 S.E.2d at 907-08 (N.C. 1978).

217. 715 P.2d 833, 835-36 (Idaho 1985).

or give him a cold shower from which Robert “would emerge shaking with cold and blue lips.”<sup>218</sup> Unfortunately, the boyfriend’s abuse also included severely beating Robert on numerous occasions, ultimately causing the two-year old to sustain a broken left arm, a subdural hematoma, and a lethal rupture of his liver.<sup>219</sup>

#### IV. UNDERSTANDING PARENTAL BEHAVIOR WHICH MAY INDICATE THAT THE PARENTS HAVE PHYSICALLY ABUSED THEIR CHILDREN

##### *A. Abusive Parents Often Fail to Give a Satisfactory Explanation for Their Children’s Injuries*

The failure of parents to give a satisfactory explanation for their child’s injury should alert a treating physician to the possibility of physical abuse and trigger a report to the SOS Team. Intentional physical abuse should be suspected if the parental explanation of how the child’s injuries occurred is either extremely unlikely or simply cannot account for the nature of the injuries.<sup>220</sup> For example, in the *State v. Best* case, when he was four month’s old, Steven Best, suffered an “oblique fracture which would generally result from a torque-type (twisting) injury.”<sup>221</sup> At his mother’s trial for manslaughter from Steven’s death ten months later, a radiologist opined that the “existence of such a fracture in a four-month-old child was highly unlikely in the absence of child abuse” and that it was “very unlikely that the amount of twisting force required for this type of fracture . . . could occur [if a four-month-old child would stick his arm through the slats in a

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218. *Id.* at 836, 858.

219. *Id.* at 836-37 (supporting the boyfriend’s conviction of murder by torture in the first degree and subsequent imposition of the death sentence).

220. *See, e.g., Bowers*, 660 F.2d at 529 (noting that evidence of BCS may confirm that the parents’ explanation of injuries is a fabrication and that they occurred deliberately); *In re D.C. & E.C.*, 596 P.2d 22, 23 (Alaska 1979) (finding children’s extensive bruising was caused by parents’ beating them with a belt, rather than resulting from an accident with the refrigerator door as parents claimed); *State v. Conlogue*, 474 A.2d 167, 169 (Me. 1984) (finding a mother’s explanation that her two-year-old daughter had fallen on concrete blocks and down the stairs was inconsistent with her injuries which included a healing fracture of her arm, a fractured pelvis, substantial bruises, and skin discoloration); *State v. Ostlund*, 416 N.W.2d 755, 757-58, 766 (Minn. Ct. App. 1987) (affirming a mother’s conviction for second degree murder of her two-year-old daughter and allowing expert testimony regarding SBS to prove that the toddler’s death from head trauma was caused by violent shaking rather than by falling from a thirty-two inch couch, as claimed by the mother); *Bludsworth v. State*, 646 P.2d 558, 558-59 (Nev. 1982) (holding that a stepfather’s explanation that he accidentally injured his two-year-old stepson by dropping the child as he climbed up the stairs, causing lethal injuries, was contradicted by evidence of the unusual placement and severity of bruises on top of the stepson’s head). Sometimes there is a discrepancy between the histories offered by the two parents. *See also ABRAMS & RAMSEY, supra* note 97, at 334 (suggesting that parents be questioned in separate locations because of potential inconsistencies).

221. 232 N.W.2d 447, 450, 453 (S.D. 1975).

crib],” as claimed by the parents.<sup>222</sup> An autopsy revealed that Steven was suffering from malnutrition, and that he had “a large number of bruises of varying age on his forehead, face, abdomen, lower and upper extremities, back and buttocks” as well as two rib fractures and a healing skull fracture.<sup>223</sup> The cause of Steven’s death was a new “massive fracture of the skull with the resulting laceration of the brain and the major vessels of the brain that had caused internal hemorrhaging in the skull.”<sup>224</sup> Steven’s pediatrician, Dr. Michael Kellum, testified that it was “utterly impossible for the infant to have fallen on the telephone and suffered the injuries involved” as claimed by the parents.<sup>225</sup>

As exemplified by Steven’s case, medical examination and testing will often make it possible to rule out the explanations offered by parents for their child’s injuries.<sup>226</sup> For example, in *State v. Loss*, a father’s explanation that his six-month-old son, Lance, fell two feet off of a bed onto a rug “did not correspond with the objective findings of the x-rays, including a skull fracture and a broken leg” and “could not have happened by accident.”<sup>227</sup> Similarly, in *State v. Tucker*, a pathologist testified that it was unlikely that a four-month old was “accident prone” or that the infant’s healing rib fractures were caused by a fall from either a crib or a toy horse, as variously claimed by his mother’s live-in boyfriend, who ultimately beat the child to death.<sup>228</sup> The mother of another eight-month-old infant in *Ashford v. State*, claimed that a “small puppy” had knocked her son to the floor to explain the lethal subdural hematoma, bone fractures, and other injuries suffered by the infant which, in fact, had been inflicted by her live-in boyfriend.<sup>229</sup>

In *United States v. Harris*, the father of another eight-month old, named Paul Harris, initially claimed that his son’s fatal brain and abdominal injuries happened when Paul fell out of his crib, and then asserted they had occurred when the father tripped over a telephone cord while holding Paul and both of them fell.<sup>230</sup> Expert medical evidence revealed that the fatal

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222. *Id.* at 449, 453.

223. *Id.* at 451.

224. *Id.*

225. *Id.* at 450, 452.

226. *Id.* at 449-50, 452-53 (providing testimony from various doctors as to the probable source of the child’s injury, in contrast to the explanations offered by the parents).

227. 204 N.W.2d 404, 405-08, 410 (Minn. 1973) (upholding expert testimony regarding widely recognized BCS, and affirming a father’s first degree manslaughter conviction in the death of his six-month-old son as a result of abuse secondary to battered child syndrome).

228. 435 A.2d 986, 988-89 (Conn. 1980).

229. 603 P. 2d 1162, 1163-64 (Okla. Crim. App. 1979).

230. *See* 661 F.2d 138, 139-40 (10th Cir. 1981).

injuries “could not have resulted from an accidental fall, but were the result of no less than six blows with a solid object, such as a fist, to the head and abdominal area.”<sup>231</sup> Medical experts explained that an infant like Paul “rarely breaks any bones in a fall” because a baby’s bones “are in a formative stage, and are therefore quite pliable.”<sup>232</sup>

Abusive parents sometimes try to blame a child’s siblings for the battered child’s injuries.<sup>233</sup> For example, in *State v. Durand*, when four-month-old Douglas Durand was brought to the hospital with a lethal subdural hematoma, from a “massive skull fracture,” his mother initially claimed that his injuries were sustained when his two-year-old sister took him out of his infant’s seat and dropped him on the kitchen floor.<sup>234</sup> The mother later elaborated on her story and claimed that Douglas slipped out of her arms in the bathroom and hit his head on the rim of the tub, roughly ten to fifteen minutes after his sister had dropped him.<sup>235</sup> However, the medical examiner said that the “amount of force necessary to create the massive type of skull injuries found on the infant was not consistent with simple dropping.”<sup>236</sup> He stated that in “order to get such an injury to the top of the head, the infant would have had to have been suspended by the heels and dropped directly on his head.”<sup>237</sup>

In fact, according to the American Academy of Pediatrics, serious injuries in infants, especially if they result in the death of the child, are “rarely unintentional,”<sup>238</sup> nor are infants likely to induce accidents by themselves.<sup>239</sup> Therefore, explanations such as “the baby rolled over on his arm and broke it” or “the baby got his head caught in the crib and fractured it” are virtually always untrue.<sup>240</sup> For example, in *Loebach*, involving a father’s trial for the murder of his three-month-old son, child abuse expert Dr. Robert ten Benschel testified that the infant’s brain hemorrhages, which were sustained at different times, could not have been self-inflicted by the infant hitting himself on the head, as claimed by the father.<sup>241</sup> Similarly,

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231. *Id.*

232. *Id.* at 140.

233. *See, e.g., State v. Durand*, 465 A.2d 762, 764 (R.I. 1983).

234. *See id.*

235. *Id.* at 765.

236. *Id.* at 768.

237. *Id.* at 767-68.

238. Committee on Child Abuse & Neglect, 1993-1994, Am. Acad. Pediatrics, *Shaken Baby Syndrome: Inflicted Cerebral Trauma*, 69 DEL. MED. J. 365, 366 (1997).

239. *See* SCHUCHTER, *supra* note 87, at 69 (adding that histories of older children who deliberately injure themselves are also usually false).

240. *Id.*; *see also* ABRAMS & RAMSEY, *supra* note 97, at 334.

241. *See State v. Loebach*, 310 N.W.2d 58, 62 (Minn. 1981) (summarizing expert testimony, saying that the injuries clearly were caused by physical abuse over time).

the Minnesota Supreme Court in *State v. Goblirsch* concluded that a two-month-old infant's fatal subdural hematoma could not have been caused by hitting the crib as claimed by the baby's abusive father, nor could the injury have been inflicted by the infant herself, rather it appeared to have been caused "by a traumatic injury of considerable force."<sup>242</sup>

Many abusive parents try to deny or minimize the child's medical problems.<sup>243</sup> In fact, injuries will often be found in a physical examination or skeletal survey of the child which were not reported by the parents at all.<sup>244</sup> For example, in *Wilkerson*, when Kessler's father "delivered [his son's] limp body to ambulance attendants," the father claimed that the two-year old had choked on some cereal, swallowed some water and stopped breathing.<sup>245</sup> The father did not report any additional traumas or injuries sustained by Kessler.<sup>246</sup> Unfortunately, Kessler was dead on arrival at the hospital.<sup>247</sup> The emergency room physician who examined Kessler found no evidence of water in his lungs or other signs of drowning.<sup>248</sup> However, the doctor did find numerous bruises on Kessler's chest, shoulders and arms.<sup>249</sup> An autopsy revealed that there were multiple bruises all over the child's body, significant internal bleeding and a deep laceration of his liver.<sup>250</sup> Testimony at the father's court hearing revealed that he frequently kicked Kessler, including kicking him two days before he died with "such force that his chest hit the wall."<sup>251</sup> The cause of death was determined to be an abdominal hemorrhage from a ruptured liver, most likely caused by

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242. 246 N.W.2d 12, 13 (Minn. 1976); *see also* *State v. Moyer*, 727 P.2d 31, 32 (Ariz. Ct. App. 1986) (convicting Robert Moyer of child abuse when his twenty-one-month-old stepdaughter sustained a skull fracture, second and third degree burns on her face and arms, and numerous bruises). The stepfather claimed that he was sitting in a tub under a sun lamp when his stepdaughter came into the bathroom. *Id.* When the phone rang, he answered it and then began watching television. *Id.* When he remembered that the child was still in the bathroom and went in to check on her, he found that she was burned. *Id.* *See also* *Eslava v. State*, 473 So. 2d 1143, 1145 (Ala. Crim. App. 1985) (stating that the mother's live-in boyfriend claimed he caused her infant son's fatal injuries when he accidentally stepped on him); *People v. Kailey*, 662 P.2d 168, 170-71 (Col. 1983) (affirming felony child abuse conviction of a father who inflicted bilateral subdural hematomas on his four-month-old daughter, noting that the injuries could not have been caused either by the baby rolling off the seat of the car or falling off of a couch or from the use of forceps during her delivery, as variously claimed by the parents).

243. *Please Keep Me Safe*, *supra* note 92.

244. *See, e.g., State v. Wilkerson*, 247 S.E.2d 905, 907 (N.C. 1978).

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.* at 908.

the father forcefully striking or compressing the toddler's abdomen.<sup>252</sup>

*B. Abusive Parents Often Fail to Display Normal Behavior in Dealing with Their Children's Injuries*

The abnormal behavior of the parents toward their children's injuries may also alert a knowledgeable physician to the possibility that physical abuse has occurred, triggering a report to the SOS Team.<sup>253</sup> For example, "normal" parents come in immediately after their children are injured, while abusive parents often delay bringing their children in for treatment, frequently waiting until late at night.<sup>254</sup> Sometimes abusive parents display unusual anger and may become quite defensive when giving their child's history to the treating physician.<sup>255</sup> If the parents feel the physician is questioning them too closely, they may refuse to consent to further examination or treatment of the child.<sup>256</sup>

Abusive parents may also appear either apathetic or indifferent to their child's plight,<sup>257</sup> rarely looking at the child.<sup>258</sup> In addition, they may seem "unsurprised or uncaring about a diagnosis of serious injury."<sup>259</sup> For example, in *Tucker*, the mother's live-in boyfriend, who had lethally beaten her four-month-old son, reportedly responded to the mother's continuing concern by saying: "Well, if he is going to die, he is going to die."<sup>260</sup> Similarly, in *Loebach*, when it was discovered that his three-month-old son was dead in his crib, the infant's abusive father, who had caused his death, "was cool, did not seem remorseful, expressed unusual concern about an ashtray, and turned on the stereo when the undertaker arrived."<sup>261</sup> When the abusive father in the *Wilkerson* case was informed that his son was dead, he appeared "quite calm and told his wife something to the effect that it's done, it's over, there's nothing we can do about it now."<sup>262</sup> Perhaps worst of all, in *Stuart*, when their "extremely emaciated" toddler, Michelle Stuart, was severely burned in a fire after being left alone by her parent's in a camper, Mr. and Mrs. Stuart displayed a "visible lack of

252. *Id.*

253. *See, e.g., ABRAMS & RAMSEY, supra* note 97, at 344.

254. *Id.*

255. Grumet, *supra* note 20, at 298.

256. *See id.* at 308.

257. *Id.* at 298.

258. Silver, *supra* note 149, at 812-13 (comparing characteristics of normal and abusive parents).

259. ABRAMS & RAMSEY, *supra* note 97, at 334.

260. *State v. Tucker*, 435 A.2d 986, 988 n.4 (Conn. 1980).

261. *State v. Loebach*, 310 N.W.2d 58, 61 (Minn. 1981).

262. *State v. Wilkerson*, 247 S.E.2d 905, 907 (N.C. 1978) (quoting the testimony of the emergency room physician).

emotion” and told paramedics that the child’s last name was “Perkins.”<sup>263</sup> When the mother was asked if she wanted to accompany her three-year-old daughter to the hospital in the ambulance, the mother responded: “No, she won’t be afraid. She can go by herself.”<sup>264</sup> The parents never went to the hospital, or called to check on her condition until two days later, when they learned that Michelle had died within hours of her admission to the hospital.<sup>265</sup>

One study contrasted the attitudes of non-abusive parents with abusive parents upon admission of their child to the hospital.<sup>266</sup> The results of this study are as follows:

Table I—Characteristics of Non-Abusive and Abusive Parents in a Hospital Setting	
NON-ABUSIVE PARENT	ABUSIVE PARENT
Spontaneous reporting of details.	Does not volunteer information, or is evasive and contradictory in details or appear irritated at being questioned.
Concerned with child’s injury.	Critical of child; angry with him for being injured.
Concerned about treatment.	Not concerned.
Exhibit sense of guilt even when faultless.	No indication of guilt feelings or remorse.
Difficult to detach from child who is admitted.	Seldom touch or look at child.
Identify with child’s feelings, physically and emotionally.	No response to child, or inappropriate response; no indication of perception of child’s feelings.

263. *Stuart v. Tarrant County*, 677 S.W.2d 273, 277 (Tex. App. 1984).

264. *Id.*

265. *Id.* at 277-78.

266. Silver, *supra* note 149, at 812-13.



Positively relate to child.	Act as though child's injuries are an assault upon themselves and consistently criticize child's actions.
Question prognosis of child's condition; inquire about discharge and follow-up treatment.	No concern. <sup>267</sup>

PART III: UNDERSTANDING THE CHARACTERISTICS AND BEHAVIOR OF  
PHYSICALLY ABUSED INFANTS AND CHILDREN WHICH MAY BE  
INDICATIVE OF CHILD ABUSE  
I. INTRODUCTION

The characteristics and behavior of the physically abused child can also act as indicators that intentional abuse has occurred.<sup>268</sup> In addition to sharing many demographic traits, abused children often display similar psychological manifestations of the abuse, which parallel those suffered by battered women.<sup>269</sup> Like their abusive parents, battered children also may display abnormal behavior in dealing with their injuries, which may lead a knowledgeable treating physician or the SOS Team to suspect that the child has been abused.<sup>270</sup>

II. AN OVERVIEW OF THE DEMOGRAPHIC CHARACTERISTICS OF  
PHYSICALLY ABUSED CHILDREN

Although estimates of the ages of the typical victims of severe physical abuse vary somewhat, it is clear that most battering affects very young children, generally under the age of ten.<sup>271</sup> An early study found that about one-third of the victims of physical abuse were under six months of age, one-third were ages six months to three years and one-third were over the age of three.<sup>272</sup> A study by Cooks County Hospital of 444 children hospitalized for physical abuse found that 68.6% of the children were less than three years of age while twenty percent were less than one year.<sup>273</sup>

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267. *Id.*

268. TEN BENSEL, *supra* note 40.

269. *See, e.g.,* LENORE WALKER, *THE BATTERED WOMAN* 42 (1979) (discussing learned helplessness of battered women).

270. TEN BENSEL, *supra* note 40.

271. DeFrancis, *supra* note 149, at 16 (reporting that a study of newspaper reports of child abuse revealed that over half the physically abused children were under age four while over ninety percent were under age ten).

272. SMITH, *supra* note 208.

273. Brown, *supra* note 14, at 84.

The average ages are even younger when the child fails to survive the abuse.<sup>274</sup> In the Cooks County Hospital study all thirty-eight children who died of their injuries were under the age of seven and sixty percent were under two years of age.<sup>275</sup> Five of the dead infants were under three months of age.<sup>276</sup>

In the Cooks County Hospital study, physical abuse was found to be slightly more frequent in boys, with a fifty-six percent incidence.<sup>277</sup> Among the thirty-eight children who died of their injuries, the ratio was reversed, with sixty percent of the girls succumbing.<sup>278</sup>

### III. ABUSED CHILDREN OFTEN DISPLAY SIMILAR PSYCHOLOGICAL CHARACTERISTICS

Children who survive the battering and grow up in physically abusive homes often display markedly similar psychological attributes.<sup>279</sup> A 1989 study, cited by the Pennsylvania Supreme Court in *Commonwealth v. Dunkle*, involved eighty-six children who were abused by their parents or guardians up to the age of six.<sup>280</sup> The study determined that the children exhibited the following psychological traits:

All have difficulty meeting task demands at school, all seem to have an abiding anger, all are unpopular with their peers, and all have difficulty functioning independently in school and laboratory situations. The problems are not abuse-specific; the common problems . . . all can be tied to the lack of nurturance [sic] . . . all [the parents] failed to provide sensitive, supportive care for their [children].<sup>281</sup>

In addition, abused children frequently become withdrawn and may suffer from depression and a pervasive feeling of hopelessness.<sup>282</sup> "Having

274. Vincent De Francis, Am. Humane Ass'n, Address at a National Symposium on Child Abuse: Protecting the Abused Child—A Coordinated Approach (1972); see also DeFrancis, *supra* note 149, at 16 (noting that eighty percent of the children who died were under age four, and a majority of those were under age two).

275. Brown, *supra* note 14, at app'x c, tbl. 3.

276. *Id.*

277. *Id.* at app'x b, tbl. 2.

278. *Id.* at app'x c, tbl. 4.

279. See, e.g., *Commonwealth v. Dunkle*, 602 A.2d 830, 833 (Pa.1992) (listing characteristics of abused children).

280. See *id.* (noting that the five factors comprising the Child Sexual Abuse Accommodation Syndrome, which are typically present in older sexually abused children, closely parallel characteristics that commonly occur in physically abused children); cf. Roland C. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE & NEGLECT 177, 181-88 (1983) (describing characteristics of sexually abused children that parallel those of battered children, including secrecy about the abuse, learned helplessness, a feeling that the child is trapped in his or her situation, and delays in eventual disclosure of abuse, with disclosure often retracted later).

281. *Dunkle*, 602 A.2d at 833.

282. See *State v. Janes*, 850 P.2d 495, 503 (Wash. 1993) (describing the experience

endured the abuse, many of the children blame themselves for their situations and are potentially suicidal. After repeated beatings and threats, the children believe their lives are in ‘mortal danger.’”<sup>283</sup>

In trying to develop ways to deal with on-going abuse, children frequently manifest some of the same psychological characteristics as battered women, including hypervigilance and learned helplessness.<sup>284</sup> Even when very small, physically abused children display hypervigilance by picking up “low level cues that people who have not been traumatized would not pick up.”<sup>285</sup> In *People v. Janes*, involving an abused child who ultimately killed his abusive stepfather, the Washington Supreme Court explained this characteristic as follows:

Such a hypervigilant child is acutely aware of his or her environment and remains on the alert for any signs of danger, events to which the unabused child may not attend. The child’s history of abusive encounters with his or her battering parent leads him or her to be overly cautious and to perceive danger in subtle changes in the parent’s expressions or mannerisms. Such ‘hypermonitoring’ behavior . . . means the child becomes sensitized to these subtle changes and constantly ‘monitors’ the environment (particularly the abuser) for those signals which suggest danger is imminent.<sup>286</sup>

In addition, like battered women, abused children often suffer from a learned helplessness that “results from feeling trapped in a situation from which they cannot escape.”<sup>287</sup> Although it might be expected that the abused child would seek outside help, “there are compelling psychological reasons that make seeking and getting help the rare exception, not the norm.”<sup>288</sup> The “prolonged exposure to abuse results in feelings of powerlessness, embarrassment, fear of reprisal, isolation, and low self-esteem . . . . These effects often prevent a child from seeking help from

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of a battering victim as a hopeless vacuum of cumulative terror).

283. See Susan C. Smith, *Abused Children Who Kill Abusive Parents: Moving Toward an Appropriate Legal Response*, 42 CATH. U. L. REV. 141, 154 (1992) (“After taking the life of an abusive parent, the children usually experience a sense of freedom and safety because the parent and the heightened sense of fear are gone. Yet, many of the children remain confused and tend to deny the extent of the abuse they endured”).

284. See *Janes*, 850 P.2d at 502 (recalling that Washington courts have previously acknowledged the importance of battered woman syndrome, and concluding that battered-woman and battered-child syndromes should be given equal consideration by the court).

285. *Id.*

286. *Id.*

287. Jamie Heather Sacks, *A New Age of Understanding: Allowing Self Defense Claims for Battered Children Who Kill Their Abusers*, 10 J. CONTEMP. HEALTH & POL’Y 349, 355-56 (1994).

288. *Janes*, 850 P.2d at 502.

third parties.”<sup>289</sup> Moreover, battered children often fear that running away will only result in greater abuse, not only to them, but to other family members as well.<sup>290</sup> Informing police or other authorities of the abuse often is avoided by abused children for the same reasons or because they have sought help unsuccessfully.<sup>291</sup> As explained by the *Janes* court: “Oftentimes abused children will have sought outside help from authority figures . . . without gaining any satisfactory outcome. Other persons within the family are often unable to help because they frequently suffer abuse as well.”<sup>292</sup> Ironically, despite the abuse, battered children frequently have strong emotional bonds with their abusive parents.<sup>293</sup> These bonds make running away a psychologically unrealistic option.<sup>294</sup> As the Washington Supreme Court noted in *Janes*: “Children are entirely dependent on their parent for emotional and financial support. They are extremely vulnerable and tend to place great trust in their parents.”<sup>295</sup> Abusive parents sometimes exercise almost obsessive control over their children, regarding them as chattels to satisfy the parents’ needs rather than as individuals in their own right.<sup>296</sup>

Because physically abused children have seen only violence used to solve problems in the home, they are unaware of other problem-solving methods.<sup>297</sup> It is not surprising, therefore, that a number of studies have shown a marked correlation between physical abuse as a child and violent behavior in youth and adulthood.<sup>298</sup> For example, studies cited by child

289. *State v. Nemeth*, 694 N.E.2d 1332, 1337 (Ohio 1998).

290. *See, e.g.*, *County of L.A. Dep’t of Pub. Soc. Servs. v. Robinson (In re Biggs)*, 94 Cal. Rptr. at 523 (affirming juvenile court order to remove both abused and non-abused child from abusive home, and noting that “there remained the strong possibility that [abuser] would transfer his sadism to any other juvenile available.”).

291. *See Janes*, 850 P.2d at 499-502 (recalling that Washington’s Child Protective Services had been contacted several times by Andrew Jane’s neighbors and school teachers because of the constant abusive behavior directed at Andrew and his family by Andrew’s stepfather); *see also State v. Tucker*, 435 A.2d 986, 988 n.4 (Conn. 1980) (noting that efforts by neighbors to involve CPS did not succeed and four-month-old Charles Patten was ultimately beaten to death by his mother’s boyfriend).

292. *Janes*, 850 P.2d at 502.

293. *See, e.g.*, Lawrence Mayer, *Kids Who Kill Their Parents*, WASH. POST, May 13, 1984, at 15-16 (likening the bond to that between a master and a slave).

294. *See Janes*, 850 P.2d at 502 (observing that the combination of failed prior attempts to seek help, and the victimization of other members of the family as well as the child, combine with other factors to make running away unrealistic).

295. *Id.*

296. *See Smith, supra* note 283, at 154 (describing how the abusive parent’s view of the child as property without any independent personhood creates the impression that the abused child is unusually close to their abuser).

297. *See, e.g.*, Brandt Steele, *Notes on the Lasting Effects of Early Child Abuse*, 10 CHILD ABUSE AND NEGLECT: INT’L J. 283, 285 (1986) (observing that victims of childhood abuse tend to inflict the same forms of abuse upon their own children).

298. *See, e.g., id.* (remarking on some parents’ literal repetition of their maltreatment

abuse expert Dr. Robert W. ten BenseL indicate “a hundred percent correlation between [physical] child abuse and deviant behavior among violent juvenile delinquents, adults who had committed violent crimes and who were in San Quentin Prison, and all assassins and people who had attempted assassinations without success in the United States in the past twenty years.”<sup>299</sup> In 1972, Denver researchers Joan Hopkins and Brandt Steele found that ninety-two out of a hundred delinquent youngsters had been bruised, lacerated, or fractured by their parents within eighteen months of their arrest.<sup>300</sup> In another study, a Philadelphia medical examiner noted that of a hundred juvenile offenders surveyed in 1970, eighty-two had been abused children and forty-three recalled being knocked-out by their parents.<sup>301</sup> As Dr. Karl Menninger has noted: “You can almost always be certain that the man who has committed violent crimes has been treated violently as a child . . . . Violence breeds violence.”<sup>302</sup>

#### IV. ABUSED CHILDREN OFTEN FAIL TO DISPLAY NORMAL BEHAVIOR IN DEALING WITH THEIR INJURIES

Like the aberrant behavior of abusive parents, the “abnormal” behavior of the abused child may also help a physician determine whether the child has been physically abused and needs to be reported to the SOS Team.<sup>303</sup> Oftentimes, during the examination, an abused child will appear extremely passive, lack spontaneity, and seem fearful of the medical staff.<sup>304</sup> For example, the child may flinch when the physician approaches.<sup>305</sup> An abused child also may be very non-communicative<sup>306</sup> and may be very reluctant to talk about his or her injury because of fear or embarrassment.<sup>307</sup> This is in marked contrast to the behavior of a child who receives an accidental injury, who will usually talk freely about how the injury occurred.<sup>308</sup>

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as children, but as the abuser instead).

299. TEN BENSEL, *supra* note 40, at 4.

300. *Id.*

301. *Id.*

302. KARL MENNINGER, *THE CRIME OF PUNISHMENT* (Viking Press 1968).

303. See, e.g., H. LIEN BRAGG, U.S. DEP’T OF HEALTH AND HUMAN SERVS., *CHILD PROTECTION IN FAMILIES EXPERIENCING DOMESTIC VIOLENCE* 10 (2003) (explaining that domestic violence, whether direct or indirect, can lead to behavioral and emotional problems such as fear, anxiety, and difficulty developing attachments).

304. SCHUCHTER, *supra* note 87.

305. ABRAMS & RAMSEY, *supra* note 97, at 330.

306. *Id.*

307. BRAGG, *supra* note 303, at 41 (cautioning that children can be uncomfortable and too frightened to talk about abuse).

308. SCHUCHTER, *supra* note 87.

The same researcher who compared the behavior of a non-abusive and an abusive parent also compared the behavior of a non-abused and an abused child when admitted to the hospital, with the following results:

<u>NON-ABUSED CHILD</u>	<u>ABUSED CHILD</u>
Cling to parents	Wary of physical contact with parents or others.
Turn to parents for assurance.	Do not turn to parents for assurance, rather, constantly alert for danger.
Turn to parents for comfort during and after examination.	No expectation of being comforted; cry hopelessly during treatment and examination.
Demonstrates desire for parents and home.	No similar expression of desire. <sup>309</sup>

PART IV: ALLEVIATING THE LETHAL LEGACY OF CHILD ABUSE BY  
IDENTIFYING SYNDROMES & INJURIES WHICH ARE SURVIVAL-  
THREATENING PER SE, MANDATING THAT THE SOS TEAM IMMEDIATELY  
REMOVE THE CHILDREN FROM THEIR ABUSIVE HOMES WITH THE  
PRESUMPTION THAT PARENTAL RIGHTS WILL BE TERMINATED

I. INTRODUCTION

The SOS Team should give its highest priority to the abused children that are classified as survival-threatening per se. This category describes children who are most at risk of permanent disability or death because they have been diagnosed as suffering from certain syndromes, conditions, or injuries which are in themselves life-threatening. If the child has sustained harm that is identified as fitting within the survival-threatening per se classification, then the repetitive nature of child abuse makes it clear that the only way the SOS Team can alleviate the lethal legacy of child abuse is by immediately removing the child from their abusive home with the presumption that parental rights will be terminated.<sup>310</sup>

309. Silver, *supra* note 149, at 812.

310. See Wooster, *supra* note 87, at 1809 (arguing that, in cases of suspected child

There are two lethal syndromes, battered child syndrome (“BCS”) and shaken baby syndrome (“SBS”), which are regarded as survival-threatening per se because victims of both of these syndromes frequently suffer permanent disability or death.<sup>311</sup> Both syndromes affect only infants or very young children who are totally unable to help themselves and will suffer permanent injury or death without outside intervention.<sup>312</sup> Victims of these two syndromes frequently suffer from three types of specific injuries, which are sufficiently serious in themselves to also be categorized as survival-threatening per se, head injuries, including subdural hematomas, multiple bone fractures at various stages of healings, and severe abdominal trauma.<sup>313</sup>

Poisoning and asphyxiation are two far less frequent, but equally lethal, means of abusing children, which also are included in the survival-threatening per se category.<sup>314</sup> These two methods of abuse are commonly used by parents suffering from Munchausen’s Syndrome By Proxy (“MSBP”), where parents give their children toxic doses of various substances or partially strangle or smother them, in order to get attention for themselves.<sup>315</sup>

Finally, extreme physical neglect can lead to two conditions which are survival-threatening per se, dehydration and starvation.<sup>316</sup> In addition,

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abuse, public authorities should intervene as soon as possible and consider children in danger as long as they are with their parents because their injuries are serious and part of a larger pattern of abuse).

311. See Kempe, *supra* note 17, at 18 (listing symptoms of BCS, which often leads to death and includes subdural hematoma, multiple fractures and bone lesions, multiple soft-tissue injuries, and malnutrition); ABRAMS & RAMSEY, *supra* note 97, at 335 (noting that shaken baby syndrome often results in whiplash-type injuries that can cause death, blindness, or severe brain injury).

312. See Kempe, *supra* note 17, at 17 (noting that in general children affected by BCS are younger than three years old).

313. See VINCENT J. DiMAIO & DOMINICK DiMAIO, *FORENSIC PATHOLOGY* 344-45, 360-61 (2d ed., CRC Press 2001) (describing the physical injuries as a result of abuse, including subdural hematoma, retinal hemorrhaging, skull or extremity fractures, lacerations of the liver, or rupture of the bowel).

314. See, e.g., Roy Meadow, *Suffocation, Recurrent Apnea, and Sudden Infant Death*, 117 PEDIATRICS 351, 354 (1990) (studying cases in which suffocation was mistaken for other illnesses); David Rogers et al., *Non-Accidental Poisoning: An Extended Syndrome of Child Abuse*, 1 BRIT. MED. J. 793 (1976) (reporting on six cases of non-accidental poisoning of children by their parents).

315. See Michael T. Flannery, *Munchausen Syndrome by Proxy: Broadening the Scope of Child Abuse*, 28 U. RICH. L. REV. 1175, 1226 (1994) (arguing that medical, legal, and social services should work together to address Munchausen Syndrome by Proxy (“MSBP”) as child abuse); Roy Meadow, *Munchausen Syndrome by Proxy: The Hinterland of Child Abuse*, 310 THE LANCET 343, 345 (1977) (concluding that two early cases of MSBP were abuse).

316. See DiMAIO & DiMAIO, *supra* note 313, at 339, 346 (noting that dehydration and starvation are variations of BCS trauma which causes the children to be emaciated and can lead to death); see also L. Adelson, *Homicide by Starvation, the Nutritional Variant of the Battered Child Syndrome*, 186 J.A.M.A. 458 (1963).

severe physical and emotional neglect sometimes combine to produce a deadly condition known as non-organic failure to thrive, which is also categorized as survival-threatening per se.<sup>317</sup>

## II. THE BATTERED CHILD SYNDROME IS SURVIVAL-THREATENING PER SE

### *A. Introduction*

Battered child syndrome is a devastating form of child abuse which frequently causes permanent injury or death in infants or very young children.<sup>318</sup> Although the syndrome is survival-threatening per se, the initial battering episode is often not life-threatening.<sup>319</sup> In fact, “the severe permanent damage associated with the ‘battered child syndrome’ usually does not occur with the initial incident.”<sup>320</sup> Obviously, it is imperative that medical personnel be fully apprised of the characteristics of BCS so that any suspected victims are reported immediately to the SOS Team at the time of the initial abuse. Identification of abuse at this time offers the SOS Team what may be their only chance to intervene and prevent “subsequent trauma and irreversible injury to the child.”<sup>321</sup> It is also imperative that the SOS Team immediately remove the battered child from the abusive home, most likely on a permanent basis.

Although, as noted above, the case of Mary Ellen in 1875 is regarded as the start of protecting children from known abuse by their parents, it was not until much later that physicians fully understood the parameters of BCS.<sup>322</sup> In fact, it took almost seventy-five years for medical experts to both recognize and believe that some lethal injuries, previously thought to be accidental, were in fact intentionally inflicted by the children’s parents or guardians.<sup>323</sup>

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317. See Harold Martin, *The Child and His Development*, in *HELPING THE BATTERED CHILD AND HIS FAMILY* 93, 100-01 (Kempe & Helfer eds. 1972) (exploring psychological and physical causes for failure to thrive).

318. Kempe, *supra* note 17.

319. Stanford B. Friedman, *The Need for Intensive Follow-up of Abused Children*, in *HELPING THE BATTERED CHILD AND HIS FAMILY* 79, 79 (Kempe & Helfer eds., 1972).

320. *Id.*

321. *Id.*

322. See Brown, *supra* note 13, at 46 (chronicling the first steps of recognizing the etiology of BCS).

323. Kempe, *supra* note 17, at 17 (coining the phrase “battered-child syndrome” to characterize the clinical condition of young children who suffer physical abuse); see also Grumet, *supra* note 20, at 296-97 (noting that the medical community had no diagnosis for child abuse until Dr. Kempe’s article).



*B. The Development of Battered Child Syndrome as a Medical Diagnostic Tool*

The early development of BCS as a medical diagnostic tool dates from the late 1930s, when pediatricians began to notice recurrent, multiple fractures in infants and very young children.<sup>324</sup> However, rather than determining that some of these injuries might have been caused deliberately by the children's parents, the physicians attributed the injuries to unexplained trauma, accident proneness or rare metabolic disorders.<sup>325</sup> Recognition of the possibility that the injured children were battered by their parents eventually evolved through the work of radiologists.<sup>326</sup> In 1946, Dr. John Caffey published an article describing six children in Cincinnati,<sup>327</sup> who suffered from chronic subdural hematomas<sup>328</sup> resulting from injury to their heads.<sup>329</sup> Cumulatively, these six children had amassed an incredible total of twenty-three fractures.<sup>330</sup> Dr. Caffey demonstrated how x-rays of these young children revealed skeletal changes caused by trauma. Although he did not interpret these findings as injuries willfully inflicted by the child's parents, he noted his suspicions regarding the frequent correlation between subdural hematomas and fractures of long bones in children.<sup>331</sup> It was not until nine years later, however, that two radiologists for the first time described such injuries as purposefully inflicted trauma, rather than accidental injuries.<sup>332</sup>

In 1962, pediatrician Dr. C. Henry Kempe coined the term "battered child syndrome" to describe "a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent."<sup>333</sup> Dr. Kempe cautioned physicians "to have a high initial level of

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324. See Caffey, *supra* note 89, at 163.

325. *Id.* (using x-rays for the first time to make a connection between long bone fractures and chronic subdural hematomas).

326. See Brown, *supra* note 13, at 45-46 (listing the successive work of Dr. John Caffey, Dr. Frederic N. Silverman, and Dr. Paul V. Woolley, Jr., employing x-ray technology to identify purposefully inflicted trauma).

327. See Caffey, *supra* note 89, at 163.

328. See SMITH, *supra* note 208, at 264 (defining a subdural hematoma as a collection of blood clots beneath the dura mater, the outer covering of the brain).

329. See Caffey, *supra* note 89, at 163.

330. *Id.*

331. *Id.* at 173; see Frederick N. Silverman, *The Roentgen Manifestations of Unrecognized Skeletal Trauma in Infants*, 69 AM. J. ROENTGENOLOGY 413 (1953) (recognizing that multiple fractures were due to trauma and reporting that physical injury was the most common bone disease of children).

332. P.V. Woolley & W.A. Evans, Jr., *Significance of Skeletal Lesions in Infants Resembling Those of Traumatic Origin*, 158 AM. MED. ASS'N J. 539 (1955).

333. Kempe, *supra* note 17, at 17-18 (basing his findings on reports from seventy-one hospitals of 302 cases of abusive injuries to children over a one-year period). Of these reported cases, thirty-three of the children died and eighty-five of the children

suspicion of the diagnosis of the battered-child syndrome in instances of subdural hematoma, multiple unexplained fractures at different stages of healing, failure to thrive, when soft tissue swelling or skin bruising are present, or in any other situation where the degree and type of injury is at variance with the history given regarding its occurrence.”<sup>334</sup> Dr. Kempe’s studies also revealed that, although in “some instances the clinical manifestations are limited to those resulting from a single episode of trauma . . . more often the child’s general health is below par, and he shows evidence of neglect including poor skin hygiene, multiple soft tissue injuries, and malnutrition.”<sup>335</sup>

In addition to identifying the medical manifestations of BCS, Dr. Kempe described some common characteristics of the parental perpetrators of the syndrome which might be of assistance to the SOS Team in identifying battering parents.<sup>336</sup> He found that the abusive parents shared some “psychiatric factors” including low intelligence, lacking maturity, and having suffered abuse as children themselves.<sup>337</sup> He also found that alcoholism, sexual promiscuity, unstable marriages, and minor criminal records were characteristic of abusive parents.<sup>338</sup> Dr. Kempe further explained that the abusive parents frequently failed to provide a satisfactory explanation for their child’s injuries and identified any “marked discrepancy between clinical findings and historical data as supplied by the parents [as] a major diagnostic feature of battered child syndrome.”<sup>339</sup>

Almost thirty years later in 1983, in *Duley v. State*, a Maryland appellate court described the following additional attributes found in parents of children suffering from battered child syndrome:

[They] often are young, somewhat immature, unable to really handle their emotions in a socially acceptable fashion. Frequently they are in a stressful situation, either economic, domestic stresses on them, and subject to sort of flying off when certain added stress is presented. They sometimes have been victims of quite harsh punishment themselves as they were growing up, is sort of a pattern which they fall back into.<sup>340</sup>

were left with permanent brain damage. *Id.* Dr. Kempe also surveyed seventy-seven District Attorneys who handled 447 reports of beaten children in one year, with forty-six percent resulting in court action. *Id.* Unfortunately, forty-five of the children died of their injuries while 290 suffered permanent brain damage. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.* at 18-19.

338. *Id.* at 18.

339. *Id.* at 20, 22.

340. 467 A.2d 776, 779 (Md. Ct. Spec. App. 1983) (quoting an expert witness who testified as to a battering parent profile in a case of a two-month old who died from internal hemorrhages caused by her abusive father). In *State v. Loss*, Dr. Homer D.

*C. The Development of Battered Child Syndrome as a Legal Tool For Prosecuting Abusive Parents*

In addition to physician's reliance on BCS as a diagnostic tool, district attorneys also use expert testimony regarding the syndrome as evidence in prosecuting abusive parents.<sup>341</sup> California became the first state to admit expert medical testimony regarding BCS to support the prosecution of an adult defendant for child abuse and as proof that the child's current injuries were not accidental in its landmark 1971 case, *People v. Jackson*.<sup>342</sup> The *Jackson* court recognized the legal description of BCS as consisting of the following characteristics:

- (1) The child is usually under three years of age;
- (2) There is evidence of bone injury at different times;
- (3) There are subdural hematomas with or without skull fractures;
- (4) There is a seriously injured child who does not have a history given that fits the injuries;
- (5) There is evidence of soft-tissue injury; and
- (6) There is evidence of neglect.<sup>343</sup>

The thirteen-month-old child who was the victim in the *Jackson* case sustained injuries typical of BCS at the hands of his father, including recent fractures of both his arms, ten broken ribs, first- and second-degree burns over twenty-three percent of his body, a distended abdomen and an injury to his liver.<sup>344</sup> As the physician in the *Jackson* case testified, "it would take thousands of children to have the severity and number and degree of

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Venters, a pediatrician specializing in BCS, used the term "battering person" in describing the four patterns characterizing parents whose children are at risk of becoming victims of the syndrome:

One pattern is that of an individual simply repeating the type of discipline or child management to which he was subjected as a child. . . . A second pattern is frequently seen in an individual who, as a child, has been shunted from foster home to foster home and feels rejected. A third pattern involves a role reversal in which the individual exhibits an even more significant lack of identity and poor self-concept or self-image, and when a child is born, it usually is seen as a love object who returns love and provides love for the needy parent. The fourth category of patterns involves parents who are hostile, abusive, impetuous, and who lash out at insignificant things frequently and react in a hair-triggered manner. 204 N.W.2d 404, 408 (Minn. 1973).

341. See, e.g., *People v. Jackson*, 95 Cal. Rptr. 919, 921-21 (Cal. Ct. App. 1971).

342. *Id.* (holding that admitting into evidence a physician's diagnosis that a father's eighteen-month-old son was a victim of BCS did not improperly invade the province of the jury, and that BCS has become an accepted, legally qualified medical diagnosis on the trial court level); see also *Landeros v. Flood*, 551 P.2d 389, 393-94 (Cal. 1976) (concluding that BCS is an accepted medical diagnosis, but ruling that the trial court erred in sustaining the demurrer of defendant doctor and hospital because issues existed regarding whether defendants had a duty to recognize BCS).

343. *Jackson*, 95 Cal. Rptr. at 921.

344. *Id.* at 920-21.

injuries that this child had over the span of time that he had' by accidental means."<sup>345</sup>

Over the thirty-five years since *Jackson* was decided, at least two circuit courts<sup>346</sup> and thirty-six other state courts have followed California's lead and admit expert testimony regarding BCS as prosecutorial evidence against child abusers.<sup>347</sup> In addition, in *Estelle v. McGuire*, the United

345. *Id.* at 921.

346. *See, e.g.*, *United States v. Boise*, 916 F.2d 497, 504 n.16 (9th Cir. 1990) (rejecting the argument of a father, who had been convicted of second-degree murder in the death of his six-month-old son, that even the term "battered child syndrome" should not have been permitted because it was unfairly prejudicial, and upholding admission of autopsy photographs into evidence); *United States v. Bowers*, 660 F.2d 527, 529 (5th Cir. 1981) (upholding the admission of expert testimony regarding BCS in affirming a mother's conviction of cruelty to a child in the death of her two and a half year old daughter).

347. *See, e.g.*, *Eslava v. State*, 473 So. 2d 1143, 1147 (Ala. Crim. App. 1985) (holding that expert testimony was admissible to show that an infant fit the profile for BCS and received non-accidental injuries, which were inflicted by his mother's live-in boyfriend); *State v. Moyer*, 727 P.2d 31, 33 (Ariz. Ct. App. 1986) (noting that BCS is an accepted medical diagnosis that indicates a child has not suffered certain types of injuries by accidental means, and is sufficient for a guilty verdict when coupled with proof that the injuries occurred while the child was entrusted to the defendant); *People v. Ellis*, 589 P.2d 494, 495-96 (Colo. Ct. App. 1978) (upholding the admissibility of expert testimony of BCS in a case involving a four-year old who, after sustaining several prior fractures, was beaten to death by his stepmother, and finding that, where the defendant's theory of the case is accidental death, and where there is evidence of exclusive parental custody during the relevant period, evidence of past abuse is admissible to prove intent and disprove accident); *State v. Dumlao*, 491 A.2d 404, 410 (Conn. App. Ct. 1985) (admitting expert testimony regarding BCS, where parents lethally battered their two-year-old daughter, and commenting that evidence of BCS, "coupled with other proof, such as a continuing opportunity to inflict the injuries, may permit an inference not only that the injuries were not accidental but also that they were inflicted by one who regularly cares for the child"); *State v. Screpesi*, 611 A.2d 34, 39 (Del. Super. Ct. 1991) (holding that BCS is an accepted medical diagnosis, and evidence of such was admitted properly in a case of a seven-week-old infant who suffered intentional injuries); *Albritton v. State*, 221 So. 2d 192, 197 (Fla. Dist. Ct. App. 1969) (upholding the trial court's decision to admit evidence regarding BCS, including the "gruesome, inflammatory, and revolting photographs" of a sixteen-month-old toddler who was beaten to death by her mother's boyfriend); *State v. Stuart*, 715 P.2d 833, 870 n.4 (Idaho 1986) (Bistline, J., dissenting) (stating that BCS is recognized judicially in Idaho); *People v. Platter*, 421 N.E.2d 181, 184 (Ill. App. Ct. 1980) (upholding a pediatrician's testimony that three-year-old Kristie Hubbard was a victim of BCS and affirming her mother's boyfriend's conviction of manslaughter in Kristie's death from a massive bowel perforation); *Bell v. Commonwealth*, 684 S.W.2d 282, 283 (Ky. Ct. App. 1984) (finding no prejudicial error in admitting physicians' opinions that an infant, who suffered a lethal subdural hematoma from his father's beating, was a victim of BCS and upholding the father's conviction of second-degree manslaughter); *State v. Nash*, 446 So. 2d 810, 812, 814 (La. Ct. App. 1984) (admitting testimony from a coroner that the fatal abdominal and head injuries and rib fractures suffered by a nineteen-month-old child at the hands of his mother's live-in boyfriend were indicative of BCS); *State v. Conlogue*, 474 A.2d 167, 172-73 (noting the acceptance of BCS as a diagnosis in Maine and holding that, by excluding medical testimony of BCS, the trial court improperly denied defendant the opportunity to have the jury consider the credibility of the mother's recantation of her confession to the abuse); *Duley v. State*, 467 A.2d 776, 781 (Md. Ct. Spec. App. 1983) (allowing evidence that two-month-old Michelle Duley, who died from her father's abuse, was a victim of BCS based on unreasonable injuries, including fractures and internal

hemorrhaging from lethal shaking by her father); *Commonwealth v. Day*, 569 N.E.2d 397, 400 (Mass. 1991) (acknowledging the proper inclusion of testimony describing BCS); *Commonwealth v. Labbe*, 373 N.E.2d 227, 230 (Mass. App. Ct. 1978) (upholding the admissibility of a pathologist's expert testimony regarding BCS which he defined as "'a young infant or child (being) subjected to repeated episodes of trauma, violence by an older person which, after sufficient length of time, leads to severe medical injury and often ultimate death'"); *People v. Barnard*, 286 N.W.2d 870, 871 (Mich. Ct. App. 1979) (holding that expert evidence regarding BCS was admissible because it is a "widely recognized medical diagnosis which indicates that a child has been injured by other than accidental means" and affirming the mother's boyfriend's second-degree murder conviction in the death of her two-year-old child); *State v. Goblirsch*, 246 N.W.2d 12, 15 (Minn. 1976) (upholding admission of expert testimony regarding BCS, noting that "its use in this case was potentially no more prejudicial than the revolting nature of the infant's injuries themselves" and affirming the father's conviction of first-degree manslaughter in the death of his two-month-old daughter); *Aldridge v. State*, 398 So. 2d 1308, 1309, 1312 (Miss. 1981) (affirming both parents' conviction of felonious abuse and battery of their infant daughter and their fifteen-year sentence); *State v. Taylor*, 515 P.2d 695, 703 (Mont. 1973) (finding that evidence regarding BCS is fully admissible as expert testimony); *Bludsworth v. State*, 646 P.2d 558, 559 (Nev. 1982) (noting that BCS is "an accepted diagnosis signifying serious and persistent physical abuse" and affirming the mother's conviction of child abuse and the stepfather's conviction of child abuse and second-degree murder); *People v. Henson*, 304 N.E.2d 358, 363-64 (N.Y. 1973) (noting that evidence of BCS "coupled with additional proof . . . that the injuries occurred while the child was in the sole custody of the parents would permit the jury to infer not only that the child's injuries were not accidental but that, in addition, they occurred at the culpable hands of its parents," thus affirming the parents' convictions of criminally negligent homicide in the death of their four-year-old son); *State v. Wilkerson*, 247 S.E.2d 905, 912, 919 (N.C. 1978) (noting that all courts, which have considered the question, have concluded that expert medical testimony concerning BCS was admitted properly into evidence and affirming a father's conviction of second degree murder in the beating death of his two-year-old son); *Ohlsen v. M.B. (In re R.W.B.)*, 241 N.W.2d 546, 550, 554 (N.D. 1976) (upholding admissibility of BCS in terminating parents' rights where their son suffered eleven separate bone fractures of his arms and his legs during his first seven months of life); *State v. Nemeth*, 694 N.E.2d 1332, 1335 (Ohio 1998) (noting that for over thirty years the legal and medical community has used BCS as "the label for a set of physical symptoms that provide proof of child abuse"); *Ashford v. State*, 603 P.2d 1162, 1164-65 (Okla. Crim. App. 1979) (upholding admission of expert testimony from a pathologist that declared BCS "a characteristic finding in children who have been mistreated in some way by another person" and upholding a mother's boyfriend's first-degree manslaughter conviction and forty-year sentence in the beating death of her eight-month-old son); *Commonwealth v. Rodgers*, 528 A.2d 610, 615-16 (Pa. Super. Ct. 1987) (upholding testimony regarding BCS and affirming parents' convictions for involuntary manslaughter in the death from malnutrition of their two-and-a-half-year-old daughter); *State v. Durand*, 465 A.2d 762, 768 (R.I. 1983) (affirming a mother's conviction of manslaughter and sentence of fifteen years in the death of her four-month-old son from a subdural hematoma and ruling that the jury could infer from expert testimony on "child abuse syndrome" that the mother inflicted her infant's injuries because "it is very difficult in a prosecution for abuse and death of minor children to establish the guilt of a defendant other than by circumstantial evidence because normally, as in this case, there are no eyewitnesses"); *State v. Lopez*, 412 S.E.2d 390, 392-93 (S.C. 1991) (upholding the admissibility of expert testimony regarding BCS, indicating that "such testimony may support an inference that the child's injuries were not sustained by accidental means," and upholding a stepmother's conviction for murdering her three-year-old stepson); *State v. Best*, 232 N.W.2d 447, 458 (S.D. 1975) (affirming admission of expert testimony regarding BCS, noting that the court had not found any case where expert medical testimony regarding BCS was rejected, and affirming a mother's conviction for second-degree manslaughter in the beating death of her fourteen-month-old son); *Hawkins v. State*, 555 S.W.2d 876, 876-78 (Tenn. Ct. App. 1977) (admitting expert testimony regarding BCS, as well as

States Supreme Court upheld the admissibility of expert testimony concerning BCS as evidence of prior injuries for the purpose of prosecuting child abusers in federal cases.<sup>348</sup> Like the injuries suffered by the infant in the *Jackson* case, the horrendous injuries suffered before her death by six-month-old Tori McGuire, at the hands of her father were, unfortunately, also typical for an infant victim of BCS.<sup>349</sup> An autopsy revealed that Tori had twenty-nine contusions on her abdomen, seventeen contusions on her chest, a lacerated large intestine, a split liver, a split pancreas, damage to her heart and lungs, rectal tearing, and seven-week-old, partly healed fractures of several of her ribs.<sup>350</sup> Tori's father claimed that she sustained these injuries when she fell off of the couch.<sup>351</sup> In affirming the father's conviction of second-degree murder of Tori, the U.S. Supreme Court noted that "evidence demonstrating battered child syndrome helps to prove that the child died at the hands of another and not by falling off a couch, for example; it also tends to establish that the 'other,' whoever it may be, inflicted the injuries intentionally."<sup>352</sup>

In *Schleret v. State*, where a stepfather beat to death his three-year-old stepson, the Minnesota Supreme Court discussed the critical necessity of allowing expert testimony regarding BCS to convict the abuser:

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photographs showing the healthy condition of two-and-a-half-year-old Laura before her death and the "pitiful condition of [her] maltreated body" to show the extent of her wounds, and affirming the second degree murder convictions of her mother and her live-in boyfriend and their sentences of seventy-seven years and 199 years, respectively); *Righi v. State*, 689 S.W.2d 908, 909 (Tex. App. 1984) (allowing medical testimony that a child suffered from BCS and upholding the conviction and six-year sentence of her mother for "intentionally and knowingly . . . engaging in conduct that caused [her daughter] serious physical deficiency and impairment"); *State v. Tanner*, 675 P.2d 539, 543-45 (observing that "all courts which have addressed the question have affirmed the admission of expert medical testimony regarding the presence of the battered child syndrome" and holding that expert testimony regarding BCS was admissible because it was "not used broadly" but was "defined and applied" to the three-year-old victim of her mother's lethal abuse "with particularity"); *State v. Janes*, 850 P.2d 495, 502 n.6 (Wash. 1993) (noting that Washington courts admit evidence of BCS "for purposes of proving a physical pattern of child abuse"); *State v. Johnson*, 400 N.W.2d 502, 504, 507 (Wis. Ct. App. 1986) (upholding expert testimony regarding BCS in prosecutions involving child victims because "those felonious assaults are in a unique category" and affirming the manslaughter conviction of a man who was "like a second father" to the child he beat to death); *Goldade v. State*, 674 P.2d 721, 727 (Wyo. 1984) (recognizing the acceptance of the term BCS and upholding the child abuse conviction and six-month jail sentence of the mother of her four-and-a-half-year-old battered child); see also Jennifer L. Layton, *When The Abused Child Fatally Says "No More": Can Parricide Be Self Defense In Ohio?*, 18 U. DAYTON L. REV. 447, 450 n.22 (1993).

348. 502 U.S. 62, 69-70 (1991).

349. *Id.* at 64-65.

350. *Id.* at 65.

351. *Id.*

352. 311 N.W.2d 843, 844-45 (Minn. 1981).

Much of the evidence that can be gathered to show an instance of “battered child syndrome” is circumstantial. In allowing such evidence to support a conviction, this court has recognized that those felonious assaults are in a unique category. Most cases of felonious assault tend to occur in a single episode to which there are sometimes witnesses. By contrast, cases that involve “battered child syndrome” occur in two or more episodes to which there are seldom any witnesses. In addition, they usually involve harm done by those who have a duty to protect the child. The harm often occurs when the child is in the exclusive control of a parent. Usually the child is too young or too intimidated to testify as to what happened and is easily manipulated on cross-examination. That [a] child . . . [does] not survive, strengthens, rather than diminishes, the law’s concern for the special problems of prosecuting a defendant in a “battered child” case. As background, direct testimony of earlier episodes of harm done to the child is admissible. Crucial to identifying such cases are the discrepancies between the parent’s version of what happened to the child when the injuries occurred and the testimony of medical experts as to what could not have happened, or must have happened, to produce the injuries.<sup>353</sup>

### III. HEAD INJURIES ARE SURVIVAL-THREATENING PER SE

SOS Team members need to be particularly vigilant in assuring the safety of children who are victims of head trauma. Not only can head injuries be survival-threatening in themselves but, if they have been inflicted by violent shaking, they are also markers for the deadly shaken baby syndrome (“SBS”).

Obviously, head trauma can be extremely serious. In fact, head injuries are the leading cause of death and disability in children under the age of five.<sup>354</sup> What may not be as obvious, however, is that the majority of head

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353. *Id.*

354. *See* State v. Loss, 204 N.W.2d 404, 408 (explaining that six-month-old Lance Running died from “direct trauma to the head” inflicted by his father). Lance sustained a v-shaped fracture of approximately two and a half inches by one inch on the left side of his skull, causing extensive hemorrhaging in the skull and swelling of the brain. *Id.* Sanders, 303 S.E.2d at 15 (stating that three-month-old Cassandra Sanders also died from a “severe crushing type head injury which consisted of a circular skull fracture on the right side of the brain” inflicted by her mother). The abuse caused “severe damage to [Cassandra’s] brain, including much bleeding into the brain tissue and laceration of the brain by the edges of the skull fracture.” *Id.*; *see also* Dabbs v. State, 518 So. 2d 825, 826 (Ala. Crim. App. 1987) (affirming the conviction of Ricky Dabbs for the murder of his live-in girlfriend’s fourteen-month-old daughter by inflicting “massive brain damage”); Moyer, 727 P.2d at 33 (noting that twenty-one-month-old child suffered a fractured skull at the hands of her stepfather); L.A. County Dep’t of Children’s Servs. v. Richard H. (*In re* Richard H.), 285 Cal. Rptr. 917, 924 (Cal. Ct. App. 1991) (deciding a case where a four-month old sustained a skull fracture and a subdural hematoma at the hands of his father); State v. Hughes, 457 N.W.2d 25, 27-28 (Iowa Ct. App. 1990) (finding the father responsible for the fatal injuries sustained by his twin sons due to “nonaccidental head trauma resulting from shaking”).

injuries sustained by infants or very young children are caused intentionally. According to a 1993 study by the American Academy of Pediatrics, sixty-four percent of all head injuries in babies under twelve months of age were caused by child abuse and, if “uncomplicated skull fractures were excluded,” the study estimated that ninety-five percent of “serious intracranial injuries” were inflicted intentionally.<sup>355</sup> The medical examiner in *Durand* explained that “babies often suffer serious head injuries but do not suffer fractures of the skull because [as infants] the skull bones are very pliable. For this reason, infants and young children suffer internal bleeding more often than skull fractures.”<sup>356</sup>

The worst head injury in terms of serious after-effects or death is a subdural hematoma.<sup>357</sup> For example, in *Goblirsch*, a two-month-old infant died of a subdural hematoma inflicted by her father.<sup>358</sup> The presence of blood in a subdural tap done of the infant confirmed that the brain hemorrhage was probably caused by a “traumatic injury of considerable force” because a subdural hematoma caused by infection does not have blood in it.<sup>359</sup> Similarly, in *Taylor*, Vicky Mullen died of a “massive subdural hematoma,” inflicted by her stepfather six days before her second birthday.<sup>360</sup> The bleeding, which occurred in the space between the brain and the membrane lining of the skull, was estimated to have begun approximately ten to thirteen days prior to her death.<sup>361</sup> The pathologist who performed the autopsy stated that Vicky’s “entire scalp was swollen and had a ‘boggy’ consistency, suggesting bleeding over the entire scalp.”<sup>362</sup> He thought that this condition was “the result of one or a series of severe blows, with the area of initial bleeding being subsequently aggravated and enlarged by other severe blows to the head.”<sup>363</sup> An autopsy also revealed multiple bruises and abrasions as well as two separate hemorrhages in Vicky’s abdomen resulting from “severe blunt force

355. Sokobin, *supra* note 38, at 402.

356. *Durand*, 465 A.2d at 767.

357. See, e.g., *Bell*, 684 S.W.2d at 283 (recognizing that the infant died of a subdural hematoma inflicted by his father); *Martin v. State*, 547 P.2d 396, 397 (Okla. Crim. App. 1976) (finding that the seven-week old died from subdural hemorrhage inflicted by his father). *State v. Taylor*, 515 P.2d 695, 697 (Mont. 1973) (describing a subdural hematoma as “a bleeding into the cranial cavity in the space separating the brain and the membrane lining the boney vault”).

358. *State v. Goblirsch*, 246 N.W.2d 12, 13-14 (Minn. 1976) (noting that the infant also sustained thirteen rib fractures).

359. *Id.* at 13.

360. *Taylor*, 515 P.2d at 697.

361. *Id.* at 697-98.

362. *Id.* at 698.

363. *Id.* (noting that he believed that there were episodes of re-bleeding caused by additional injuries to her head, occurring between the time of the first injury and the time of her death).



impacts” inflicted from three to fourteen days before her death.<sup>364</sup>

An autopsy report in *Tanner* also concluded that, after a lifetime of severe abuse by her mother, three-year-old Tawnya Tanner finally died of a “subdural hematoma associated with multiple contusions of the body.”<sup>365</sup> A neurosurgeon testified that, when he performed a bilateral craniotomy to relieve the pressure on Tawnya’s brain, he found a “very large subdural hematoma or blood clot with bruised brain tissue” and that, the “severity of the swelling and the hematoma indicated that a significant amount of force had been applied.”<sup>366</sup> In *Bell*, Anthony Bell’s death also resulted from “cerebral trauma with subdural and brain hemorrhage.”<sup>367</sup> Anthony’s father admitted that he held his infant son “by one leg hitting [his] head against the wall, and while carrying him by one leg, head downward, from one room to another, banged the child’s head against a door facing.”<sup>368</sup>

Like Vicky, Tawnya, and Anthony, three-year-old Kristen Steger was also just a toddler when she sustained a fatal subdural hematoma, “covering almost the entire left half of the brain.”<sup>369</sup> The lethal injury was caused when Kristen’s stepmother “shoved the child’s head into the toilet and broke the lid over it.”<sup>370</sup> Kristen was then “left to die, the ambulance not being called until rigor mortis began to set in. When the emergency room nurse saw Kristen’s pathetic corpse, ‘there wasn’t two inches of her body that didn’t have black-and-blue marks.’”<sup>371</sup> Unfortunately, Kristen had also sustained numerous other serious injuries including fractures of her right arm and left cheekbone and hemorrhaging of her liver, adrenal gland, intestines, and diaphragm.<sup>372</sup>

Most of the injuries had been inflicted by Kristen’s stepmother at different times over a one-month period to discipline Kristen for disobedience, including wetting her pants and sticking out her tongue.<sup>373</sup> “[F]or the final week of the youngster’s abbreviated life” the beatings were inflicted by her stepmother on a daily basis.<sup>374</sup> Despite the continuous abuse, no one ever sought medical help for Kristen before she died.<sup>375</sup>

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364. *Id.* at 699.

365. *State v. Tanner*, 675 P.2d 539, 544 (Utah 1983), *superseded on other grounds*, *State v. Walker*, 743 P.2d 191, 192 (Utah 1987).

366. *Id.*

367. *Bell*, 684 S.W.2d at 282.

368. *Id.* at 282-83.

369. *People v. Steger*, 546 P.2d 665, 667 (Cal. 1976).

370. *Id.* at 674.

371. *Id.*

372. *Id.* at 667.

373. *Id.*

374. *Id.*

375. *Id.*

Moreover, the stepmother's conviction for first-degree murder by torture was modified to second-degree murder by the California Supreme Court holding that the prosecution did not prove that the stepmother murdered Kristen with "willful, deliberate and premeditated intent to inflict extreme and prolonged pain."<sup>376</sup>

Unfortunately, like Kristen, many infants and toddlers who die from a subdural hematoma, suffer numerous other injuries as well. For example, although only four months old, Douglas Durand already had suffered a broken clavicle, an abscess near his stomach, two healing lacerations of his liver, and ten rib fractures, when a subdural hematoma from a "massive skull fracture," inflicted by his mother, "ended his brief and unfortunate life."<sup>377</sup> Similarly, when he was even younger than Douglas, Quinton Boise, died from severe subdural hemorrhaging from bilateral skull fractures, resulting from blunt force blows inflicted by his father.<sup>378</sup> Unfortunately, the autopsy revealed that this was not the only abuse Quinton suffered. Despite the fact that he was only six weeks old, Quinton already had suffered several older head injuries that also caused brain hemorrhaging as well as a broken left arm and fifteen broken ribs.<sup>379</sup> In fact, the evidence confirmed that Quinton received repeated beatings over a three-and-a-half-week period prior to sustaining the lethal blows to his head.<sup>380</sup> The State Medical Examiner testified that the brain injuries probably resulted from "violent shaking" while "compression type squeezing" probably caused the fractured ribs.<sup>381</sup>

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376. *Id.* at 670-71.

377. *State v. Durand*, 465 A.2d 762, 763 (R.I. 1983). According to the autopsy report,

[Douglas'] [s]kull fracture was accompanied by extensive subgaleal hemorrhage (bleeding between the outer skull surface and the overlying skin), which extended from ear to ear over the top of the skull as well as forward beneath the skull . . . . External examination disclosed [multiple] bruises and . . . crepitation, that is, movement of the fractured bones of the skull . . . . The autopsy further disclosed blood in the soft tissues and muscles surrounding the right kidney, an abscess in the area of the stomach and pancreas, two healing lacerations of the liver and an infarction of the caudate (middle) lobe of the liver . . . . The bone fractures were relatively old and in varying stages of the healing process. The doctor estimated that the injury to the liver was more recent, probably only two weeks old. *Id.*

378. *United States v. Boise*, 916 F.2d 497, 499 (9th Cir. 1990).

379. *Id.* at 500.

380. *Id.*

381. *Id.*

## IV. SHAKEN BABY SYNDROME IS SURVIVAL-THREATENING PER SE

*A. Victims of Shaken Baby Syndrome Can Suffer Critical Injuries to Their Brains and to Their Eyes*

The “violent shaking” suffered by Quinton Boise exemplifies a deadly form of Abusive Head Trauma (“AHT”), known as shaken baby syndrome (“SBS”), which was identified in the early 1970s.<sup>382</sup> Like battered child syndrome, shaken baby syndrome is recognized by both the medical and legal professions and expert testimony regarding SBS has been admitted in numerous U.S. courts.<sup>383</sup> The deadly nature of SBS makes it imperative that the SOS Team immediately, and probably permanently, remove any victims of SBS from their abusive homes.

SBS occurs when a baby is shaken aggressively and/or slammed against a surface, causing extreme rotational cranial acceleration, meaning that the infant’s brain bounces around, repeatedly impacting the skull.<sup>384</sup> Unfortunately, a baby is shaken violently or slammed into something hard approximately 1,500 times per year (meaning that almost three infants suffer from this type of abuse every day).<sup>385</sup> Approximately one-third of

382. ABRAMS & RAMSEY, *supra* note 97, at 334; *Boise*, 916 F.2d at 499.

383. L.A. County Dep’t Children’s Servs. v. Richard H. (*In re Richard H.*), 285 Cal. Rptr. 917, 919-20 (Cal. Ct. App. 1991) (admitting expert medical testimony regarding a four-month old who sustained a skull fracture and a subdural hematoma at the hands of his father, which were consistent with shaken child syndrome); *State v. McClary*, 541 A.2d 96, 102 (Conn. 1988) (finding, in the case of a six-month old who was blinded and suffered permanent brain damage inflicted by her father’s shaking, that shaken baby syndrome is a generally recognized medical condition and sufficiently developed to permit a reasonable opinion to be asserted); *People v. Milner*, 463 N.E.2d 148, 150-51 (Ill. App.Ct. 1984) (admitting evidence that a fifteen-month-old child was the victim of SBS at the hands of his father, who then hid his son’s body in a demolished building for almost two months before turning it over to the police); *State v. Hughes*, 457 N.W.2d 25, 27-28 (Iowa Ct. App. 1990) (admitting expert medical testimony that eight-month-old Devrick Jennings was a victim of SBS at the hand of his father); *State v. Evans*, 594 A.2d 154, 156 (N.H. 1991) (admitting expert testimony regarding BCS to explain a ten-day-old baby’s permanent loss of fifty percent of her brain tissue due to her father shaking her because she was crying and he could not get her to stop); *In re Lou R. & Quita L.*, 499 N.Y.S.2d 846, 848-49 (N.Y. Fam. Ct. 1986) (admitting expert testimony regarding SBS in a case involving a seventeen-month old who suffered seizures and blood in his spinal fluid after being shaken by his parents and noting that the syndrome is a generally recognized medical condition); *State v. Lopez*, 412 S.E.2d 390, 393 (S.C. 1991) (upholding the admissibility of expert testimony regarding SBS since it may support an inference that the child’s injuries were not accidental, and upholding a stepmother’s conviction for murdering her three-year-old stepson). See generally ROBERT D. GOLDSTEIN, CHILD ABUSE AND NEGLECT CASES AND MATERIALS 46 (West Group 1999).

384. Luke J. Haseler et al., *Evidence from Proton Magnetic Resonance Spectroscopy for a Metabolic Cascade of Neuronal Damage in Shaken Baby Syndrome*, 99 PEDIATRICS 4 (1997) (noting that SBS occurs when a parent severely shakes an infant back and forth with resulting brain trauma, frequently leading to severe permanent neurological damages or even death).

385. Dittman, *supra* note 295.

the infants do not survive the shaking.<sup>386</sup>

Ironically, the violent shaking often leaves no outward signs of abuse, despite causing massive internal brain injuries.<sup>387</sup> Thus, it is crucial that, if the SOS Team suspects that a baby is a victim of SBS, the Team arrange for x-rays to try to ascertain whether the infant has sustained head trauma. For example, “[a] nondepressed linear skull fracture is ordinarily detectable only by x-ray examination.”<sup>388</sup> If the baby dies from the shaking, an autopsy may reveal impact sites on the scalp of the head.<sup>389</sup> However, even if the autopsy does not reveal any impact injuries, that does not eliminate the possibility that the infant was slammed against a soft surface, such as a mattress or a changing table mat.<sup>390</sup>

Most of the children who suffer from SBS are under the age of four,<sup>391</sup> with many of the victims being under two years of age and often under one year of age.<sup>392</sup> Babies who are premature or have other special needs or who are difficult to soothe are especially at risk.<sup>393</sup> Male infants are more frequently shaken than female babies.<sup>394</sup> The reason that the syndrome does not occur in older children is that it is “hard to pick up an older child and hold them and shake them back and forth . . . . They just become too heavy.”<sup>395</sup> In addition, an older child “can run away better” and “they also can control their neck better.”<sup>396</sup> Thirty-seven percent of the perpetrators are the biological fathers of the shaken infants.<sup>397</sup> Boyfriends of the infants’ mothers are the next most frequent abusers (at twenty-one percent), followed by female care providers (seventeen percent) and then by the mothers of the infants (thirteen percent).<sup>398</sup>

The shaking usually is done by grasping the baby by the trunk or arms and violently shaking the infant back and forth so that the infant’s chin impacts the chest and then whip-saws to impact the upper back.<sup>399</sup> This

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386. Dittman, *supra* note 295 (estimating that twenty-five percent to thirty-five percent of the victims die).

387. Tracey S. Corey, “Cutaneous Evidence of Physical Abuse,” at 8, presented at the Child Abuse Conference, Davis, California (2005); and Dittman, *supra* note 295.

388. *Landeros v. Flood*, 551 P.2d 389, 406 (Cal. 1976).

389. Corey, *supra* note 388, at 8.

390. *Id.*

391. Dittman, *supra* note 295, at 3.

392. *State v. Hughes*, 457 N.W.2d 25, 26 (Iowa Ct. App. 1990).

393. Dittman, *supra* note 295, at 3.

394. *Id.*

395. *Hughes*, 457 N.W.2d at 27.

396. *Id.*

397. Dittman, *supra* note 295, at 3.

398. *Id.*

399. *Id.*

whiplash effect can happen as frequently as four times every second.<sup>400</sup> In *State v. Hughes*, where a father severely injured his twin sons when they were only one month old and later killed another son when he was eight months old, medical experts described the whiplash effect sustained by these babies as follows:

[W]hen a child is picked up and shaken the repeated oscillations back and forth cause the skull that's one . . . density and the brain which is of a different density, [to vary] how fast they go back and forth; and at one given moment the brain will be going one way and the skull will be going the opposite way. There can also be more direct injury right to the brain itself, occasionally in some cases to the spinal cord.<sup>401</sup>

A baby is more vulnerable to brain injury from shaking than an older child since an infant's head constitutes approximately ten percent of the baby's total weight versus only about two percent of the total weight of the brain of an adult.<sup>402</sup> Moreover, an infant's head is about one quarter of the baby's body length, whereas, with an adult, the head length is about an eighth of the body length. In addition, the consistency of an infant's brain is less developed than an adult's brain; it is soft rather than firm, which means that it is injured much more easily.<sup>403</sup> There is also more space between the skull and the brain so that, when an infant is shaken, the brain bounces around, impacting the skull with more force.<sup>404</sup>

During the shaking, the rotational forces tear the bridging veins that surround the brain, causing subdural hematoma.<sup>405</sup> In addition, the shaking can shear or tear the brain tissue.<sup>406</sup> This trauma causes the brain to swell, resulting in pressure that pushes down on the brainstem, which, in turn, controls vital functions like heart rate and respiration.<sup>407</sup> This can lead to a decrease in oxygen to the brain and permanent brain damage or death.<sup>408</sup> For example, in *Duley* two-month-old Michelle Duley died from hypoxic encephalomalacia—a lack of oxygen to the brain—caused by a subdural hematoma, resulting from her father shaking her with “substantial force, force not remotely approaching anything which would be applied in the exercise of judgment, good or bad, to a child of this age.”<sup>409</sup>

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400. Davis, *supra* note 3, at 7.

401. *Hughes*, 457 N.W.2d at 27.

402. Dittman, *supra* note 295, at 3.

403. *Id.*

404. *Id.*

405. *Id.* at 4.

406. *Id.*

407. *Id.*

408. *Id.* (noting that in more severe cases, the baby will suffer from respiratory distress, seizures, coma or death).

409. *Duley v. State*, 467 A.2d 776, 781-82 (Md. Ct. Spec. App. 1983); *see also State*

In *Hughes*, medical experts also established that the lethal brain trauma sustained by eight-month-old Devrick Jennings at the hands of his father, “were not the result of a casual shaking but rather the result of a violent shaking.”<sup>410</sup> In describing the substantial shaking required to cause Devick’s multiple injuries, which included acute “bilateral subdural bleeding from the brain” as well as “subdural hematomas over the entire spinal cord,” the medical expert testified as follows:

We’re not talking about patting on the back or . . . a little rattling. We’re talking about such a significant shaking that the head is being forcefully bounced from the chest and then all the way back to hit against the back and then bounced back and forth. . . . [T]hat requires a reasonably substantial physical effort to shake something that weighs a number of pounds hard enough to get that type of motion.<sup>411</sup>

The violent shaking may also cause the blood vessels in the retina to tear and begin to bleed, resulting in retinal hemorrhages—bleeding in the back of the eyes.<sup>412</sup> These types of widespread, multi-layered retinal hemorrhages are valuable markers for the SOS Team in identifying SBS because they only occur from rotational head trauma.<sup>413</sup> Unfortunately, retinal hemorrhages can lead to blindness.<sup>414</sup> For example, in the case of *State v. McClary*, as a result of “severe, violent shaking” administered by her father, six-month-old Jennifer McClary suffered “multiple hemorrhages of the eyes” which resulted from “trauma within or to the brain.”<sup>415</sup> Unfortunately, Jennifer became “totally blind,” with no chance that she would ever recover her vision, and was described as a “severely, neurologically disabled child [who] in all probability would always be bedridden.”<sup>416</sup>

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v. Evans, 594 A.2d 154, 159-60 (N.H. 1991) (describing the extraordinary, violent shaking needed to sustain injuries causing a ten-day-old baby to lose one half of her brain tissue).

410. *State v. Hughes*, 457 N.W.2d 25, 27 (Iowa Ct. App. 1990).

411. *Id.* at 27-28.

412. Dittman, *supra* note 295, at 3.

413. *State v. Schneider*, CA No. L-84-214, 1984 WL 3719, at \*2 (Ohio App. Ct. Dec. 21, 1984) (convicting a father of involuntary manslaughter in the death of his four-month-old child from SBS). A coroner described how shaken babies often are “perfectly healthy, normal looking babies” with “no external signs of any injury, but yet come in looking extremely ill and many times have episodes of apnea or stopping breathing.” *Id.* The coroner explained that “the only real way of making the [SBS] diagnosis is to, number one, suspect it in a patient who has no other signs of abuse and to look in the eye grams.” *Id.* The physician searches for “hemorrhage in the retina which suggests that there has been injury to the brain from the brain going back and forth in the skullcap.” *Id.*

414. *State v. McClary*, 541 A.2d 96, 99 (Conn. 1998).

415. *Id.* at 97-99.

416. *Id.* at 99.

*B. Victims of Shaken Baby Syndrome Can Suffer From a Variety of Bone Fractures*

In addition to subdural bleeding and retinal hemorrhages, victims of shaken baby syndrome may also suffer from a variety of bone fractures, including skull fractures, rib fractures, chip fractures and spiral fractures. These types of fractures should also alert the SOS Team to the critical need to immediately remove the shaken baby from the abusive parents.

Skull fractures can occur when an infant is slammed into an object during the shaking.<sup>417</sup> For example, in *In re Richard H.*, four-month-old Christopher H. was hospitalized in a comatose condition, having suffered two independent head injuries at the hands of his father—a parietal skull fracture and a subdural hematoma.<sup>418</sup> The skull fracture was “so severe, it could only have been caused by blunt trauma to the head with an instrument or by hitting the baby’s head against a hard object.”<sup>419</sup> The subdural hematoma was probably caused by “shaking the child with a front and back motion.”<sup>420</sup> Christopher’s comatose state resulted from his father continuing to shake him after the blood vessels in his brain had burst.<sup>421</sup>

Similarly, in *Renteria*, two-and-a-half-month-old S.M. suffered “very massive brain injuries,” which left him permanently mentally disabled, as a result of “extremely violent shaking” by his mother’s boyfriend.<sup>422</sup> He also sustained two skull fractures that, rather than occurring when he fell out of bed as claimed by the boyfriend, happened after he was “thrown against another object, be it the crib, or the bed, or the floor, or the wall, or something like that.”<sup>423</sup> In *Dabbs*, Misty Kyle died from two four-and-a-half-inch skull fractures, “one on each side of her head,” also inflicted by her mother’s live-in boyfriend, who once threw her about seven feet across a room because she was crying.<sup>424</sup> A forensic pathologist testified that her injuries “were caused by the type of force you would expect if you picked up a thirteen-month-old child and slammed one side of its head against a wooden surface and then did the same thing to the other side of the head.”<sup>425</sup> He explained that Misty’s injuries “had to be caused by two

417. See SMITH, *supra* note 208, at 192 (relating skull fractures with shaking).

418. L.A. County Dep’t Children’s Servs. v. Richard H. (*In re Richard H.*), 285 Cal. Rptr. 917, 918 (Cal. Ct. App. 1991).

419. *Id.* at 919.

420. *Id.*

421. *Id.* (describing how the injured infant would at first be fussy and unable to eat, then as the baby’s condition worsened, he would have seizures, with his eyes rolling back in his head).

422. *People v. Renteria*, 597 N.E.2d 714, 716 (Ill. App. Ct. 1992).

423. *Id.*

424. *Dabbs v. State*, 518 So. 2d 825, 826 (Ala. Crim. App. 1987).

425. *Id.*

blows because there was no connection between the two fractures” and that an accidental fall of three feet, which the boyfriend claimed caused her injuries, “could not have caused Misty’s massive brain damage.”<sup>426</sup>

A shaken baby can suffer from rib fractures if the infant is held by the abdomen and squeezed during the shaking.<sup>427</sup> For example, in addition to her fatal subdural hematoma, two-month-old Michelle Duley also suffered from multiple rib fractures of varying ages, caused by her father’s use of “excessive force.”<sup>428</sup> Metaphyseal or chip fractures, can result from the flailing and jerking of the infant’s limbs during the severe shaking, which causes shear fractures through the soft metaphyseal tissue.<sup>429</sup> A comminuted spiral fracture of an infant’s legs or arms can be caused by the parent forcibly twisting the limbs when picking up the child.<sup>430</sup> In a comminuted fracture “the bone is splintered or crushed into numerous pieces.”<sup>431</sup> Calling spiral fractures, the “‘hallmark’ of a battered child,” a radiologist in the *Milner* case described spiral fractures of the legs of two infants, Cory and Tamara, as resulting from a “twisting force, such as holding a child by his arms and shaking him.”<sup>432</sup> The radiologist’s testimony disproved the father’s claims that Cory sustained his injuries when he fell from a bed and that Tamara sustained her injuries when another child jumped off a window ledge onto her.<sup>433</sup> Unfortunately, both Cory and Tamara’s twin brother, Shamar, died from their injuries.<sup>434</sup>

*C. Victims of Shaken Baby Syndrome Who Survive Often Suffer From Severe Physical and Mental Disabilities*

Infants, like Tamara,<sup>435</sup> who do survive the shaking generally suffer from one or more of the following conditions: permanent vegetative state, permanent brain damage, paralysis, cerebral palsy, epilepsy, blindness, deafness, learning disabilities, behavioral disorders and/or developmental delays.<sup>436</sup> One study showed that sixty-eight percent of the survivors of SBS were abnormal on follow-up, with thirty-six percent of those babies

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426. *Id.*

427. Comm. on Child Abuse and Neglect, *supra* note 238, at 207 (explaining statistics and types of child abuse injuries).

428. *Duley v. State*, 467 A.2d 776, 781 (Md. Ct. Spec. App. 1983).

429. Comm. on Child Abuse and Neglect, *supra* note 238, at 208 (distinguishing types of fractures children can suffer).

430. *Id.*

431. WEBSTER’S NEW INTERN. DICT. 457 (3d ed. 1961).

432. *People v. Milner*, 463 N.E.2d 148, 152 (Ill. App. Ct. 1984).

433. *Id.*

434. *Id.* at 151 (noting that Tamara survived the abuse).

435. *Id.*

436. Dittman, *supra* note 295, at 5.



having severe difficulties, and the remainder divided between moderate and mild disabilities.<sup>437</sup> The types of difficulties included sixty-four percent experiencing speech and language problems, sixty percent having motor deficits, fifty-two percent exhibiting behavior problems, forty-eight percent suffering from visual disabilities, and twenty percent having epilepsy or a related seizure disorder.<sup>438</sup>

*D. Symptoms of Shaken Baby Syndrome Can Sometimes Be Caused by Other Conditions*

It is, of course, important to be certain that what appears to be SBS is not the result of a medical condition unrelated to parental abuse.<sup>439</sup> For example, some of the symptoms of SBS, can be caused by internal bleeding in another part of the body, infection, cardiac problems, or congenital brain damage.<sup>440</sup> Intracranial bleeding can also be caused by hemophilia, a vascular malformation or a CNS tumor, the most common solid tumor of childhood.<sup>441</sup> Birth trauma can cause retinal hemorrhage.<sup>442</sup> However, if the retinal bleeding occurs during delivery, it is usually resolved by the time the infant is six weeks old.<sup>443</sup> If the retinal hemorrhage is unilateral, the injury is likely to be accidental whereas if the retinal hemorrhage is bilateral, the injury is likely to be the result of abuse.<sup>444</sup> Although it is rare, retinal bleeding can also occur after a resuscitation attempt.<sup>445</sup>

V. MULTIPLE NON-ACCIDENTAL BONE FRACTURES IN VARIOUS STAGES OF HEALING ARE SURVIVAL-THREATENING PER SE

*A. Introduction*

Although a single broken bone, in and of itself, is not usually a survival-threatening injury, even a single fracture may indicate that a child is being

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437. Karen M. Barlow et al., *Late Neurologic and Cognitive Sequelae of Inflicted Traumatic Brain Injury in Infancy*, 116 PEDIATRICS 174, 174 (2005).

438. *Id.*

439. J. THOMAS STOCKER, CONGENITAL AND ACQUIRED DISORDERS SIMULATING CHILD ABUSE (2005).

440. *In re Lou R. v. Quita L.*, 499 N.Y.S.2d 846, 848 (N.Y. Fam. Ct. 1986) (ruling out other possible causes for a seventeen-month old's seizures and blood in his spinal fluid and cranial cavity, medical experts performed a variety of diagnostic tests including a CT scan, a "bone scan, blood clotting studies, urine/blood/spinal fluid cultures, electrolyte studies, electroencephalogram, chest X-rays, blood count and check of arterial blood gases").

441. STOCKER, *supra* note 439.

442. *Id.*

443. *Id.*

444. Dittman, *supra* note 295, at 3.

445. STOCKER, *supra* note 439.

abused intentionally, especially if the child is very young.<sup>446</sup> The SOS team investigating the abuse should always consider the possibility that a child has not only suffered the overt presenting fracture, but that the child may have suffered additional, hidden fractures as well. As detailed above, both victims of BCS and SBS frequently sustain multiple bone fractures, often along with other serious injuries.<sup>447</sup> Any infant or child with non-accidental, multiple fractures in various stages of healing, has sustained injuries that are survival-threatening per se and should be regarded as being at extreme risk of permanent injury or death.<sup>448</sup> As noted above, a major characteristic of physical abuse is its repetitive nature, as a result there is every reason to believe that the injuries will recur if the child is not immediately, and probably permanently, removed from the home by the SOS Team.

*B. Bone Fractures in Various Stages of Healing and Sustained at Different Times Are Indicative of Child Abuse*

If the SOS Team suspects that a child with a single broken bone or other serious injuries may have suffered additional fractures, the SOS Team should arrange to have a radiological bone survey of the child's entire skeleton. These skeletal surveys will often confirm that the child's injuries were caused intentionally by revealing numerous fractures in various stages of healing.<sup>449</sup> For example, in *Nivert*, four-month-old Christian Mayfield's parents claimed that their son had been injured when he "caught his head between the bars of his crib."<sup>450</sup> X-rays revealed that he sustained a skull fracture, which was inconsistent with the explanation provided by his parents.<sup>451</sup> Full-body X-rays subsequently revealed fifteen additional fractures, "at various stages of healing, throughout his body," including

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446. *Id.*

447. See, e.g., *Santosky v. Kramer*, 455 U.S. 745, 781 n.10 (1982) (Rehnquist, J., dissenting) (noting that parental abuse of two-year-old Tina Apel resulted in her suffering a fractured left femur, which her parents had treated with a home-made splint, abrasions on her upper legs and bruises on her upper arms, forehead, and spine); *People v. Ellis*, 589 P.2d 494, 496 (Colo. Ct. App. 1978) (finding that a four-year-old battered child sustained several fractures before being beaten to death by his stepmother); *Ohlsen v. M.B. (In re R.W.B.)*, 241 N.W.2d 546, 550 (N.D. 1976) (discovering battered child suffered eleven separate bone fractures of his arms and his legs during his first seven months of life inflicted by his parents).

448. John L. Gwinn et al., *Roentgenographic Manifestations of Suspected Trauma in Infancy*, 176 J.A.M.A. 926, 927 (1961).

449. SCHUCHTER, *supra* note 87, at 3; see also Kempe, *supra* note 17, at 18 (noting that the "characteristic distribution of these multiple fractures and the observation that the lesions are in different stages of healing are of additional value in making the diagnosis").

450. *State v. Nivert*, CA Nos. 16806, 1995 WL 608415, \*1 (Ohio Ct. App. Oct. 18, 1995).

451. *Id.*

breaks of both or his legs and arms.<sup>452</sup> As Dr. Kempe explained: “To the informed physician, the bones tell a story the child is too young or too frightened to tell.”<sup>453</sup>

In the *Bouknight* case, x-rays of Maurice’s bones told a story that the three-month-old infant was far too young to tell.<sup>454</sup> Although Maurice was initially hospitalized with a single fracture of his left femur, a skeletal survey revealed several additional partially healed bone fractures as well as other indications of severe physical abuse.<sup>455</sup> While he was in the hospital, his mother “was observed shaking Maurice, dropping him in his crib despite his spica cast, and otherwise handling him in a manner inconsistent with his recovery and continued health.”<sup>456</sup> Following his release from the hospital, Maurice was placed in shelter care; however, several months later the order was inexplicably modified to return Maurice to his mother’s care with the proviso that the mother comply with extensive conditions as part of a court-approved protective supervision order.<sup>457</sup> Unfortunately, the mother “in nearly every respect violated the terms of the protective order.”<sup>458</sup> The mother subsequently refused to produce Maurice or reveal where he could be found and the State acknowledged that it suspected that Maurice was dead.<sup>459</sup>

Further *Tanner* illustrates both the usefulness of skeletal surveys and the predictably tragic results which can occur if a child who suffers injuries that are survival-threatening *per se* is returned to her abusive home.<sup>460</sup> When Tawnya was only three months old, she was admitted to Oregon Medical Center because of failure to thrive.<sup>461</sup> A skeletal survey revealed that she had sustained bone fractures of her right clavicle, her right eleventh rib, and her right tibia.<sup>462</sup> Two of these fractures were spiral fractures, which are virtually always intentionally caused by twisting the bone.<sup>463</sup>

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452. *See id.* (noting that Christian’s father was convicted of felony assault and child endangerment while his mother was convicted of child endangerment).

453. *HELPER & KEMPE*, *supra* note 17, at 20.

454. *See generally* *Balt. City Dep’t of Soc. Servs. v. Bouknight*, 493 U.S. 549 (1990).

455. *Id.*

456. *Id.*

457. *Id.*

458. *Id.*

459. *Id.* at 551, 559 (noting that the police were investigating the case as a possible homicide and holding that the mother could not invoke the Fifth Amendment privilege against self-incrimination to resist the order to produce Maurice).

460. *See generally* *State v. Tanner*, 675 P.2d 539 (Utah 1983), *superseded on other grounds*, *State v. Walker*, 743 P.2d 191, 192 (Utah 1987).

461. *Tanner*, 675 P.2d at 548.

462. *Id.* at 549.

463. *Id.*

According to Tawnya's physician, the mother's explanation that Tawnya fell from a couch was insufficient to account for her injuries.<sup>464</sup> Although Tawnya was removed from her mother's home for a short time, once she was returned, she suffered abuse for "substantially all" of the remaining two years of her life, until she died from a subdural hematoma, inflicted by her mother.<sup>465</sup>

In addition to revealing that a child has suffered multiple fractures, skeletal surveys also allow roentgenologists to determine whether the various fractures were sustained at the same time or at different times.<sup>466</sup> For example, in *Ashford*, a skeletal survey revealed that, in addition to a fatal subdural hematoma, eight-month-old Jason Barnett had partially healed fractures from four to eight weeks old and other injuries from five days to two weeks old, caused by his mother's live-in boyfriend.<sup>467</sup> Similarly, in *Harris*, full body x-rays revealed that lethal injuries to the brain and abdomen were not the only injuries a father had inflicted on his eight-month-old son, Paul.<sup>468</sup> In addition, Paul had sustained a fractured clavicle, four rib fractures, a broken right wrist, a broken left leg, and a possible broken arm.<sup>469</sup> The stage of healing of the fractures showed that the injuries were "caused on different occasions during the two or three months immediately preceding the infant's death."<sup>470</sup>

*C. Bone Fractures Caused by Jerking, Twisting or "Crunching" Are Indicative of Child Abuse*

Skeletal surveys may also reveal that the abused child has been jerked in such a manner as to break his bones.<sup>471</sup> In a small child, the SOS Team should suspect such injuries to the extremities if the child's limbs are tender or painful, if there is decreased voluntary movement, or if the child limps or fails to bear weight.<sup>472</sup> The deliberate and vicious nature of these types of fractures also indicate that the SOS Team should remove the child from the abusive home because there is a strong likelihood that the abuse

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464. *Id.*

465. *Id.* at 541, 548 (noting that Tawnya's mother was ultimately convicted of manslaughter in her daughter's death, which was affirmed on appeal).

466. Bakwin, *Multiple Skeletal Lesions in Young Children Due to Trauma*, 49 J. PEDIATRICS 7, 57 (1956); see, e.g., *People v. Ellis*, 589 P.2d 494, 496 (Colo. Ct. App. 1978) (finding that x-rays revealed several prior fractures of differing age had been sustained by a four-year old who was ultimately beaten to death by his stepmother).

467. *Ashford v. State*, 603 P.2d 1162, 1164 (Okla. Crim. App. 1979).

468. *United States v. Harris*, 661 F.2d 138, 140 (10th Cir. 1981).

469. *Id.*

470. *Id.*

471. Gwinn, *supra* note 448, at 927.

472. *Child Maltreatment 2003*, *supra* note 7, at 1.

will recur and increase in severity.<sup>473</sup>

Radiological bone surveys can also be useful to the SOS Team by revealing the presence of chip or metaphyseal fractures in the joints, resulting from a parental abuser twisting the child's limbs. An arm or leg fracture caused by such a twisting force is particularly significant in diagnosing child abuse because "the extremities are the handles for rough handling of the child by adults."<sup>474</sup> For example, in *Albridge*, x-rays revealed that an infant had sustained a fresh chip fracture of her left leg, which the mother claimed happened when she fell with the baby in her arms the previous day.<sup>475</sup> Two days later, the infant sustained a new fracture of her right leg that the child's pediatrician described as "a bucket handle fracture where the whole metaphysis of the tibia is pulled loose from the bone, which can only be caused by 'a pulling, twisting force.'"<sup>476</sup> The parents offered no explanation for the child's additional injury so the pediatrician ordered a skeletal survey.<sup>477</sup> The x-rays revealed two additional bucket handle fractures to the infant's right ankle, which were within a week old, as well as two bucket handle fractures of the left wrist, which were about a month old.<sup>478</sup> The Mississippi Supreme Court noted that the five fractures "inflicted over a comparatively short period of time justified a finding that they were the results of a course of mistreatment extending over almost the entire brief life span of the child."<sup>479</sup>

In addition to chip or bucket handle fractures, an infant who has sustained rib fractures may have been injured intentionally by being crushed by his or her abuser.<sup>480</sup> For example, in *Durand*, four-month-old

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473. See *Sanders v. State*, 303 S.E.2d 13, 15 (Ga. 1983) (noting that, in addition to the "crushing type head injury" that caused her death, eleven-month-old Cassandra Sanders suffered a broken upper right arm, probably caused by her abusive mother "placing tension on it until it snapped").

474. HELFER & KEMPE, *supra* note 17, at 43; see also *State v. Screpesi*, 611 A.2d 34, 36 (Del. Super. Ct. 1991) (convicting the father of second-degree assault for twisting the leg of his seven-month-old son, Michael, causing a fracture to the infant's femur; x-rays revealed that Michael had several previous fractures in his legs); *State v. Loss*, 204 N.W.2d 404, 408 (Minn. 1973) (finding in addition to lethal head injuries inflicted by his father, six-month-old Lance Running sustained a spiral, twisting fracture of his leg, "which is more frequently encountered in battered-child syndrome cases than are straight-across fractures").

475. *Aldridge v. State*, 398 So. 2d 1308, 1310 (Miss. 1981).

476. *Id.*

477. *Id.*

478. See *id.* at 1310-11 (noting that there was "no fact or circumstance . . . tending in any way to support any other reasonable explanation of these injuries except that they were inflicted by its parents [since no] other person is shown to have had the custody or care of the infant save its parents"); see also *State v. Durand*, 465 A.2d 762, 766 (R.I. 1983); Davis, *supra* note 3, at 6.

479. *Aldridge*, 398 So. 2d at 1310-11.

480. HELFER & KEMPE, *supra* note 17, at 48.

Douglas Durand suffered ten rib fractures along with a fatal subdural hematoma.<sup>481</sup> The Rhode Island Supreme Court noted that “[s]ignificant force would have been required to cause the rib fractures primarily because the ribs and bones of a child of this age are pliable and the type of force would have to be a crushing or squeezing one.”<sup>482</sup> In the *Loebach* case, three-month-old Michael Loebach also suffered rib fractures, as part of the lethal battering inflicted by his father.<sup>483</sup> At the father’s trial for killing his son, child abuse expert Dr. Robert ten Bensel testified that he had “never before seen rib fractures like those revealed by the autopsy.”<sup>484</sup> He described the fractures as being “so close to the spine that it would require almost total compression of the ribs and total squeezing of the body” to cause the injuries and that they could not have occurred by “throwing the baby in the air and catching him, as claimed by the parents.”<sup>485</sup> Similarly, five-week-old Joanne Muniz suffered fourteen fractured ribs at the hands of her parents in addition to scratches on her face and leg, a distended, rigid abdomen, and sores about her lips.<sup>486</sup> Joanne’s physician stated that when he lifted the infant, her ribs “crunched.”<sup>487</sup>

If a skeletal survey reveals jerking, twisting, or “crunching” fractures, especially if they were sustained at different times, the SOS Team should immediately remove the child from the home with a presumption that the removal will be permanent. A return should only be considered if the abusive parent is no longer in the home and the child is old enough to protect him or herself from any future abuse and to immediately communicate any repetition of battering to the SOS Team.

#### *D. Bone Fractures Can Sometimes Be Caused Non-Intentionally*

It is important, of course, for the SOS Team to rule out any accidental causes of the child’s injuries. For example, fractures in very young infants, especially fractures of the clavicle, humerus, or femur, can be caused by birth trauma.<sup>488</sup> Skull fractures can also occur during difficult deliveries,

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481. Durand, 465 A.2d at 763.

482. *Id.* at 768.

483. State v. Loebach, 310 N.W.2d 58, 61 (Minn. 1981).

484. *Id.* at 62.

485. *Id.* (noting that Dr. ten Bensel also testified that the “multiple injuries were clearly not caused by accidents of the kind the [parent] stated and were not self-inflicted” and that he was “firmly convinced that the baby’s death was the final result of nonaccidental physical abuse of the baby over a period of time”).

486. State v. Muniz, 375 A.2d 1234, 1236 (N.J. Super. Ct. App. Div. 1977).

487. *Id.* (quoting Dr. Eugene Garrow and affirming the father’s conviction for cruelty and the mother’s conviction of abuse, cruelty and neglect of their daughter).

488. STOCKER, *supra* note 439.

such as a breech birth.<sup>489</sup>

It is also essential for the SOS Team to rule out any possible congenital or acquired disorders that may account for the fractures. For example, broken bones can result from congenital syphilis as well as from rickets.<sup>490</sup> Osteogenesis imperfecta, a congenital disorder which causes severe bone fragility, can lead to fractures, even if the baby is in a highly protected environment.<sup>491</sup> In fact, twenty-five percent of unborn children suffering from Type IV osteogenesis imperfecta, the most serious form of the disease, sustain interuterine fractures.<sup>492</sup> Fractures in childhood are also very common in children suffering from this disorder, sometimes leading to severe deformities of the long bones.<sup>493</sup>

#### VI. INTRA-ABDOMINAL INJURIES ARE SURVIVAL-THREATENING PER SE

Intra-abdominal injuries also are suffered frequently by both victims of BCS and SBS and are classified as survival-threatening per se.<sup>494</sup> In fact, abdominal trauma ranks as the second most common cause of death in physically abused children.<sup>495</sup> For example, in *In re J.W.*, two-year-old J.W. died from massive internal hemorrhaging from a severe blow to his abdomen at the hands of his aunt and uncle.<sup>496</sup> In *Tucker*, the death of four-month-old Chuckie Patten was caused by a punch or blow of “considerable force” to the infant’s abdomen, which was inflicted by the mother’s live-in boyfriend, resulting in perforation of the small intestine.<sup>497</sup> Chuckie also sustained numerous bruises, multiple rib fractures, hemorrhage of the

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489. JONATHAN S. WIGGLESWORTH, 15 PERINATAL PATHOLOGY 91-92 (W.B. Saunders Co., 2d ed. 1996).

490. STOCKER, *supra* note 439.

491. *Id.*

492. *Id.*

493. *Id.*

494. *See* *People v. Aeschlimann*, 104 Cal. Rptr. 689, 693 (Cal. Ct. App. 1972) (quoting medical testimony claiming that an eleven-month-old boy died from non-self-inflicted “severe traumatic injuries” that caused “lacerations of . . . [his] duodenum [allowing] ‘the escape of the intestinal contents into the abdominal cavity’”); *see also* *People v. Platter*, 412 N.E.2d 181, 183-85 (Ill. App. Ct. 1980) (reviewing medical testimony claiming that a three-year-old child died from a “very unusual, very massive” bowel perforation, which would have required a “tremendous force” to inflict, as well as other internal injuries and external bruises inflicted by her mother’s live-in fiancé); *State v. Nash*, 446 So. 2d 810, 812 (La. Ct. App. 1984) (examining medical testimony stating that a nineteen-month-old suffered fatal abdominal and head injuries at the hands of his mother’s live-in boyfriend); *Hawkins v. State*, 555 S.W.2d 876, 877 (Tenn. Ct. App. 1977) (analyzing medical testimony claiming that a two-year-old child bled to death from internal injuries inflicted by her mother and her mother’s live-in boyfriend).

495. SCHUCHTER, *supra* note 87, at 68-69.

496. 415 N.W.2d 879, 880 (Minn. 1987).

497. 435 A.2d 986, 989 (Conn. 1980).

transverse colon, and an inflammation of the pancreas.<sup>498</sup> In *People v. Lawhon*, eight-month-old Cheryl Lawhon was killed when her father hit her “in the stomach with his fists with such force as to dislodge the root of the intestines and perforate the bowel, causing her subsequent death by generalized peritonitis.”<sup>499</sup> Cheryl’s father had previously hit her in the head, causing her to suffer convulsions from a subdural hemorrhage, as well as fractures of her ribs.<sup>500</sup>

Contrary to the claims of some abusive parents, children do not usually fall with sufficient force to produce abdominal injuries, because abdominal trauma requires “an external striking or compressive force of some sort applied to the abdomen.”<sup>501</sup> For example, in *State v. Johnson*, Shannon Erick bled to death from “an outpouring of blood from the peritoneal cavity and a torn mesentery, resulting in a loss of three-fifths of a pint of blood.”<sup>502</sup> Her abusive stepfather claimed that a fall down the stairs had caused her injuries.<sup>503</sup> However, Forensic Pathologist Dr. Robert Huntington testified that a “‘concentrated force’” had to have caused her injuries because “the liver and spleen were not damaged as they would be if a person’s abdomen had hit a broad surface, as in a car accident [rather] the direction of the force was heading up into the abdomen and towards her back.”<sup>504</sup> He stated that “the concentrated force could have been ‘a fist or a foot or some solid object.’”<sup>505</sup> He explained, in layman’s terms that a force comparable to what Shannon experienced “would result from a fifty or sixty miles per hour head-on collision.”<sup>506</sup> With regard to whether Shannon’s injury could have resulted from a fall down the stairs, Dr. Huntington testified that

[H]e could conceive of an accident *only if* “she had been dropped straight down a stairwell from a ceiling on the second floor down one of those old fashioned banisters, down to the first level,” or if she dropped fifteen feet straight down with no blocks or tumbles; in contrast, a “normal fall” would result in one’s “hitting broad rises” and such a fall would “distribute the injuries differently” and . . . a normal tumble down the

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498. *Id.*

499. 33 Cal. Rptr. 718, 719 (Cal. Dist. Ct. App. 1963).

500. *Id.* at 720 (upholding the father’s first-degree murder by torture conviction).

501. *State v. Wilkerson*, 247 S.E.2d 905, 909 (N.C. 1978) (noting that deep injuries in the abdomen are unusual places for an injury to a child because it would “necessitate a force being directed to the abdomen”).

502. 400 N.W.2d 502, 505 (Wis. Ct. App. 1986) (upholding defendant’s second-degree murder conviction).

503. *Id.* at 506.

504. *Id.*

505. *Id.* at 505.

506. *Id.*



stairs just would not have “that much power or thrust.”<sup>507</sup>

Dr. Huntington concluded that there was “[n]o way” that her injury resulted from an accident.<sup>508</sup>

Despite the lethal nature of the abuse, some children who suffer, or even die from blows to their abdomens, do not show any external evidence of the abdominal trauma.<sup>509</sup> In one study, forty-three percent of the children who died from abusive abdominal trauma displayed no bruises or contusions on their abdomens.<sup>510</sup> Thus, the SOS Team must be extremely careful in their investigation to ensure that these injuries are not missed. Even without any external evidence, children with intra-abdominal injuries sometimes have symptoms that aid in the investigation, such as recurrent vomiting, abdominal distention, absent bowel sounds, and localized tenderness.<sup>511</sup> X-rays may also “show free air in the chest following trauma to the internal organs.”<sup>512</sup>

There are, of course, many cases where children with severe intra-abdominal injuries do have external evidence of the abuse.<sup>513</sup> For example, in *Walkey*, when paramedics arrived to treat two-year-old Nathanel Walkey he was “covered with bruises . . . his abdomen was . . . distended” and he “looked like he had been severely beaten.”<sup>514</sup> Unfortunately, when Nathanel “was not breathing and had no pulse.”<sup>515</sup> The child’s “substitute father,” Frederick Walkey, initially claimed that Nathanel’s fatal injuries were caused when he fell and hit his head.<sup>516</sup> He later claimed that Nathanel fell down the stairs or was knocked down by his dog.<sup>517</sup> An autopsy established that Nathanel died from “a severe penetrating blow, crushing, and tearing open his intestines,” which was inflicted by Frederick.<sup>518</sup> The autopsy also showed that Nathanel suffered another “severe abdominal blow at least two weeks before he died” because he had a partly healed fractured rib, a partially healed torn liver, and a

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507. *Id.* (emphasis in original).

508. *Id.*

509. Corey, *supra* note 387, at 8.

510. DiMAIO & DiMAIO, *supra* note 313, at 338.

511. See Brown, *supra* note 13, at 48 (noting that “physical finding of . . . battered children vary with the site and severity of the injury”).

512. *Id.*

513. See, e.g., *People v. Walkey*, 223 Cal. Rptr. 132, 134 (Cal. Ct. App. 1986) (stating that child’s autopsy revealed multiple bruises, abrasions, and lacerations, including two bite marks).

514. *Id.*

515. *Id.*

516. *Id.* at 133-34.

517. *Id.* at 139.

518. *Id.* at 134 (stating that the penetrating blow was non-accidental).

hemorrhaged spleen.<sup>519</sup> Additionally, Nathanel had “two large deep bruises on the back of his head causing life-threatening injury to the brain.”<sup>520</sup> If any of these prior injuries had been reported and investigated in the manner recommended for the SOS Team, it is likely that Nathanel would have been removed from his lethal home and, perhaps, would be alive today.

VII. POISONING IS SURVIVAL-THREATENING PER SE AND MAY INDICATE THAT THE CHILD’S PARENTS SUFFER FROM MUNCHAUSEN’S SYNDROME BY PROXY

Although poisoning is a fairly unusual form of child abuse, when it does occur poisoning is clearly survival-threatening per se.<sup>521</sup> Moreover, poisoning is probably the most frequent method of child abuse used by parents who suffer from Munchausen’s Syndrome by Proxy (“MSBP”).<sup>522</sup> First described by Dr. Roy Meadow, an English physician, in 1977,<sup>523</sup> MSBP involves a parent, usually the mother,<sup>524</sup> who “through the vehicle of a child feigns, simulates, or actually fabricates a physical illness.”<sup>525</sup> Researchers explain that MSBP parents “typically will transfer their own

519. *Id.*

520. *Id.*

521. See, e.g., Roy Meadow, *Munchausen Syndrome by Proxy—The Hinterland of Child Abuse*, 2 LANCET 343, 343-45 (1977) (analyzing two Munchausen Syndrome by Proxy cases where mothers poisoned their children and created life threatening situations).

522. See, e.g., Suzanne Painter Mochow, *Munchausen Syndrome by Proxy: A Subtle Form of Child Abuse and a Potential Due Process Nightmare*, 18 J. JUV. L. 167, 168 (1997) (describing an instance where a mother deliberately manipulated her adopted infant child’s electrolyte level by adding sodium bicarbonate to her child’s formula).

523. Meadow, *supra* note 521, at 343 (noting that Munchausen Syndrome by Proxy is a related psychiatric disease that causes “patients to consistently produce false stories and fabricate evidence, so causing themselves needless hospital investigations and operations”).

524. See *In re Jessica Z.*, 515 N.Y.S.2d 370, 374 (N.Y. Fam. Ct. 1987) (noting that “[i]n every reported case of MS[BP], the perpetrator has been found to be the child’s natural mother”).

525. *People v. Phillips*, 175 Cal. Rptr. 703, 709 (Cal. Ct. App. 1981) (quoting psychiatrist Dr. Martin Blinder’s testimony that although “literature describes some mothers who are frankly psychotic . . . a great number of mothers who do this to their children are not overtly mentally ill”); see also *In re Colin R.*, 493 A.2d 1083, 1086 (Md. Ct. Spec. App. 1980) (describing MSBP as “an aberration where parents, for one warped reason or another, induce an illness in their child so that it appears to the medical community that the child is actually suffering from a disease”); Michael T. Flannery, *Munchausen Syndrome by Proxy: Broadening the Scope of Child Abuse*, 28 U. RICH. L. REV. 1175, 1182 (1994) (stating that the disorder usually is perpetrated by the mother, who “factitiously induces illnesses or symptoms in a child by fabricating evidence”); Lynn H. Goldman & Beatrice Crofts Yorker, *Mommie Dearest? Prosecuting Cases of Munchausen Syndrome by Proxy*, 13 CRIM. JUST. 27 (1991); Mochow, *supra* note 522, at 167-68 (noting that MSBP is characterized by “parent-produced symptoms of illness” in a child and that the offending parent is “almost always the mother”).

unmet parental needs . . . onto pediatricians, nurses, spouses, maybe even the community and get from these people through their child's illness the attention and sympathy they never got from their own parents."<sup>526</sup> For example, in one study, three children were administered toxic levels of laxatives by their "emotionally disturbed mothers . . . [who were] using their babies' illnesses to elicit sympathetic interest and involvement when they felt such a need, and to inflict grief or frustration when they felt angry or retaliatory."<sup>527</sup> In another study, MSBP mothers induced illness in their children by poisoning them with a variety of toxic substances including laxatives, salt, blood, codeine, oral and fecal matter, barbiturates, and pebbles, causing the children to suffer from pain, diarrhea, vomiting, bleeding, anorexia, and seizures.<sup>528</sup>

In *In re Colin R.*, another MSBP mother caused the suffering of her son, three-year-old Colin, by giving him diuretics over a two-year period.<sup>529</sup> The diuretics caused Colin to suffer repeated cyclical episodes of vomiting, dehydration, and excess urination, totaling as much as three quarts of urine

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526. Phillips, 175 Cal. Rptr. at 709; David A. Waller, *Obstacles to the Treatment of Munchausen by Proxy Syndrome* 80, 82 (1983) (noting that inherent in the syndrome is a "contradiction between love for the child and the need to make the child ill" and commenting on one case where the mother appeared to be "bleeding through her child's kidney").

527. Phillips, 175 Cal. Rptr. at 713; David Fleisher & M.E. Ament, *Diarrhea, Red Diapers, and Child Abuse: Clinical Alertness Needed for Recognition; Clinical Skill Needed for Success in Management*, 17 CLINICAL PEDIATRICS 820, 824 (1977); see *Commonwealth v. Robinson*, 565 N.E.2d 1231, 1239 (Mass. App. Ct. 1991) (affirming a mother's involuntary manslaughter conviction in the poisoning of her eleven-month-old son with massive doses of salt that she put in his formula); David Rogers et al., *Non-Accidental Poisoning: An Extended Syndrome of Child Abuse*, 1 BRIT. MED. J. 793 (1976) (reporting on six cases of non-accidental poisoning of children by their parents and noting that this "manifestation of child abuse may be commoner than previously supposed").

528. *In re Jessica Z.*, 515 N.Y.S.2d at 372; see also Darrow A. Chan et al., *Munchausen Syndrome by Proxy: A Review and Case Study*, 11 PEDIATRICS PSYCHOL. 71, 73 (1986) (noting that five out of twenty-three children in David Waller's study died from the abuse). In another study, a child was poisoned when her mother "contaminated her child's urine with her own urine and menstrual blood, causing the child to exhibit questionable symptoms, resulting in twelve hospitalizations, seven x-ray procedures, five cystoscopies, toxic drug treatment, and numerous other unpleasant investigative procedures. Meadow, *supra* note 521, at 344. After the mother was confronted with her falsification of the child's symptoms, she entered outpatient psychiatric treatment and the child's urinary symptoms disappeared and did not recur. *Id.* In a different study, a nineteen-month-old child was given tranquilizers by his MSBP mother. Mark S. Dine, *Tranquilizer Poisoning: An Example of Child Abuse*, 36 PEDIATRICS 782, 785 (1965) (cautioning physicians to be "alert to the possibility . . . of deliberate drug intoxication as a cause of illness even when the history excludes this factor"). In a further study, two children were given prescription drugs by their MSBP mothers. Phillips, 175 Cal. Rptr. at 713 (citing Eva V. Hvizdala & Andrew M. Gellady, *Intentional Poisoning of Two Siblings by Prescription Drugs: An Unusual Form of Child Abuse*, 17 AM. J. CLINICAL PEDIATRICS 480 (1978)).

529. 493 A.2d 1083, 1085 (Md. Ct. Spec. App. 1980) (affirming the circuit court decision that the child was in need of assistance and should be placed under protective supervision).

per day.<sup>530</sup> He was repeatedly hospitalized and subjected to invasive tests, including a kidney biopsy, to try to determine the cause of his symptoms.<sup>531</sup> He also took medication for maladies he did not have, such as Barter's Syndrome and abdominal epilepsy.<sup>532</sup> When his urine sample revealed the presence of the diuretics, and all of his medications were discontinued, his symptoms disappeared.<sup>533</sup> Colin thrived once he was placed in foster care and none of his maladies reoccurred.<sup>534</sup> Additionally, hypodermic syringes and two vials of a diuretic were found in his mother's dresser drawer.<sup>535</sup>

If a young child, like Colin R., is hospitalized repeatedly with medically unexplainable symptoms or illnesses, the possibility of child abuse by an MSBP parent should be suspected and a referral should be made to the SOS Team, because without intervention, the child is in life-threatening danger. Some experts estimate that as many as 1,200 cases of child abuse per year are caused by parents who suffer from MSBP<sup>536</sup> and that about ten percent of MSBP victims do not survive.<sup>537</sup> However, the "true incidence [of MSBP] is unknown because detection is so inherently difficult"<sup>538</sup> and because there are several obstacles to diagnosing and managing MSBP.<sup>539</sup>

530. *Id.*

531. *Id.*

532. *Id.*

533. *Id.* at 1086 (noting that Colin's parents also were denied unsupervised access to Colin).

534. *See id.* (stating that since his mother's diagnosis with MSBP, Colin has not suffered from any of his former symptoms).

535. *Id.*

536. *See* John Batt, *Doctors on Trial: Time to Put Experts to the Test*, LONDON TIMES, July 11, 2006, at 4, *available at* <http://business.timesonline.co.uk/tol/business/law/article684607.ece> (stating that MSBP "is officially recorded as 1,200 cases a year in the U.S. and reported with regularity in the British press"); *see also* MARTIN R. GARDNER & ANNE P. DUPRE, *CHILDREN AND THE LAW: CASES AND MATERIALS* 265 (Matthew Bender & Co., 2d ed. 2006); Best Hospitals, Cleveland Clinic, [www.clevelandclinic.org](http://www.clevelandclinic.org) (last visited Sept. 22, 2007) (stating that as many as 1,000 cases of child abuse by MSBP occur each year).

537. *Reid v. State*, 964 S.W.2d 723, 728 (Tex. App. 1998) (quoting medical examiner Dr. Thomas Bennett describing MSBP as "a very severe form of child abuse").

538. *In re Jessica Z.*, 515 N.Y.S.2d 370, 371 (N.Y. Fam. Ct. 1987).

539. *Id.* (listing the obstacles to include the following: "(1) failure to appreciate fully the relationship of MSP to non-accidental poisoning of children; (2) the striking symbiotic tie between mother and child; (3) the highly persuasive denial typical of the parent/perpetrator; (4) skepticism of the legal authorities presented with the paradox of a parent who appears to be seeking the best medical care for the child, and to love and dote on the child, while at the same time causing the child's illness, suffering and even death"); *see also* Vincent L. Guandolo, *Munchausen Syndrome by Proxy: An Outpatient Challenge*, 75 PEDIATRICS 526, 530 (1985) (pointing out that the "swift recognition of this condition may prevent irreparable harm to a child and limit superfluous use of medical resources"); Lawrence Kurlandsky et al., *Munchausen Syndrome By Proxy: Definition of Factitious Bleeding in an Infant by Cr Labeling of Erythrocytes*, 63 PEDIATRICS 228, 231 (1979) (cautioning that medical personnel caring

This means that members of the SOS Team must be especially careful in determining whether a child's symptoms are the result of deliberate poisoning by an MSBP parent. Because parents suffering from MSBP are often "outwardly devoted to the child" and display "concern, competence and intelligence," it is very difficult "to suspect them as the possible cause of their child's illness."<sup>540</sup> Moreover, many of the factors associated with other forms of child abuse are not typically found in MSBP cases.<sup>541</sup> For example, there is "no psychopathology evident, nor history of abuse by parents, nor economic stress[,] nor the special characteristics of an abused child."<sup>542</sup> Instead, medical experts describe the following factors as commonly found in the case histories of victims of an MSBP parent:

- (1) The child's prolonged illness which presents confusing symptoms defying diagnosis, and is unresponsive to medical treatment.
- (2) The child's recurring hospitalizations, surgery, and other invasive procedures.<sup>543</sup>
- (3) The child's dramatic improvement after removal from mother's access and care.
- (4) The mother's training as a nurse or in a medically related field.<sup>544</sup>
- (5) The mother's unusual degree of attentiveness to child's needs in hospital.
- (6) The mother's unusually supportive and cooperative attitude toward doctors and hospital staff.
- (7) The mother's symbiotic relationship to the child.<sup>545</sup>

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for children should be aware of MSBP in "any perplexing and unexplained illness . . . [and that] [f]ailure to do so may commit a physician to perform many unnecessary and potentially harmful investigations"); David M. Orenstein & Abby L. Wasserman, *Munchausen Syndrome By Proxy Simulating Cystic Fibrosis*, 78 PEDIATRICS 621, 624 (1986) (noting that "[i]t is incumbent on medical personnel involved with such children and families to educate the legal authorities about this form of child abuse to ensure proper care for the children").

540. *People v. Phillips*, 175 Cal. Rptr. 703, 709 (Cal. Ct. App. 1981) (quoting Psychiatrist Dr. Martin Blinder testimony that when a mother is accused of causing her child's illness, "she cannot accept responsibility, even when the evidence is incontrovertible"); see also *In re Jessica Z.*, 515 N.Y.S.2d at 371; Meadow, *supra* note 521, at 343-45 (stating that of the nineteen MSBP mothers studied, over one-half remained in the hospital with their children).

541. *In re Jessica Z.*, 515 N.Y.S.2d at 377.

542. *Id.*

543. *Id.* at 371; see also *Reid v. State*, 964 S.W.2d 723, 727-28 (Tex. App. 1998) (describing how the children of MSBP parents are also "victimized . . . over the years 'in an ongoing pattern of . . . diagnostic tests which are in themselves . . . abusive because they involve invasion into the body . . . [and] that carries with it . . . a fatally risk'").

544. *In re Jessica Z.*, 515 N.Y.S.2d at 371, 374 (noting that the perpetrators were almost invariably medically sophisticated); Guandolo, *supra* note 539, at 530.

545. *Id.* at 371 (quoting expert testimony "urging awareness of the 'warning symptoms' of MS[B]P, so that its early detection is possible, in order to avoid

A paradigm example of a case with all of these factors, which nonetheless confounded medical experts with tragic results, is the California case of *People v. Phillips*.<sup>546</sup> The case involved an MSBP mother, Priscilla Phillips, who successively poisoned both of her adopted daughters by deliberately administering a sodium compound into their food.<sup>547</sup> Despite targeted abuse of her daughters, Phillips was described as “a kind, helpful and loving person, a dutiful wife to her husband and a devoted mother to their two sons.”<sup>548</sup> Highly educated, she had a master’s degree in social work and was employed by the Marin County Health and Human Services Department.<sup>549</sup> She also volunteered at the Child Protective Service’s Unit of the Marin County Child Abuse Agency.<sup>550</sup>

The Phillips adopted Tia, the first of their two daughters, following a hysterectomy.<sup>551</sup> Within four months of the adoption, Tia was admitted to the hospital for observation, following repeated visits to her pediatrician with symptoms including fever, violent vomiting, and brief “staring spells.”<sup>552</sup> While she was in the hospital, Tia’s mother was permitted to remain with her overnight and to feed her.<sup>553</sup> Tia continued to have recurring attacks of vomiting and diarrhea, which were alleviated when she was fed intravenously, only to recur when her mother fed her by mouth.<sup>554</sup> While hospitalized, Tia was subjected to numerous invasive diagnostic examinations but the tests revealed no abnormalities and “the doctors were baffled.”<sup>555</sup> After almost five months in the hospital, Tia was discharged.<sup>556</sup> However, only nine days later, Tia’s mother called the pediatrician to report that Tia was again very sick with vomiting and diarrhea.<sup>557</sup> When examined, Tia was found to be “severely dehydrated, lethargic, and unresponsive to stimulation.”<sup>558</sup> Tia again was admitted to the hospital where tests revealed that she was suffering from an “extreme level of

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unnecessary and harmful hospitalization, treatment, and potential death to an unknown number of helpless children”).

546. See 175 Cal. Rptr. 703, 705 (Cal. Ct. App. 1981).

547. *Id.*

548. *Id.*

549. *Id.*

550. *Id.*

551. *Id.*

552. *Id.* at 706.

553. *Id.* at 708.

554. *Id.* at 706.

555. *Id.*

556. *Id.*

557. *Id.*

558. *Id.*

sodium in her blood.”<sup>559</sup> These results were similar to the abnormally high levels of blood serum sodium and bicarbonate that had been found in Tia’s blood when the infant was ill during her prior hospital stay.<sup>560</sup> However, Tia’s “doctors had no explanation for this phenomenon.”<sup>561</sup>

Tia “improved rapidly” while in the hospital and she was discharged after only three days.<sup>562</sup> Two weeks later, she was again hospitalized with the same symptoms and, when she improved, was again released five days later.<sup>563</sup> This same pattern of admission to the hospital then rapid recovery followed by discharge was repeated twice in each of the next five months.<sup>564</sup> During each of these stays, various diagnostic tests revealed no abnormalities.<sup>565</sup> Finally, on February 2, 1978, Tia was brought to the emergency room “for the last time.”<sup>566</sup> She was in “critical condition” with “generalized seizures” and an “extreme level of sodium in her blood.”<sup>567</sup> An x-ray showed aspiration of vomit into her right lung and she was unable to eliminate carbon dioxide from her body.<sup>568</sup> She died the next day.<sup>569</sup>

Several months after Tia’s death, the Phillips adopted another infant named Mindy.<sup>570</sup> On February 3, 1979, the anniversary of Tia’s death, Mindy was admitted to the hospital with complaints of vomiting, diarrhea, and an elevated sodium level.<sup>571</sup> Recognizing the similarities in Tia and Mindy’s conditions (and the fact that they were not genetically related), their pediatrician began to consider the possibility that Mindy was being poisoned by her mother.<sup>572</sup> An analysis of the formula prepared for Mindy by her mother, revealed that the sodium content was much higher than the manufacturer’s specifications.<sup>573</sup> Once the mother was no longer permitted to care for Mindy, the child improved immediately.<sup>574</sup> At Ms. Phillips’ trial for murdering Tia and endangering Mia’s life, the Coroner testified that the cause of Tia’s death was sodium poisoning and that the amount of the

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559. *Id.*

560. *Id.* at 706-07.

561. *Id.* at 707.

562. *Id.*

563. *Id.*

564. *Id.*

565. *Id.*

566. *Id.*

567. *Id.*

568. *Id.*

569. *Id.*

570. *Id.*

571. *Id.*

572. *Id.*

573. *Id.* at 708.

574. *Id.*

sodium was so high that it had to have been administered directly into the gastrointestinal tract.<sup>575</sup> Following a lengthy trial, the jury convicted the mother of murdering Tia and of willfully endangering the life of Mindy.<sup>576</sup>

The case of *Jessica Z.* also exemplifies the difficulty of diagnosing MSBP, even in a case where virtually all the common factors are present.<sup>577</sup> When Jessica was approximately five months old, she underwent an operation for congenital abnormalities that were believed to be causing dehydration due to diarrhea and vomiting.<sup>578</sup> However, when her symptoms returned, she underwent a second major surgical procedure, which revealed no obstructions that might have accounted for her continuing illness.<sup>579</sup> Many more medical tests were conducted, and “[e]very conceivable possibility . . . was considered and rejected—except for one”—the possibility that the infant was being poisoned.<sup>580</sup> After being hospitalized for fifty-five days, Jessica was “returned home, with diarrhea, attached to two tubes, which were attached to two pumps to regulate the speed of her tubal feeding.”<sup>581</sup> Unfortunately, only one week later, the infant was re-admitted to the hospital “in critical condition, in shock, with a 106-degree fever having developed bacteremia.”<sup>582</sup> She rapidly improved when treated in the Intensive Care Unit; however, when she was transferred to a private room, and her parents began to assist with her care, her symptoms returned.<sup>583</sup> This time, her physician’s suspicions were aroused and a test of Jessica’s stool “revealed the presence of phenolphthalein (a chemical found in Ex-lax and other laxatives).”<sup>584</sup> Once her mother’s contact with Jessica was supervised strictly, Jessica’s condition improved markedly and she was ultimately placed in foster care, where she had no additional medical problems.<sup>585</sup>

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575. *Id.*

576. *Id.* at 705.

577. *In re Jessica Z.*, 515 N.Y.S.2d 370, 372-73 (N.Y. Fam. Ct. 1987) (noting the following difficulties: ignorance of the link between MSBP and non-accidental poisoning, the “symbiotic” bond between the abusive parent and abused child, the believable denial of the abusive parent, and the skepticism of authorities when an apparently loving attentive parent is accused of child abuse).

578. *Id.* at 372-73.

579. *Id.* at 373.

580. *Id.*

581. *Id.*

582. *Id.*

583. *Id.*

584. *Id.*

585. *Id.* at 374.



VIII. ASPHYXIATION IS SURVIVAL-THREATENING PER SE AND MAY  
INDICATE THAT THE CHILD'S PARENTS SUFFER FROM MUNCHAUSEN'S  
SYNDROME BY PROXY

Parents suffering from MSBP sometimes suffocate, strangle, or smother their children, causing them to suffer from survival-threatening per se asphyxiation, in which the child's cells either fail to receive, or are unable to utilize, oxygen.<sup>586</sup> The brain, which uses about twenty percent of the body's oxygen supply, is particularly susceptible to asphyxiation.<sup>587</sup> Of the three types of asphyxiation, suffocation is the one most commonly used by abusive parents.<sup>588</sup> Parents suffocate their children with their hands or by blocking the child's airway, such as by ramming a gag into the child's mouth.<sup>589</sup> Less frequently, abused children suffer from asphyxiation at the hands of their parents by strangulation, which involves cutting off oxygen by putting pressure on the neck.<sup>590</sup> Children have been strangled by their parents forcefully tightening cords or ropes around their necks or by using their hands or forearms or other implements, like a flashlight, to occlude the neck vessels.<sup>591</sup> Parental abusers also have smothered their children by obstructing the children's noses and mouths using a variety of implements, such as hands, clothes, pillows, blankets, sheets of plastic wrap, scarves, tape, or plastic bags.<sup>592</sup>

Even very brief periods of smothering a child can lead to devastating results. One researcher concluded that smothering for a minute can cause seizures, between one and two minutes can cause brain damage, and over two minutes can cause death.<sup>593</sup> For example, one father wrapped his seven week old son in a blanket so tightly that the infant could not move.<sup>594</sup> Then the father placed the baby face down in a bassinet, admittedly estimating

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586. See Andrew M. Baker, M.D., Speech at the 24th Annual UC Davis Nat'l Child Abuse and Neglect Conference: Pediatric Asphyxial Deaths, at 1 (2005).

587. *Id.*

588. See *id.* at 1-3 (noting suffocation can also occur due to inadequate oxygen in the environment, but that this type of suffocation is almost always accidental); Julie Sevens Lyons, *Joy Emerges After Test of Faith*, SAN JOSE MERCURY NEWS, Nov. 23, 2006, at A1 (explaining that Job McConville's drug-abusing mother apparently tried to suffocate Job when he was four months old, causing "severe brain damage"). Now three years old, as a result of the abuse, Job still cannot sit, crawl, talk, or use his hands. *Id.* at A4; see also Anastasia Toufexis et al., *When Is Crib Death a Cover for Murder?*, TIME, Apr. 11, 1994, at 63 (discussing a MSBP mother who may have suffocated five of her children claiming that the infants died from sudden infant death syndrome).

589. Baker, *supra* note 586, at 3.

590. *Id.* at 23.

591. *Id.* at 5.

592. *Id.* at 3.

593. *Id.* at 24.

594. Stephen C. Boos, *Constrictive Asphyxia: A Recognizable Form of Fatal Child Abuse*, 24 CHILD ABUSE & NEGLECT 1503, 1505 (2000).

that there was a ten percent chance the infant would die if his father left him that way.<sup>595</sup> Unfortunately, the baby did not survive the abuse.<sup>596</sup>

Physical abuse involving any of these forms of asphyxiation is usually very hard to diagnose because there are often few exterior signs of the abuse and autopsy reports are “minimal or absent.”<sup>597</sup> In one study of twenty-seven British children who were suffocated intentionally, over half had no external signs of inflicted asphyxia at all, while only five had facial petechiae (pinpoint flat round red spots under the skins surface) and only two had any bruises on their necks.<sup>598</sup> Tragically, nine of these children died.<sup>599</sup> Perhaps even more disturbing, when the researcher examined the medical histories of the children’s thirty-three siblings, they learned that eighteen of the siblings died suddenly and unexpectedly, raising the possibility that some of their deaths also resulted from intentional asphyxiation.<sup>600</sup>

Children suffering from asphyxiation at the hands of a MSBP parent, frequently experience medically unexplainable apnea, cyanotic episodes, or cardiopulmonary arrest.<sup>601</sup> Therefore, as with poisoning, if a child suffers these symptoms without medical explanation, the child should be referred immediately to and investigated by the SOS Team because of the danger that the child may be suffering survival-threatening abuse at the hands of his or her MSBP parent.

It is possible that the mother in *Reid v. State*, might not have caused the death of her first child, Morgan, or the severe illness of her second child, Matthew, if Texas had an SOS Team to investigate the repeated unexplained episodes of apnea experienced by her children.<sup>602</sup> During

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595. *Id.*

596. *Id.*

597. See Robert M. Reece, *Fatal Child Abuse and Sudden Infant Death Syndrome: A Critical Diagnostic Decision*, 91 PEDIATRICS 423, 425, 428 (1993) (noting that autopsies are crucial to identifying MSBP and yet rarely are performed).

598. Meadow, *supra* note 521, at 352 (recognizing the difficulty in correctly diagnosing suffocation related to child abuse when the child presents with few outward symptoms).

599. *Id.* at 353.

600. See *id.* at 352 (noting that thirteen of these siblings were diagnosed as dying of SIDS and three were found to have choked on their vomit or a foreign object while the cause of the two other deaths was unascertained); Roy Meadow, *Unnatural Sudden Infant Death*, 80 ARCH. DIS. CHILD 7, 8-9 (1990) (finding in a separate study of eighty-one unnatural infant deaths over an eighteen-year period in England, that seventy-five of the babies had previous unexplained medical problems such as seizures, twitching, cyanosis, or apnea).

601. See, e.g., DiMAIO & DiMAIO, *supra* note 313, at 351 (outlining the patterns in medical histories of children with MSBP parents, including the symptoms cited and the disappearance of the symptoms once the children are removed from the parents’ care).

602. 964 S.W.2d 723, 731 (Tex. App. 1998) (discussing the repetitive and escalating nature of the children’s episodes of apnea, which could have alerted the SOS Team to

Morgan's eight months of life, she suffered approximately thirteen apnea episodes.<sup>603</sup> Testing failed to reveal any satisfactory physiological reason for the apnea.<sup>604</sup> Morgan was usually awake before the episodes began, and her mother was the one who observed the onset of the apnea and had to revive Morgan by mouth-to-mouth resuscitation.<sup>605</sup> Unfortunately, in February of 1984, Morgan suffered an apnea episode and efforts to revive her were unsuccessful.<sup>606</sup> An autopsy determined that the cause of her death was "brain death secondary to cardiorespiratory arrest of undetermined etiology."<sup>607</sup> On May 2, 1985, the mother had another child, Robert Reid—known as Matthew—who had the first of approximately fifteen apnea episodes only twenty-six days after his birth.<sup>608</sup> Again, the mother was the only one who was with the infant at the onset of the apnea and it was the mother who resuscitated him.<sup>609</sup> Like his sister, Matthew underwent numerous tests without finding a satisfactory physiological explanation for the apnea.<sup>610</sup> It was not until Matthew was almost three years old that it was finally determined that his mother was causing his apnea episodes.<sup>611</sup> Once Matthew was removed from his mother's home and placed in foster care, he never had another apnea episode again.<sup>612</sup>

What rather limited knowledge there is of intentional asphyxiation of a child has come primarily from case studies involving MSBP parents who have been surreptitiously videotaped abusing their children while the children were hospitalized.<sup>613</sup> It is possible that legally authorized videotaping may be a way that the SOS Team can determine whether or not a child's unexplained symptoms are the result of child abuse because video surveillance has been used successfully to confirm that several children were suffering abuse at the hands of their parents. For example, one case

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the possibility of MSBP).

603. *Id.* at 726 n.2 (defining apnea "in a pathological sense" as "a suspension of respiration, partial or entire; suffocation").

604. *Id.* at 731.

605. *Id.*

606. *Id.* at 726, 731.

607. *Id.* at 726.

608. *Id.* at 725, 731.

609. *Id.* at 731.

610. *Id.*

611. *Id.*

612. *Id.*

613. Cf. D.P. Southall et al., *Apnoeic Episodes Induced by Smothering: Two Cases Identified by Covert Video Surveillance*, 294 BRIT. MED. J. 1637 (1987) (advocating for covert legal video surveillance of parents' interaction with their children where MSBP is suspected); Carol Lynn Rosen et al., *Two Siblings With Recurrent Cardiorespiratory Arrest: Munchausen Syndrome by Proxy Or Child Abuse?*, 71 PEDIATRICS 715, 717 (1983) (discussing a case study of a mother caught suffocating her child by a concealed video camera).

study involved a twenty-month-old toddler who had suffered from weekly cyanotic episodes since he was only four months old.<sup>614</sup> Covert video surveillance showed the infant's mother smothering her son with a t-shirt while he was sleeping.<sup>615</sup> In another case, a videotape showed a mother smothering her previously-sleeping five-month-old infant.<sup>616</sup> In both cases, the videotape showed that, when the smothering began, the babies "struggled violently until they lost consciousness."<sup>617</sup>

Another case study using a hidden camera involved a four-month-old girl and her four-year-old brother, who suffered from almost daily cardiopulmonary arrest, requiring resuscitation by their mother.<sup>618</sup> Extensive medical tests and a variety of medications failed to identify or resolve the children's problems.<sup>619</sup> When she was seven months old, the youngest child was hospitalized and covert video surveillance revealed that the mother was suffocating her infant daughter.<sup>620</sup> Once the mother was no longer allowed to be alone with her children, their asphyxiation problems ceased.<sup>621</sup> Expert testimony at the mother's trial established that she had "repeatedly suffocated the children."<sup>622</sup>

Researchers also used covert videotaped surveillance to monitor thirty-nine children who had been subjected to unsuccessful exhaustive medical evaluations to determine why they were suffering from recurrent acute life-threatening events ("ALTEs").<sup>623</sup> The children had been hospitalized between two and fifty separate times for ALTEs (with the median being seven hospitalizations).<sup>624</sup> Through video surveillance, the researchers were able to prove that thirty-three of the children had suffered intentional abuse at the hands of their parents.<sup>625</sup> In thirty of these cases, the abuse was by

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614. Southall, *supra* note 613, at 1637-39.

615. Baker, *supra* note 586, at 23-24.

616. *Id.*

617. *Id.* (belying researchers who refer to smothering as "gentle battering"); *see also* Meadow, *supra* note 521, at 1572-73 (noting that "[s]mothering is violent; a young child who cannot breathe struggles and tries to get air. The smothering needs considerable force, even when the child is young"); Meadow, *supra* note 314, 355 (commenting that "[i]nfants and young children struggle hard when their airways are blocked; the mothers have to lean on them with force").

618. *See* Rosen et al., *supra* note 613, at 715-16, 719.

619. *Id.*

620. *Id.*

621. *Id.*

622. Reid v. State, 964 S.W.2d 723, 730-31 (Tex. App. 1998).

623. *Cf.* Southall, *supra* note 613, at 1637-41 (studying two children by videotape to confirm that smothering caused their frequent apnea episodes).

624. *Id.*

625. *Id.*

intentional suffocation.<sup>626</sup>

IX. STARVATION AND DEHYDRATION ARE SURVIVAL-THREATENING  
PER SE

Many of the children who suffer physical abuse that is survival-threatening per se also suffer from parental neglect of their basic needs, such as for food, water, shelter and medical and dental care.<sup>627</sup> Although usually not life-threatening, in some cases, severe parental neglect does result in children suffering from starvation or dehydration.<sup>628</sup> Both of these conditions are survival-threatening per se, mandating that the SOS Team remove the children from their abusive homes to assure their safety.<sup>629</sup> Since malnutrition can depress the immune system, children whose basic needs for food and water are not met also frequently suffer from potentially life-threatening secondary diseases.<sup>630</sup> These illnesses can include tuberculosis, pneumonia, urinary tract infections, skin infections, ear infections, meningitis, and intracranial abscesses.<sup>631</sup> In some cases, the immediate cause of the child's death may be one of these diseases, but the underlying cause would be the physical neglect.<sup>632</sup>

Immediate removal from the abusive home is especially critical in the case of an infant or very young child.<sup>633</sup> Once children are mobile, they can sometimes obtain sufficient food and drink to survive, consequently, most victims of lethal starvation or dehydration are under the age of one year.<sup>634</sup> For example, in *Turner*, Keith Roddy was only five months old

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626. *Id.* at 627; *see, e.g.*, *Turner v. District of Columbia*, 532 A.2d 662, 666 (D.C. Cir. 1987) (explaining that a father abused his children "for any reason," there was no food at the apartment, and the children's diapers were not changed frequently).

628. *See, e.g.*, *Brodie v. Summit County Children Servs.*, 554 N.E.2d 1301, 1303 (Ohio 1990) (finding a father and an unrelated woman subjected his daughter to starvation over a two-year period).

629. *See, e.g.*, *Williams v. State*, 376 N.W.2d 117, 188 (Mich. Ct. App. 1985) (involving two-year-old Nicole Williams who died of starvation likely at the hands of her mentally ill mother); *Commonwealth v. Rodgers*, 528 A.2d 610, 615-16 (Pa. Super. Ct. 1987) (concluding that a two-and-a-half-year-old died from malnutrition due to neglect by her parents); *see also* Lester Adelson, *Homicide by Starvation, the Nutritional Variant of the Battered Child Syndrome*, 187 J.A.M.A. 458 (1967) (reporting on five mothers who purposely failed to feed their children).

630. Adelson, *supra* note 629, at 458 (asserting that "acts of omission," such as starvation and dehydration can be as dangerous to children as violent abuse).

631. *Id.*

632. *Id.* at 460 (reviewing the ways that malnutrition and dehydration were overlooked previously in the face of acute illnesses).

633. *Id.* at 459 (noting a heightened danger of malnutrition and dehydration in infants due to their high rate of growth).

634. Kim A. Collins & Laura D. Knight, *A 25-Year Retrospective Review of Deaths Due to Pediatric Neglect*, 26 AM. J. FORENSIC MED. & PATHOLOGY 221, 221-28 (2005) (highlighting the most typical case of fatal pediatric neglect, where a child under the age of one goes without food or water for some time).

when he was found dead of starvation and dehydration at the hands of his father.<sup>635</sup> Keith died despite numerous prior reports to Child Protective Services that there was no food in the home and that Keith, and his two-year-old brother Lynn, had been receiving only water and were abused by their father “for any reason.”<sup>636</sup> Unfortunately, the CPS worker who “investigated” the reports did nothing to contact the father or to make any effort to gain access to the apartment where the children were residing.<sup>637</sup> Although Lynn survived, his condition when he was taken into protective custody was described as follows: “The two year old [Lynn] was standing in the middle of the floor, very malnourished. His little ribs and everything [were] sticking out, and his head was bigger than the rest of his body. He had defecated on himself.”<sup>638</sup> Furthermore, “[t]here was no food at all in the apartment; the refrigerator and cabinets were totally empty,” and there were not “any articles associated with the care and feeding of a baby.”<sup>639</sup>

Like Keith Roddy, Joseph Mahurin was just an infant, only two months old, when he died at the hands of his parents in the case of *State v. Mahurin*.<sup>640</sup> An autopsy revealed that Joseph was “extremely emaciated, having lost all of his body fat; his eyes were sunken; he was dehydrated and had suffered bronchial pneumonia caused by his malnourished condition.”<sup>641</sup> Joseph’s twin brother, Patrick, was found in the filthy family home, laying on a bed, unresponsive and staring into space, with two bottles lying beside him, one filled with curdled formula.<sup>642</sup> The physician who examined Patrick stated that he “had lost his fat reserves” and was “skin and bones.”<sup>643</sup> Evidence at the parents’ trial revealed that Patrick was suffering from starvation and that Joseph had died of malnutrition.<sup>644</sup> Malnutrition was also the underlying cause of death of two-and-a-half-

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635. See *Turner v. Dist. of Columbia*, 532 A.2d 662, 666 (D.C. Cir. 1987) (noting that Keith apparently had not been bathed for some time based on “the amount of ‘caked’ dirt that was present on the body,” the police found no food or child-care products at the apartment, and the father later pleaded guilty to manslaughter).

636. *Id.* at 664.

637. See *id.* at 665 (explaining that the social worker traveled to the apartment complex three times, but left after knocking and receiving no answer at either the outer door of the building or the apartment).

638. *Id.* at 665-66.

639. *Id.* at 666.

640. See 799 S.W.2d 840, 841-42 (Mo. 1990) (convicting Joseph Mahurin’s mother of manslaughter and father of involuntary manslaughter after evidence at trial showed Joseph died of malnutrition while under their care).

641. *Id.* at 842.

642. *Id.*

643. *Id.*

644. See *id.* (noting that the twin’s parents were convicted of endangering Patrick’s welfare and involuntary manslaughter in Joseph’s death with sentences of up to four years against the father and up to seven years against the mother).

year-old Anna Rodgers, in *Commonwealth v. Rodgers*, who weighed only 15¼ pounds when she died.<sup>645</sup>

As recently as October of 2003, four boys, ages nine to nineteen, were starved to the point that none of them weighed more than fifty pounds.<sup>646</sup> The boys were all previously foster children who had been adopted by their foster parents.<sup>647</sup> Their adoptive parents starved them, despite receiving as much as \$28,000 per year from the State of New Jersey to care for the boys.<sup>648</sup> Although caseworkers visited the home thirty-eight times over a two-year period, the boys' plight was not discovered until a neighbor reported to the New Jersey police that the nineteen-year-old was rummaging through trash cans for discarded food at two-thirty in the morning.<sup>649</sup> Police investigators initially thought that the nineteen-year-old was about ten years old, since he was only four feet tall and weighed only forty-five pounds.<sup>650</sup> All of the boys were so horribly malnourished that "their shriveled bodies gave no hint of their ages."<sup>651</sup> Once removed from their lethal home, the boys rapidly gained weight.<sup>652</sup> For example, after spending only thirteen days in the hospital, the fourteen-year-old boy increased his weight from forty to forty-seven pounds.<sup>653</sup>

The fact that caseworkers failed to discover the abuse of the four boys is almost impossible to fathom since the physical appearance of a starving or dehydrated child should alert even a lay observer to the child's grave situation.<sup>654</sup> A child who is starving from neglect exhibits a number of distinctive physical characteristics including the following: a narrow neck, due to the loss of fat, giving the head a deceptively large appearance; sunken eyes, due to the loss of orbital fat and often from associated dehydration; sunken cheeks due to the loss of fat; extremely prominent

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645. *Commonwealth v. Rodgers*, 528 A.2d 610, 612 & n.1 (Pa. Super. Ct. 1987) (noting that the emergency room physician counted thirty bruises on Anna's body and head as well as a healing rib fracture).

646. Lydia Polgreen & Robert F. Worth, *New Jersey Couple Held In Abuse; One Son, 19, Weighed 45 Pounds*, N.Y. TIMES, Oct. 27, 2003, at A1.

647. *Id.* at A1, B5 (showing that the parents also had adopted two other girls from the foster system and were in the process of adopting another girl).

648. *Id.*

649. *Id.* at A1 (noting that the house had passed a safety inspection with two employees of the Division of Youth and Family Services).

650. *Id.*

651. *Id.* (noting that the boys, who the parents fed only pancake batter, peanut butter, and cereal, ate wallboard and insulation to ward off their hunger pains).

652. *Id.* at B5 (citing as an example that one of the boys had gained seven pounds in thirteen days after being removed from the home).

653. *Id.*

654. *See id.* (stating that the caseworker was an experienced social worker and had resigned as a result of the allegations).

ribs; skeletal limbs; knobby knees; and wrinkled buttocks and ankles.<sup>655</sup> In the case of an infant, the fontanelle often is depressed as the cerebrospinal fluid drops in pressure and the brain shrinks due to dehydration of brain cells.<sup>656</sup> In addition, a protruding abdomen is “a determinative sign [of] protein energy malnutrition.”<sup>657</sup> For example, the abused child in *People v. Righi* had a “protruding abdomen even when she was flat on her back” from being starved by her mother “as a form of punishment.”<sup>658</sup> In addition, the child had four fractures, two “large black eyes,” a skull fracture, and “serious second-degree burns on her back.”<sup>659</sup>

It is, of course, always important to rule out organic diseases which may produce a similar wasted appearance.<sup>660</sup> This was done in the New Jersey case where medical examinations ruled out any systemic causes for the boys’ small statutes.<sup>661</sup> There are, in fact, a number of diseases that can cause an inadequate absorption of the nutrients and calories needed for proper growth.<sup>662</sup> The most common of these diseases include partial cleft palate, cystic fibrosis, pyloric stenosis, cancer, congenital heart disease, cerebral palsy, and celiac disease.<sup>663</sup> Absorption problems can also be caused by intestinal mal-absorption, protein-losing enteropathies, abetalipoproteinemia, congenital metabolic disorders and chromosomal abnormalities.<sup>664</sup> In addition, mentally deficient children are more likely to suffer from dehydration because they often have difficulty swallowing, due to a lack of muscular coordination.<sup>665</sup>

#### X. NON-ORGANIC FAILURE TO THRIVE IS SURVIVAL-THREATENING PER SE

Physical and emotional neglect can also result in a survival-threatening per se condition known as non-organic failure to thrive, which necessitates that the SOS Team immediately remove the abused child from the deadly home.<sup>666</sup> The condition “results . . . from a nonorganic source, including

655. Collins & Knight, *supra* note 634.

656. *Id.*

657. *Righi v. State*, 689 S.W.2d 908, 909 (Tex. App. 1984) (discussing signs of malnutrition in the context of an appeal of a conviction for “intentionally and knowingly, by omission, engaging in conduct that caused serious physical deficiency and impairment”).

658. *Id.*

659. *Id.*

660. Collins & Knight, *supra* note 634.

661. Polgreen & Worth, *supra* note 646, at B5.

662. Collins & Knight, *supra* note 634.

663. *Id.*

664. *Id.*

665. *Id.*

666. *See, e.g., Commonwealth v. Robinson*, 556 N.E.2d 1229, 1231 (Mass. App. Ct.



the failure of the infant or child to receive adequate, proper food.”<sup>667</sup> The term is used to describe “infants and young children whose weight is persistently below the third percentile for their age on standardized growth charts, or less than eighty-five percent of the ideal weight for their age”<sup>668</sup> and causes poor muscle tone, decreased verbalization, weight loss, lack of growth, listlessness and even catatonic states in an infant or very young child.<sup>669</sup> For example, in the case of *Stuart v. Tarrant County Child Welfare Unit*, three-and-a-half-year-old Michelle Stuart was diagnosed as suffering from non-organic failure to thrive because she weighed only seven-and-a-half pounds, which is at the fiftieth weight percentile for a nine-month-old child and, although she could say a few words, she was unable to put sentences together.<sup>670</sup>

The Colorado appellate court in *In re C.O.* explained the insidious development of non-organic failure to thrive, in the case of a toddler who gained less than two pounds during her second year of life, as follows:

The “failure to thrive” syndrome does not arise as a result of a single or even a few instances of deprivation by the parent or parents but must, by its very nature, be the result of neglect or deprivation continuing over a sufficiently long period of time that there occurs a clearly apparent differen[ce] between the growth and development of the deprived child and that of a child who receives normal love and care over a comparable

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1991) (describing failure to thrive as a “chronic, potentially life-threatening disorder of infancy and childhood”); *Rodarte v. Cox*, 828 S.W.2d 65, 75-76 (Tex. App. 1991) (affirming order continuing seven-year-old Jessica’s placement with her foster parents and terminating her natural parents’ rights where, during the first two months of her life, Jessica was diagnosed as failing to thrive because of her parents’ “improper and inadequate feeding, emotional deprivation and failure to properly seek medical care”). Jessica “regressed emotionally and physically” and was whipped during the six months that she was returned to her parents’ home, which occurred shortly after her father’s “threat of litigation against TDHS [the Texas Department of Human Services] . . . based on the Program Director’s “rigid and cruelly misguided application of an ordinarily sound policy” to keep families together. *Id.* at 73-76; see *State ex rel S.T., H.T., M.T., & C.T.*, 928 P.2d 393, 395 (Utah Ct. App. 1996) (including a four-month old who was diagnosed with “failure to thrive” because she had gained only three pounds since her birth, and where she and her brother suffered from malnutrition and medical neglect); see also Goldstein, *supra* note 383, at 234 (noting that failure to thrive is also sometimes referred to as “maternal or emotional deprivation syndrome” or as “psychosocial or deprivation dwarfism”).

667. *Robinson*, 565 N.E.2d at 1231 n.1 (noting that failure to thrive can also result “from an organic condition, such as serious pediatric illness”); see also *State v. Tanner*, 675 P.2d 539, 548-49 (Utah 1983), *superseded on other grounds*, *State v. Walker*, 743 P.2d 191, 192 (Utah 1987) (noting that three-month-old Tawnya Turner was admitted to the hospital suffering from failure to thrive and that the condition can be caused by “neglect or abuse or a variety of psychological problems”).

668. *Id.*

669. Goldstein, *supra* note 383, at 234 (noting that this condition can occur with or without parental fault, and that “nonorganic failure to thrive” refers to instances where the parental fault is present).

670. 677 S.W.2d 273, 278 (Tex. App. 1984) (explaining that Michelle’s weight was not even within the weight scale of a normal three-year old).

period. Moreover, the fact that, over an extended period, there is a medically significant differen[ce] between the progress and development of the deprived child and that of normal children attests to the severity of the neglect.<sup>671</sup>

The condition is diagnosed when the child loses weight in the home environment but gains weight rapidly when hospitalized or placed in foster care.<sup>672</sup> For example, in *Howard v. Howard (In re Warr)*, during the six weeks that three-month-old Latresha Warr was with her mother, she lost two ounces of weight whereas a normal child should gain six or seven ounces per week.<sup>673</sup> Once she was hospitalized, suffering from “non-organic failure-to-thrive,” Latresha gained eleven ounces in eight days.<sup>674</sup> Not only Latresha, but also one of her siblings suffered from non-organic failure to thrive and had to be removed from their abusive mother’s home.<sup>675</sup> In young infants, like Latresha, the weight loss and failure to thrive, if left untreated, can lead to “problems with the child’s brain growth,” causing difficulties later on including “behavior problems, school problems and anti-social behavior.”<sup>676</sup> The child’s physical and psychological development may be permanently stunted, with long range consequences including mental retardation and death.<sup>677</sup>

Three-month-old Michael Loebach, who was ultimately beaten to death by his father, also represented a classic non-organic failure to thrive child.<sup>678</sup> At birth, Michael weighed in the ninety-fifth percentile, but only weighed in the tenth percentile when he died three months later; he was also in the ninety-fifth percentile in height when he was born, but was only in the fiftieth percentile when he died.<sup>679</sup> The Connecticut case of *In re Aokusia T.* also exemplifies “the classic case of non-organic failure to

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671. 541 P.2d 330, 331-33 (Col. Ct. App. 1975) (terminating mother’s parental rights because her two-year-old child gained less than two pounds during her second year of life and suffered from “failure to thrive” resulting from malnourishment and her mother’s inability to supply the child “with a proper diet and to provide the necessary love and affection to satisfy the child’s emotional requirements”).

672. See, e.g., *Hardy v. Dep’t of Health & Rehab. Servs.*, 568 So. 2d 1314, 1315 (Fla. Dist. Ct. App. 1990) (upholding a finding of dependency based on “parental neglect syndrome” or non-organic failure to thrive where three-year old’s loss of weight indicated that he was “not being fed adequately and did not have a nurturing environment” in his parent’s home, noting that he gained two pounds and grew two inches in the seven months that he was in foster care).

673. 1982 WL 6639, at \*2 (Ohio Ct. App. 1982).

674. *Id.*

675. *Id.*

676. *Id.*

677. Goldstein, *supra* note 383, at 234.

678. *State v. Loebach*, 310 N.W.2d 58, 61 (Minn. 1981).

679. *Id.*

thrive.”<sup>680</sup> At the time Aokusia was admitted to the hospital at the age of twenty-two months, her weight percentile had dropped from once being greater than the ninety-fifth percentile to the tenth percentile.<sup>681</sup> She appeared emaciated, quiet, and passive, with “decreased skin turgor.”<sup>682</sup> The child’s mother was disinterested in her welfare and reported that Aokusia had eaten her feces on three occasions.<sup>683</sup> During her two week hospital stay, Aokusia gained weight consistently and was happy and playful except during visits from her mother when she “immediately ran to her primary nurse crying and clinging to her leg.”<sup>684</sup> When Aokusia was released from the hospital, she was placed in a foster home where she continued to gain weight and to develop normally.<sup>685</sup> Her parents’ rights were terminated when Aokusia was seven and was adopted by her foster parents.<sup>686</sup>

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680. 1994 WL 282500, at \*2 (Conn. Super. 1994); see *People v. Jones (In re Jones)*, 376 N.E.2d 49, 50 (Ill. App. Ct. 1978) (affirming neglect petition based on failure to thrive where, because of his mother’s improper feeding, an infant weighed nine pounds at birth and only twelve pounds at seven months of age, as compared with a normal infant whose weight doubles between the ages of three to five months and noting that there was no organic reason for the baby’s failure to gain weight and that he gained weight during his hospitalization); *In re S.P.W. et al.*, 761 S.W.2d 193, 194-95, 197-98 (Mo. 1988) (affirming an order terminating a mother’s parental rights to her three children, who had all been in foster care since infancy due to failure to thrive caused by the mother’s borderline intelligence and permanent and chronic schizophrenia, meaning that she would be “only marginally capable of caring for herself and would probably never be capable of caring for her children”); *In re S.B.*, 724 P.2d 168, 169, 171 (Mont. 1986) (affirming an order terminating mother’s parental rights where the mother had a life long “schizotypal personality disorder” and was careless in feeding her infant daughter, missed parenting skills classes and would not adequately care for the child, leading to the infant being twice diagnosed as suffering from failure to thrive, being eighteen percent underweight and experiencing significant delays in the development of cognitive skills); *State v. Williams*, 772 P.2d 366, 371-72 (N.M. Ct. App. 1989) (affirming termination of a mother’s parental rights to her son, who was diagnosed as suffering from nonorganic failure to thrive when he was only twenty-seven days old, resulting from “parental interactions patterns” causing the mother to be unable to learn “adequate parenting skills” for her son); *Asendorf v. M.S.S.*, 342 N.W.2d 203, 207 (N.D. 1983) (affirming an order terminating a mother’s parental rights to her three children, none of whom were developing properly either physically or mentally, due to nonorganic failure to thrive when in the mother’s home, which was frequently filthy with “dirty clothes and diapers strewn about, dirty dishes stacked a top kitchen countertops, no linen on the beds, human and animal feces on the beds and a general odor of urine throughout the home”); SELMA & LOUIS FRAIBERG, *CLINICAL STUDIES IN INFANT MENTAL HEALTH: THE FIRST YEAR OF LIFE* (1980); Croch & Milner, *Effects of Child Neglect On Children*, 20 CRIM. JUST. & BEHAV. 49, 53 (1993).

681. *In re Aokusia T.*, 1994 WL 282500 at \*1.

682. *Id.* (noting that she had a “foreign body lodged in her left nostril with purulent discharge”).

683. *Id.*

684. *Id.*

685. *Id.*

686. See *id.* at \*4 (explaining that the child has been in the care of the Department of Children and Youth Services since being two years old).

Failure to thrive can also occur in infants and young children for organic, or physiological reasons, without any fault on the part of the parents.<sup>687</sup> For example, organic failure to thrive can be caused by phenylketouria and cholesterol ester storage disease.<sup>688</sup>

PART V: ALLEVIATING THE LETHAL LEGACY OF CHILD ABUSE BY  
DETERMINING WHEN LESS SEVERE INJURIES ARE SURVIVAL-  
THREATENING IN FACT, MANDATING THAT THE SOS TEAM IMMEDIATELY  
REMOVE THE CHILDREN FROM THEIR ABUSIVE HOMES WITH THE  
PRESUMPTION THAT PARENTAL RIGHTS WILL BE TERMINATED  
I. INTRODUCTION

In addition to the survival-threatening per se syndromes, injuries, and conditions discussed above, there are also several other forms of parental abuse which are categorized as potentially survival-threatening because, although they can be life-threatening, they are often less severe.<sup>689</sup> However, even if on an individual basis an injury is not survival-threatening, the cumulative effect of multiple, less severe injuries can be sufficient to find that the child has suffered survival-threatening abuse.<sup>690</sup> Consequently, individual injuries, from the categories that follow, should be classified as survival-threatening in fact if the SOS Team determines either that the injury is, in itself, sufficiently severe to be life-threatening or if the combination of less severe injuries is cumulatively life-threatening. In addition, if the nature of the injuries are sufficiently deliberate and sadistic that the SOS Team determines that the child will face an escalating cycle of increasingly more severe abuse if returned home, these injuries should also be categorized as survival-threatening in fact.

For example, although they vary in severity, if burns are sufficiently serious they can, of course, be life-threatening, which would mean that they should be reclassified as survival-threatening in fact. However, the most common intentionally inflicted abusive burn, from a cigarette, is usually quite minor in itself. Nonetheless, multiple cigarette burns, if combined with other non-deadly but severe mistreatment, might be classified as survival-threatening in fact. Moreover, multiple cigarette burns in themselves might well be regarded as sufficiently deliberate and sadistic that they would also be found to be survival-threatening in fact. For the same reasons, psychological abuse in tandem with physical maltreatment can also be found to be survival-threatening in fact, even if the injuries

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687. Goldstein, *supra* note 383, at 234.

688. See STOCKER, *supra* note 439; Collins & Knight, *supra* note 634.

689. See, e.g., Davis, *supra* note 3, at 4 (noting that multiple serious injuries occurring at the same time are indicative of child abuse).

690. *Id.*

themselves are not life-threatening. Extensive bruises and abrasions can also be severe enough to be survival-threatening in fact. Finally, neglect can range from causing relatively minor risk to children to being sufficiently serious that, in a particular case, the danger to the child can also be classified as survival-threatening in fact.

## II. BURNS ARE POTENTIALLY SURVIVAL-THREATENING INJURIES IN FACT

Burns commonly are sustained by physically abused children.<sup>691</sup> As noted above, even if the burns, in themselves, are not life-threatening, the SOS Team should seriously consider immediately removing the child from the abusive home because the incredibly sadistic and deliberate actions shown by many of the parents who burn their children foreshadow survival-threatening injuries in the future.

Parents employ an extensive variety of implements to inflict burns on their children, the most common type of burn is inflicted by a lit cigarette, forming distinctive circular, punched out areas of lesions, usually on the palms of the child's hand or soles of the child's feet.<sup>692</sup> In addition to cigarettes, parents use other tools to cause burns leaving distinctive marks, such as a steam iron,<sup>693</sup> a hot poker, the grill of a heater, a branding iron or the coils of an electric stove,<sup>694</sup> all of which leave exact imprints on the child's skin.<sup>695</sup> One unusual example of a distinctive burn involved the word "IF," which was burned on an abused child's palm.<sup>696</sup> The fact that the imprints or letters are clear and distinct can help the SOS Team confirm that the burn is intentional because accidental burns "are characterized by

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691. See, e.g., *State v. Moyer*, 727 P.2d 31, 32 (Ariz. Ct. App. 1986) (describing a step-father inflicting second degree burns on the face and arm of his twenty-one-month-old stepdaughter); *Landeros v. Flood*, 551 P.2d 389, 391 (Cal. 1976) (explaining that the mother and stepfather inflicted second- and third-degree burns on their two-year-old daughter's left hand); *People v. Barnard*, 286 N.W.2d 870, 871 (Mich. Ct. App. 1979) (reviewing extensive testimony regarding the infliction of lethal injuries by the mother's live-in boyfriend on her two-year-old child, including severely burned feet and arms, black eyes, fractured leg and ribs, and extensive bruises).

692. See, e.g., *Albritton v. State*, 221 So. 2d 192, 193-94 (Fla. Dist. Ct. App. 1969) (indicating that in addition to lethal internal injuries, two-year-old Stacie Phillips had cigarette burns on her fingers inflicted by her mother's live-in boyfriend); *State v. Conlogue*, 474 A.2d 167, 170 (Me. 1984) (verifying that the mother admitted to burning her two-year-old daughter with a cigarette lighter to discipline her).

693. Goldstein, *supra* note 383, at 68.

694. See, e.g., *Brodie v. Summit County Children*, 554 N.E.2d 1301, 1303 (Ohio 1990) (stating that the defendant father placed his eleven-year-old daughter's hand on the electric burner of a stove, causing burns).

695. Davis, *supra* note 3, at 5.

696. See *State ex rel S.T., H.T., M.T. & C.T.*, 928 P.2d 393, 396 (Utah Ct. App. 1996) (noting that the parents claimed the child burned herself while playing near a stove in the care of a babysitter, which the babysitter denied).

single, brief, glancing contacts of exposed body parts.”<sup>697</sup>

Distinctive marks on the child are also left by parents who intentionally burn their children by immersing them in scalding or very hot water. For example, two-year-old Reggie Pruitt suffered burns from scalding water, inflicted by his mother’s boyfriend.<sup>698</sup> In addition to a “very sharp line of demarcation between the burned and unburned areas,” the location of Reggie’s burns made it apparent that “he was in a flexed position at the hip and knee,” indicating Reggie attempted to withdraw from the painful water.<sup>699</sup> The burns caused a ring sign on the central region of Reggie’s buttock, suggesting he was held in scalding water in a bathtub with his buttock resting on the surface of the tub.<sup>700</sup> The presence of only one “splash mark” indicated he did not fall into the burning substance.<sup>701</sup> In fact, an expert in burns stated that “it would be impossible for a child to fall into a tub in that position and stay in that position to sustain that type of burn.”<sup>702</sup>

Burns that are pointed or deeper in the middle are caused by pouring hot liquid on the child. Glove or sock-like burns result from immersing the hands and/or feet of the child in hot liquids, while donut shaped burns on the buttocks occur from holding the child down in hot liquid.<sup>703</sup> The place where the hot liquid quits burning the child is called the “immersion line” and the degree of an immersion burn is usually consistent throughout.<sup>704</sup> The case of *People v. Roselle*<sup>705</sup> illustrates this type of abuse. In that case, a father burned his three-year-old daughter by placing her in a bathtub of scalding water, resulting in severe burns to her buttocks and right foot.<sup>706</sup> When his daughter started screaming upon being placed in the tub, he thought it was because “she did not want to take a bath and had a ‘bad temper which manifested itself in rebellious behavior.’”<sup>707</sup> When he saw

697. Kenneth Wayne Feldman, *Evaluation of Physical Abuse*, in THE BATTERED CHILD 186-87 (Mary Edna Helfer et al. eds., 1997).

698. See *People v. Cooper*, 669 N.E.2d 637, 640 (Ill. App. Ct. 1996) (ascertaining that Reggie suffered first- and second-degree burns to his buttocks, thighs, and penis).

699. *Id.*

700. See *id.* (describing the cause of the ring sign being because “the burn would be less severe where the buttock was actually touching the bathtub”).

701. *Id.*

702. *Id.*

703. See, e.g., *People v. Jones (In re Jones)*, 376 N.E.2d 49, 50-51 (Ill. App. Ct. 1978) (reviewing testimony that the fourteen-month-old child’s first and second degree burns created burn patterns showing that immersion into water likely caused the burns).

704. Davis, *supra* note 3, at 5.

705. 643 N.E.2d 72 (N.Y. 1994).

706. *Id.* at 73 (explaining that, although the father admitted noticing steam rising from the water, he claimed to have tested the temperature and found that it was “warm enough to take a bath”).

707. *Id.* (elaborating that the father determined lead poisoning caused the rebellious

that his daughter's skin was peeling off, he took her to a hospital for treatment.<sup>708</sup>

Even worse, in *Mitchell v. State*, a father disciplined his eight-year-old son for bedwetting by "forcing him to sit naked in a bathtub filled with very hot water and bleach to wash his soiled bed linens," telling him that the liquid in the bathtub would feel like "acid."<sup>709</sup> Although severely burning the feet, buttocks, and knuckles of his son, the father failed to seek medical treatment for the burns until required to do so by police five days later.<sup>710</sup>

Parents also have found some more unusual methods to burn their children. For example, parents have burned their infants by cooking them in a microwave or other oven.<sup>711</sup> In *Commonwealth v. Ogin*, seventeen-month-old April Widoner was burned when her father shoved hot spaghetti into her face, causing burns and facial swelling.<sup>712</sup>

Once again, it is important to rule out any non-intentional causes of the burns.<sup>713</sup> At times, diaper rash can give the appearance of burns as can an allergic reaction to drugs.<sup>714</sup> In addition, a disease known as scalded-skin syndrome—or Stevens Johnson disease—can cause lesions that seem like burns.<sup>715</sup> Burn-like lesions can also be caused by streptococcal toxic-shock syndrome and by a group of hereditary diseases known as epidermolysis bullosa.<sup>716</sup>

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behavior).

708. *Id.* at 76 (upholding the father's indictment for assault and endangering the welfare of the child).

709. 503 S.E.2d 293, 296 (Ga. Ct. App. 1998) (holding that the father's actions "may be found by a jury to constitute reckless or wanton conduct").

710. *Id.* at 295 (identifying "disciplinary reasons" as the father's stated reason to the police for burning his son).

711. Goldstein, *supra* note 383, at 68.

712. *Commonwealth v. Ogin*, 540 A.2d 549, 551 (Penn. Super. Ct. 1988) (upholding the parents' conviction for assault and endangering the welfare of their child for pushing hot spaghetti into her face, throwing her against a wall, and slapping her in the face).

713. STOCKER, *supra* note 439, at 1 (listing non-abuse causes of bruising in normal child development and non-abuse related disease).

714. *Id.*

715. *Id.*

716. *Id.*

### III. EXTENSIVE BRUISES AND ABRASIONS ARE POTENTIALLY SURVIVAL-THREATENING IN FACT

#### A. Introduction

Bruises and abrasions are among the most common intentionally inflicted injuries sustained by an abused child and, even if not sufficiently serious to be actionable in themselves, can be instrumental to the SOS Team in identifying a child as a victim of physical abuse.<sup>717</sup> Bruises are especially likely to indicate abuse in any infant under three months of age. Moreover, even if bruises are sustained as a result of misguided parental discipline, they can lead to serious harm.<sup>718</sup> As the Pennsylvania Supreme Court noted in *Kramer*, even if the blows inflicted by a father with a leather strap were directed at his seven-year-old daughter's buttocks, "there still was a very good likelihood that one or more could have gone astray and ruptured a kidney or broken a bone."<sup>719</sup>

Due to the primary beating, battered children may also suffer secondary injuries.<sup>720</sup> For example, beaten children frequently suffer eye damage including impaired vision, acute hyphema (hemorrhage in the anterior chamber of the eye between the cornea and pupil),<sup>721</sup> dislocated lens, and detached retina.<sup>722</sup> There may also be general evidence of trauma such as hematuria (the presence of blood in the urine), shock, vomiting, or

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717. See, e.g., *In re D.C. & E.C.*, 596 P.2d 22, 23 (Alaska 1979) (finding that three incidents of "beatings causing extensive bruising" of two children by their mother and stepfather "indicated a general pattern of abuse" and quoting the family therapist's testimony that the home was "potentially life threatening" for the children); *Hildreth v. Iowa Dep't of Human Servs.*, 550 N.W.2d 157, 160 (Iowa Ct. App. 1996) (stating that "welts, bruises, or similar markings are not physical injuries per se but may be and frequently are evidence from which the existence of a physical injury can be found"); *State v. Johnson*, 400 N.W.2d 502, 505 (Wis. Ct. App. 1986) (describing the pathologist's findings that the large number of bruises scattered around Shannon Erick's head, neck, trunk, chest, and abdomen were "way out of the normal amount of bruises that the typical child would have" and he did not find any evidence that she was an "easy bruiser" as claimed by her mother's live-in boyfriend who beat Shannon to death).

718. See, e.g., *People v. West (In re F.W. & C.W.)*, 634 N.E.2d 1123, 1124 (Ill. App. Ct. 1994) (finding the grandmother's discipline regime to include daily beatings of her grandchildren with a variety of household objects).

719. *Commonwealth v. Kramer*, 371 A.2d 1008, 1013 (Pa. 1977) (observing that the serious injuries caused by the beatings clearly illustrated that the defendant caused them).

720. See *id.* (describing how although blows were directed at the buttocks, they were severe enough to cause damage to other areas of the body beyond the buttocks such as individual bones or the kidney).

721. J.E. SCHMIDT, ATTORNEYS' DICTIONARY OF MEDICINE & WORD FINDER, 1978 CUMULATIVE SUPPLEMENT (Matthew Bender 1978).

722. SCHUCHTER, *supra* note 87, at 69.



ataxia.<sup>723</sup>

Abusive parents frequently batter their children by hitting them with their fists,<sup>724</sup> slapping them<sup>725</sup> or kicking them.<sup>726</sup> Parents employ an astonishing variety of techniques to cause their children's bruises and abrasions. Battering parents have beaten their children with television antennas, extensions cords,<sup>727</sup> boards,<sup>728</sup> ping pong paddles,<sup>729</sup> rubber hoses, broomsticks,<sup>730</sup> baseball bats, chair legs, sticks,<sup>731</sup> a wooden spoon,<sup>732</sup> a leather strap,<sup>733</sup> a shoe,<sup>734</sup> a bull whip,<sup>735</sup> and even firewood.<sup>736</sup> For

723. See Egar & Popeck, *supra* note 159, at 141.

724. See, e.g., *People v. Steger*, 546 P.2d 665, 669 (Cal. 1976) (detailing three-year-old Kristen Steger's stepmother punched her twice in the arm causing the toddler to fall down and hit her head on the floor); *County of L.A. Dep't of Pub. Soc. Servs. v. Robinson (In re Biggs)*, 94 Cal. Rptr. 519, 523 (Calif. Ct. App. 1971) (elaborating that the mother's live-in boyfriend hit her seven-year-old son on the side of the head with his fist); *Brodie v. Summit County Children Servs. Bd.*, 554 N.E.2d 1301, 1303 (Ohio 1990) (explaining how the father hit his eleven-year-old daughter with his fist on her face and head as well as other areas of her body causing lacerations and bruises).

725. See, e.g., *Fabian v. State*, 201 A.2d 511, 518 (Md. 1964) (holding that the mother's live-in boyfriend's slapping of a sleeping two-and-a-half-year old for bedwetting was excessive use of corporal punishment).

726. *In re Biggs*, 94 Cal. Rptr. at 519 (explaining how the mother's live-in boyfriend kicked her seven-year-old son in the face); see also *Wade v. State*, 355 So. 2d 477 (Fla. Ct. App. 1978) (describing how the stepfather kicked his ten-year-old stepson in the stomach).

727. See, e.g., Howard Nuntz, *Mother Jailed On Abuse Charges*, SAN JOSE MERCURY NEWS, Nov. 14, 2006, at B1 (depicting that the mother regularly whipped her eight-year-old daughter with an extension cord and punched her in the face, and on one occasion pushed her against a wall so hard that the child vomited blood).

728. See, e.g., *County of L.A. Dep't of Pub. Soc. Servs. v. Connie G. (In re Luwanna S.)*, 107 Cal. Rptr. 62, 65 (Cal. Ct. App. 1973) (explaining how the father beat his four-year-old son twice with a board, which was "approximately fourteen-and-a-half by one-and-three-fourths inches, by one inch; very old with cracks and pits, rough, dirty, and broken off at both ends").

729. *People v. Henson*, 304 N.E.2d 358, 363-64 (N.Y. 1973) (indicating that the mother "spanked" her four-year-old son with a pingpong paddle).

730. *People v. West (In re F.W. & C.W.)*, 634 N.E.2d 1123, 1124 (Ill. App. Ct. 1994) (illustrating the variety of objects used by the grandmother to hit her thirteen- and fifteen-year-old grandchildren almost daily, including "ball bats, broomsticks, extension cords," a rope, a vinyl belt, a mop "or whatever was handy to discipline the children").

731. *Albritton v. State*, 221 So. 2d 192, 193 (Fla. Dist. Ct. App. 1969) (noting the welts left on the baby due to being hit with sticks by her mother's live-in boyfriend).

732. *Henson*, 304 N.E.2d at 360.

733. *Edward C. v. Edmond C. (In re Edward C.)*, 178 Cal. Rptr. 694 (Cal. Ct. App. 1981) (saying that the father beat his seven-year-old daughter at least a dozen times over a two-week period with a leather strap, usually on her bare flesh, as punishment for her bedwetting and her inability to remember a Sunday school lesson because "God wanted him to and . . . it was biblically ordained").

734. *People v. Steger*, 546 P.2d 665, 667 (Cal. 1976) (noting that a stepmother had disciplined her three-year-old stepdaughter by hitting her on the buttocks with a shoe).

735. *People v. Butler*, 23 Cal. Rptr. 118, 120 (Cal. App. Ct. 1962).

736. *Lapann v. State*, 382 S.E.2d 200, 201 (Ga. App. Ct. 1989) (affirming the

example, in *Kramer*, the father started beating his children daily, beginning when his son was four and his daughter was two, inflicting the beatings with “yard sticks, broom handles, shovel handles and eventually branches from trees.”<sup>737</sup> When asked why he beat the children, he responded that his children were “retarded, ugly and dumb and he never wanted kids.”<sup>738</sup> In another case, *People v. Butler*, a stepfather inflicted “unmerciful beatings and whippings” with leather belts, leather boot thongs, and a bullwhip on his four-year-old stepdaughter.<sup>739</sup> At the time of her death, seventy to eighty percent of her body was covered with bruises, she had hundreds of lacerations, and “clumps of her hair had been yanked out by the roots.”<sup>740</sup> Her injuries were “produced by heavy and repeated blows” and her death was a “combined result of hemorrhages in the skin and tissues, lacerations and contusions of the body, multiple pulmonary emboli, and shock due to trauma.”<sup>741</sup>

In *State v. Albritton*, sixteen-month-old Stacie Phillips was bruised by her mother’s live-in boyfriend when he beat her with a rope that he would put between his legs and jerk her so she would fall down on her head.<sup>742</sup> He also beat her with “fresh switches,” measuring up to three feet long, “leaving big welts” across her stomach and back.<sup>743</sup> At times, he would pick her up, whip her with a switch and then “let her just drop to the ground.” Unfortunately, he finally beat her to death.<sup>744</sup> The emergency room physician described Stacie as displaying “numerous bruises over [her] head, chest, extremities, abdomen, pelvis, peritoneum, and numerous abrasions of the thorax and abdomen, abrasions and burns of the buttocks.”<sup>745</sup> Photographs taken at the time of her admission to the hospital “showed bruises, blemishes, abrasions, lacerations, contusions, and

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aggravated assault conviction and three-year suspended sentence of a father who beat his seventeen-year-old adopted daughter on the leg, shoulder, and head with a piece of firewood sixteen feet long, three-fourths of a foot wide, and one-and-a-half feet thick, causing a gash on her head that required ten sutures to close).

737. *Commonwealth v. Kramer*, 371 A.2d 1008, 1011 (Pa. 1977) (clarifying that the beatings continued for eight or nine years).

738. *Id.* at 1012 (elaborating that any gifts the children did receive were burned by their father).

739. *See Butler*, 23 Cal. Rptr. at 120.

740. *Id.*

741. *Id.* at 121 (upholding the stepfather’s conviction of first degree murder by means of torture, the court noted that the “brutal and revolting manner in which [the stepfather] mistreated the child leads inevitably to the conclusion that he intended to cause cruel pain and suffering”).

742. 221 So. 2d 192, 195 (Fla. Dist. Ct. App. 1969).

743. *Id.* at 193.

744. *Id.*

745. *Id.* at 194 (quoting the medical doctor who testified at trial as noting that the state of the child was consistent of “battered child syndrome”).

discolorations on practically every segment of [her] little body.”<sup>746</sup> The surgery shortly after her admission revealed “extensive injury to [her] brain,” which was “practically innumerable,” and the injury caused her death shortly thereafter.<sup>747</sup>

The instrument used most frequently by abusive parents to beat their children is a belt, which innovative parents have used in a variety of ways to batter their children.<sup>748</sup> For example, in *Taylor*, the stepfather beat his twenty-three-month-old stepdaughter, Vicky, with a belt causing severe bruises.<sup>749</sup> In addition, he tied a belt around her feet and to a doorknob, and then opened and closed the door repeatedly “causing the child to bang her head against the door.”<sup>750</sup> He also “strapped the belt over the top of a door, suspended the child head down, and then opened the door very quickly causing Vicky to fall to the floor on her head.”<sup>751</sup> If Vicky did not eat, her stepfather would “slap her, slam her head very hard against the back of the high chair, and beat her head with a stick.”<sup>752</sup>

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746. *Id.* at 196.

747. *Id.* at 194.

748. See *In re D.C. & E.C.*, 596 P.2d 22, 23 (Alaska 1979) (upholding termination of a mother’s parental rights because both the mother and stepfather beat their children with a belt, which caused extensive bruising and “major psychological problems”); *People v. Steger*, 546 P.2d 665, 669 (Cal. 1976) (ruling that a stepmother tortured her stepdaughter by beating her on the buttocks with a belt on a daily basis); *Smith v. State*, 489 N.E.2d 140, 141-42 (Ind. Ct. App. 1986) (upholding a father’s conviction for battery on his fifteen-year-old daughter when the father “cruelly beat” her for approximately ten minutes with a belt buckle, mostly on her buttocks, but also on her face, arms, and legs); *State v. Conlogue*, 474 A.2d 167, 170 (Me. 1984) (indicating that a mother used a leather belt and cigarette lighter to discipline her two-year-old daughter); *Ronningen v. C.W. & E.W. (In re S.W.)*, 290 N.W.2d 675, 678 (N.D. 1980) (declaring that a father went beyond the scope of accepted punishment by hitting his child in the head with a leather belt); *People v. Henson*, 304 N.E.2d 358, 360 (N.Y. 1973) (rejecting a mother’s excuse that she beat her son with her husband’s belt and with a pingpong paddle because he had discipline problems); *Brodie v. Summit County Children Servs.*, 554 N.E.2d 1301, 1303 (Ohio 1990) (maintaining that a father hit his eleven-year-old daughter with a belt); *S.C. Dep’t of Social Servs. v. Father & Mother*, 366 S.E.2d 40, 41 (S.C. Ct. App. 1988) (explaining how a father beat his thirteen-year-old daughter with his belt until she was “black and blue”); *State v. Tanner*, 675 P.2d 539, 548 (Utah 1983), *superseded on other grounds*, *State v. Walker*, 743 P.2d 191, 192 (Utah 1987) (denouncing a mother’s abusive conduct after she whipped her three-year-old daughter with a belt and threw her against a wall or against the floor).

749. See *State v. Taylor*, 515 P.2d 695, 698 (Mont. 1973) (allowing a mother’s testimony that her child died as a result of the stepfather repeatedly beating the child with a belt and a plastic stick).

750. *Id.* (challenging the stepfather’s claim that he did not intentionally mean to harm the child because his affection towards her did not dismiss the severity of his actions).

751. *Id.*

752. *Id.*

*B. The Shape and Color of Bruises and Abrasions Can Indicate the Battering Instrument and When the Beating Occurred*

Similar to burns, the shape of the bruises will often show what instrument was used to inflict the injuries and can help the SOS Team establish that the injuries were not accidentally inflicted.<sup>753</sup> For example, wraparound bruises indicate that the child was hit by a flexible object such as a belt, a strap, or an electrical cord.<sup>754</sup> Beatings with distinctive objects, such as belt buckles, hose couplings, or cooking utensils are often revealed by the imprint of the object on the skin.<sup>755</sup> Hand and finger marks are made by slapping a child,<sup>756</sup> while handprints around a child's neck are indicative of choking.<sup>757</sup> Bald spots or bruising on the scalp of a child often indicate that the child's hair has been pulled out.<sup>758</sup>

Bruises also vary in color depending on when they were inflicted. The color can be used to show that the bruises were inflicted at different times and to determine approximately when each injury occurred. The location of the bruises can also help in determining whether the injuries were inflicted intentionally.<sup>759</sup> For example, seventy percent of all non-accidental injuries occur in what sometimes is referred to as the "Target Zone," which runs from the base of the neck to the back of the knees and from fingertips to fingertips.<sup>760</sup> Bruises on the back are especially suspect because most of the injuries sustained by a child during play occur on the

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753. See, e.g., *People v. Jackson*, 95 Cal. Rptr. 919, 921 (Cal. Ct. App. 1971) (inferring that the parents of a child, who had second-degree burns and some bruises in the shape of a thumb, acted with intent when inflicting the injuries).

754. See, e.g., *Smith v. State*, 489 N.E.2d 140, 141 (Ind. Ct. App. 1986) (asserting that a child had multiple contusions and lacerations throughout her body as a direct result of being beaten with a belt).

755. See, e.g., *People v. Henson*, 304 N.E.2d 358, 359-60 (N.Y. 1973) (finding that a mother acted with criminal negligence by using a wooden cooking spoon to inflict severe injuries on her child's body).

756. See *Dabbs v. State*, 518 So. 2d 825, 826 (Ala. Crim. App. 1987) (determining that a three-year-old child had welts in the shape of hand prints on his bottom because the mother's live-in boyfriend spanked the child roughly with his hands); see also *Martin v. State*, 547 P.2d 396, 397 (Okla. Crim. App. 1976) (implying that the parents repeatedly slapped the child because the doctor found finger marks on the child's face in parallel structure).

757. See *Sanders v. State*, 303 S.E.2d 13, 15-16 (Ga. 1983) (maintaining that the fingernail marks on an eleven-month-old child's neck suggested that the mother applied extreme pressure to the area with her hands). The court sentenced the mother to life in prison for the child's murder. *Id.* at 14.

758. *Please Keep Me Safe*, *supra* note 92.

759. See *State v. Wilkerson*, 247 S.E.2d 905, 908-09 (N.C. 1978) (explaining the findings of Dr. Grauerholz, who testified that while children accidentally injure themselves by falling forward, they receive injuries from third parties along their back areas).

760. *Davis*, *supra* note 3.

front, and not the back.<sup>761</sup> Also, bruises on the inner thighs usually are not caused accidentally.<sup>762</sup> Bruises on the arms or hands sometimes occur when children try to protect themselves from their abusers.<sup>763</sup> Moreover, in school-age children, injuries frequently are sustained in areas normally covered by clothes, such as the arms or the legs, making detection very difficult.<sup>764</sup>

*C. The Location of Bruises and Abrasions Can Indicate That the Injuries Were Inflicted Intentionally*

Injuries to more than one “surface plane” (the front, back, and two sides of a child) may also indicate to the SOS Team that the injuries are non-accidental.<sup>765</sup> For example, in *State v. Boggess*, a five-year-old boy (one of two children abused by their stepfather) had extensive bruises “on both sides of his legs from the ankles to the thighs;” on his arms “from the elbows to the wrists;” and “halfway up his back.”<sup>766</sup> That his body was covered with bruises indicated that he had been hit from several different directions.<sup>767</sup> In addition, he walked with a “waddled limp” and a “pronounced part of his lip was missing and . . . the wound was inflamed and needed to be cleaned.”<sup>768</sup> Moreover, a “three inch patch of his hair had been jerked out by his tormentor.”<sup>769</sup> In upholding the stepfather’s conviction on three counts of child abuse, the Wisconsin Supreme Court noted that “[f]ar from being a ‘sanctum,’ the house had more the characteristics of a torture chamber for these unfortunate children.”<sup>770</sup>

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761. See *Wilkerson*, 247 S.E.2d at 906 (indicating that children usually hurt their knees and hands in their daily activities, but they do not injure their liver and other internal organs, like the two-year-old boy in this case).

762. See *State v. Moyer*, 727 P. 2d 31, 32 (Ariz. Ct. App. 1986) (rejecting a stepfather’s claim that his stepdaughter suffered a fractured skull and burns due to a sun lamp located in the bathroom).

763. See *Commonwealth v. Kramer*, 371 A.2d 1008, 1012 (Pa. 1977) (declaring that the child tried to protect himself by raising his arms and hands while his father repeatedly beat him with a stick, therefore preventing the child from using his hands to write); see also *Davis*, *supra* note 3, at 1.

764. *Davis*, *supra* note 3, at 1.

765. *Id.*

766. 340 N.W.2d 516, 520 (Wis. 1983) (questioning a stepfather’s claim that he injured the child by accidentally falling on top of him because of the location and the extent of the bruises on the child’s body).

767. *Davis*, *supra* note 3, at 6.

768. *Boggess*, 340 N.W.2d at 519-20 (holding that a reasonable person would view the children’s injuries as requiring immediate aid, for example, an anonymous caller reported the abuse to Social Services after noticing one of the children limping).

769. See *id.* at 525-26 (Day, J., concurring) (challenging the dissent’s position that the social worker should have ignored the five-year-old child’s injuries because she lacked a warrant to enter the home and to investigate the anonymous caller’s tip).

770. *Id.*

*D. Bruises and Abrasions Can Indicate Other More Serious Internal Injuries*

The SOS Team investigating the case of a severely bruised and beaten child should always be certain that the child has not sustained other more serious, but less evident, injuries such as internal abdominal injuries, broken bones, or head trauma.<sup>771</sup> For example, three-year-old Tawnya Tanner, who died of a subdural hematoma, had many contusions “literally from head to foot” with “bulges of the scalp where the severely bruised brain protruded through the craniotomy sites.”<sup>772</sup> Similarly, at the time three-year-old Kristen Steger was admitted to the hospital with a lethal subdural hematoma, she was “covered from head to toe” with cuts and bruises inflicted by her stepmother.<sup>773</sup> In another case, the physician who pronounced two-year-old Nathanel Walkey dead from severe intra-abdominal injuries, noted seventeen different old and new bruises, lacerations, abrasions, and bite marks on the child’s neck and arms.<sup>774</sup>

Eleven-year-old Tameka Lehmann and thirteen-year-old John Phillips also suffered an extraordinary number of bruises and abrasions in what the North Carolina Supreme Court viewed as a pattern of child abuse at the hands of Anne and Sylvester Phillips, who were the foster parents of Tameka and the adoptive parents of John.<sup>775</sup> Both children were tied with a dog chain and hung over a door.<sup>776</sup> Tameka, who did not survive the battering, was beaten with a pan, a lamp cord, a switch, and a rubber flap.<sup>777</sup> Her foster mother also put Tameka’s head in the toilet and flushed it.<sup>778</sup> At the time of her death, Tameka had “fresh hemorrhages on her head, neck, genital area, and sacrum,” as well as numerous other serious

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771. See *State v. Tanner*, 675 P.2d 539, 544-45 (Utah 1983), *superseded on other grounds*, *State v. Walker*, 743 P.2d 191, 192 (Utah 1987) (concluding that the child’s injuries reflected the battered child syndrome because the child had serious head injuries and inexplicable bruises all over her body).

772. See *id.* at 541.

773. *People v. Steger*, 546 P.2d 665, 667 (Cal. 1976).

774. See *People v. Walkey*, 223 Cal. Rptr. 132, 134 (Cal. Ct. App. 1986) (reasoning that the mother’s boyfriend used a “blunt object” on the child’s abdomen area and his teeth to bite the child on various parts of the body).

775. *State v. Phillips*, 399 S.E.2d 293, 295-96 (N.C. 1991) (upholding admissibility of pathologist’s testimony regarding BCS based on “the patterned injuries, the various stages of healing, and the types of injuries which exceeded corporal punishment”).

776. *Id.* at 299 (allowing evidence that the parents made the children eat red peppers while they lived in Chicago to corroborate the evidence of the child abuse that took place in North Carolina).

777. *Id.* at 302.

778. *Id.* at 292-303 (ruling that the parents tortured Tameka by “inflicting great, severe or extreme pain” and that the court did not need to instruct the jury to find that the parents acted with premeditation or deliberation to convict them of first degree murder and felony child abuse).

injuries on other parts of her body.<sup>779</sup> John, who survived the abuse, had “over one hundred injuries with at least sixty percent of the injuries appearing to be as recent as three days old or less.”<sup>780</sup> John walked with a limp, most likely caused by swelling, due to his ankles being bound by a rope or chain.<sup>781</sup> He also sustained a hand fracture and serious tissue injuries to his ankles.<sup>782</sup>

*E. Beatings in and of Themselves Can Be Survival-Threatening*

If a beating is sufficiently severe, the abuse should be categorized by the SOS Team as survival-threatening in fact. A sufficiently severe beating can in itself be life-threatening or even result in a child’s death.<sup>783</sup> For example, in *People v. Wade*, the California Supreme Court upheld the conviction of Melvin Wade for first-degree murder and imposed the death sentence, due to the “heinous murder” of his girlfriend’s ten-year-old daughter, Joyce.<sup>784</sup> On the morning of Joyce’s death, Wade accused the child of “smelling and not properly washing herself.”<sup>785</sup> Wade then began “punching her with his fists” and then “beat her with a wooden board that had broken off of the frame of their couch.”<sup>786</sup> That afternoon, Wade “ordered Joyce to get inside an old army duffel bag” that he clipped shut

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779. *Id.* at 302.

780. *Id.*

781. *Id.* at 296-99 (considering the testimony of former foster children, similar to the other children’s testimonies, who witnessed the parents chain the child to a pole and engage in sexual acts).

782. *Id.* at 304 (affirming the parent’s conviction and life imprisonment for the first-degree murder by torture of their eleven-year-old foster daughter and for felony child abuse with a ten-year sentence for the battering of their thirteen-year-old adopted son).

783. *See, e.g.,* *People v. Ellis*, 589 P.2d 494, 495 (Colo. Ct. App. 1978) (contending that the trial court should not have introduced photographs of the internal organs of a four-year old, whose stepmother beat him to death); *Albritton v. State*, 221 So. 2d 192, 194-95 (Fla. Dist. Ct. App. 1969) (stating that a sixteen-month-old toddler was beaten to death by her mother’s live-in boyfriend); *State v. Wilkerson*, 247 S.E.2d 905, 907-08 (N.C. 1978) (emphasizing that a father spanked his two-year old so hard and loudly that the neighbors could hear the beatings); *Ashford v. State*, 603 P.2d 1162, 1164 (Okla. Crim. App. 1979) (explaining how a mother’s live-in boyfriend beat her eight-month-old to death); *State v. Best*, 232 N.W.2d 447, 449-50 (S.D. 1975) (finding that a fourteen-month-old baby had a serious diaper rash, rib fractures, and other evidence of BCS and eventually the mother beat her son to death); *State v. Johnson*, 400 N.W.2d 502, 504, 506-07 (Wis. Ct. App. 1986) (indicating that the child was beaten to death by a man who was “like a second father” to him).

784. 750 P.2d 794, 807-09 (Cal. 1988) (rejecting Wade’s argument that “death is a disproportionate penalty” for parents who beat their children to death because the stepfather did not act in the heat of the moment and had a long period of time to consider the consequences of his actions).

785. *Id.* at 796 (recognizing that the defendant’s demeanor turned from nice to evil when interacting with the children and he quickly resorted to violence).

786. *Id.* at 796-97.

and lifted into a “crawl space” in the attic above the bedroom.<sup>787</sup> The California Supreme Court chillingly described what happened next:

Approximately three to four hours later, Joyce freed herself from the bag and asked if she could come down. As she started to get down, [Wade] reached for her but [he] fell. He accused her of causing him to fall and grabbed her as she was hanging from the crawl space. He punched her and threw her body against the wall, making a dent.

[Wade] then began beating Joyce again with his fists. The beating apparently continued throughout the evening. During this time, [Wade] consumed a bottle of wine and shouted that he was “Michael the Archangel” and that he would kill Joyce because she was a “devil.”

[Wade] then told Joyce to take her shirt off and stand up against the wall with her arms extended. He beat her again with the board across the chest, stomach and other parts of her body. Throughout the beatings, Joyce cried and asked [Wade] to stop, telling him that she was sorry and that she would be good.

At one point during the evening, [Wade] wrapped a dog leash around Joyce’s neck and attempted to hang her from a nail on the wall. When he was unable to do this, he dropped her on the floor. When Joyce did not move, [Wade] claimed that she was “just putting on” so he kicked her in the side. At that point, she apparently was breathing. [Wade] then picked her up and let her body drop to the floor. [Wade] then stomped on her stomach.<sup>788</sup>

The police were called by the motel manager, who heard the disturbance.<sup>789</sup> However, the officers left after about fifteen minutes following assurances by Joyce’s mother that “everything would be all right.”<sup>790</sup> Shortly thereafter, the manager again heard yelling and saw Wade strike Joyce’s mother in the face.<sup>791</sup> The police were called and this time when they arrived, they “found Joyce dead on the bedroom floor.”<sup>792</sup> An autopsy report “revealed that Joyce died from cranial, cerebral, abdominal, and soft-tissue injuries.”<sup>793</sup> The pathologist “testified that the injuries acted in concert to produce the death, although any one of the major injuries to the head, abdomen or neck could have caused her death.”<sup>794</sup> Wade commented to the police, “I guess I hit her too hard.”<sup>795</sup>

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787. *Id.* at 797.

788. *Id.*

789. *Id.*

790. *Id.*

791. *Id.*

792. *Id.*

793. *Id.*

794. *Id.*

795. *Id.*



*F. Bruises and Abrasions Can also be Caused Non-Intentionally*

The SOS Team should rule out any non-intentional explanations for the injuries. Bruises and abrasions frequently are sustained by children in their normal daily activities.<sup>796</sup> For example, there “are certain places where children classically do injure themselves when they fall . . . they bang their knees, they fall on their hands . . . .”<sup>797</sup> A child will also “frequently . . . bang what [physicians] call the tibial surfaces, the area underneath the knee, and, of course, bang their elbows and . . . occasionally even fall and hit their heads . . . .”<sup>798</sup> Many children sustain bruises on the face, especially around the eyes.<sup>799</sup>

If the parent claims that the child bruises easily, it is important to rule out the parental explanation by running a bleeding disorder screen.<sup>800</sup> Hospitalization of the child will disprove a “bruising tendency” if the child does not suffer any other injuries while in the hospital.<sup>801</sup> A lack of new bruises will also eliminate the possibility that the child is suffering from some rare blood disease because the bruises are not appearing as “spontaneously as they would if the child was suffering from such a disease.”<sup>802</sup> For example, in *Goldade v. State*, four-year-old Tabatha Goldade “was hospitalized for several days for observation after it was discovered that she had ‘a lot of bruises’ on her ‘back, chest, stomach, legs, arms, and face.’”<sup>803</sup> The results of the tests established that Tabatha “did not ‘tend to bruise more easily than the average, healthy child’” as claimed by her parents.<sup>804</sup> The examining physician “ruled out illness, childhood

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796. See *State v. Wilkerson*, 247 S.E.2d 905, 909 (N.C. 1978) (advancing Dr. Grauerholz’s response to the court that children do not receive multiple injuries in multiple places, all at the same time, from their daily activities).

797. *Id.*

798. *Id.* at 911 (advancing the opinions of various medical experts to show how the child’s chest injuries fell outside the scope of normal bruising found on young children).

799. See, e.g., *People v. Barnard*, 286 N.W.2d 870, 871 (Mich. Ct. App. 1979) (charging that the court had sufficient circumstantial evidence, for example, the child’s black eyes, fractured ribs, and burned feet, to convict the defendant of second-degree murder).

800. SCHUCHTER, *supra* note 87, at 78 (noting that a blood disorder screen consists of measuring the child’s platelet count, bleeding time, partial thromboplastin time, and prothrombin time).

801. See *Wooster*, *supra* note 87, at 1808-09 (insisting that parents fabricate stories to persuade doctors to believe that they did not cause harm to their children, however, doctors can discover the truth by asking the parents specific questions).

802. See *Grumet*, *supra* note 20, at 299 (implying that parents escape liability for their misconduct because doctors label battered children as accident-prone and as having a rare diseases).

803. 674 P.2d 721, 723-24 (Wyo. 1983) (proffering that the photographs taken by the doctor did not reveal serious injuries to the child, however, the child did suffer abuse prior to being admitted).

804. *Id.* at 723.

play, and home accidents as causes” of the bruises and concluded that they “were the product of child abuse.”<sup>805</sup>

There are also several medical conditions which can cause what appear to be bruises, without the involvement of any physical abuse.<sup>806</sup> For example, what appear to be bruises may be caused by a medical condition known as Mongolian or blue spots.<sup>807</sup> These blue or blue-black spots are most often seen on the back and buttocks and disappear with age.<sup>808</sup> A multi-system disorder called Henoch-Schoenlein Syndrome, or Purpura, involves the skin, gastro-intestinal tract, joints, and kidneys, and the disorder causes a distinctive rash on the lower extremities and buttocks that resembles inflicted bruises.<sup>809</sup> What appear to be bruises can also be due to contact dermatitis, caused by an allergic reaction to soap or lime juice.<sup>810</sup> Additionally, leukemia, hemophilia, von Willibrand disease, pediatric tumors, Vitamin K deficiency, and perinatal lesions associated with inflammatory bowel disease can also lead to bruising that might incorrectly be blamed on child abuse.<sup>811</sup>

#### IV. PSYCHOLOGICAL ABUSE BY PHYSICAL MALTREATMENT IS POTENTIALLY SURVIVAL-THREATENING IN FACT

Abused children also frequently suffer from psychological abuse in addition to other physical abuse inflicted by their parents.<sup>812</sup> For example, the father in *Kramer* severely beat his two children and burned “[a]ny toys or new clothing the children received as gifts from relatives.”<sup>813</sup> He also cut his daughter’s hair “so that she would not be so cute” and burned her mattress, therefore “leaving nothing but a few blankets covering the springs for her bed.”<sup>814</sup>

Although psychological abuse, like the two children in *Kramer* endured, is usually not, in itself, survival-threatening, it can have a devastating effect on the children’s behavior and their feelings about themselves.<sup>815</sup> One

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805. *Id.*

806. *See* STOCKER, *supra* note 439.

807. *See id.*

808. *Id.*

809. *Id.*

810. *Id.*

811. *Id.*

812. *See* M.A. v. J.A., 781 S.W.2d 94, 96 (Mo. Ct. App. 1990) (reasoning that a father neglected his child by placing the boy in a small dog cage for hours as a form of punishment).

813. *Commonwealth v. Kramer*, 371 A.2d 1008, 1012-13 (Pa. 1977).

814. *Id.* at 1012 (noting that the father described his children as “retarded, ugly and dumb” and “psychopathical liars”).

815. *See Commonwealth v. Dunkle*, 602 A.2d 830, 833 (Pa. 1992) (reporting that

study, cited by the Pennsylvania Supreme Court in *Dunkle*, found that psychologically maltreated children felt “unloved” and “inferior,” had “low self-esteem” and a “negative view of the world.”<sup>816</sup> In addition, such children displayed “anxiety and aggressiveness [and] inadequate social behavior.”<sup>817</sup> As teenagers, they sometimes become truants or runaways or exhibit “destructive, depressed [or] suicidal behavior.”<sup>818</sup>

When physical maltreatment is used to inflict psychological trauma on a child, the abuse should be closely scrutinized by the SOS Team to determine if the abuse should be classified as survival-threatening in fact. According to the Handbook of Clinical Child Psychology, abused children may suffer from a variety of “psychological traumas” with physical manifestations, such as “sensory overload with light, sound, stench, aversive taste, itching, pain, or prevention of sleep.”<sup>819</sup> For example, in *Wade*, the mother’s live-in boyfriend, in addition to killing the mother’s ten-year-old daughter, Joyce, and beating her other four young children, punished the children by making them take cold showers, stand on one foot for extended periods, and drink their own urine as well as a mixture of salt and milk, to induce vomiting.<sup>820</sup> In *Brodie v Summit County Childrens’ Services Board*, eleven-year-old Tara Cook’s father shackled her to the bathroom sink for almost one month and imprisoned her in stairwells and closets, in addition to beating, burning, and starving her.<sup>821</sup> In *M.A. v. J.A.*, a twelve-year-old boy was confined by his parents in a three-by-four-foot dog cage for two hours at a time, once each week for two months, because he was expelled from his religion class.<sup>822</sup> Moreover, in *Nebgen v. State*, a seven-year-old was chained naked to a bathtub with a dog collar during the day by his deceased mother’s former live-in boyfriend, while the boyfriend was at work.<sup>823</sup>

The tragic story of Brandie Freeman in the *Elliott* case makes it clear that the physically abusive means utilized by parents in psychologically abusing

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abuse had the effect of negatively transforming the personality of the child).

816. *Id.*

817. *Id.*

818. *Id.*

819. *Nemeth v. State*, 82 Ohio St. 3d 202, 212 (citing HANDBOOK OF CLINICAL CHILD PSYCHOLOGY and noting that trauma can also be caused by “verbal overload with insults, accusations, and indoctrination”).

820. *People v. Wade*, 750 P.2d 794, 796 (Cal. 1988).

821. *Brodie v. Summit County Child Servs. Bd.*, 554 N.E.2d 1301, 1303 (Ohio 1990).

822. *M.A. v. J.A.*, 781 S.W.2d 94, 95 (Mo. Ct. App. 1990).

823. *Nebgen v. State*, 192 N.E. 130, 131 (Ohio Ct. App. 1933) (upholding conviction of the mother’s former live-in boyfriend for willful torture and punishment of a child).

their children can easily escalate and become survival-threatening.<sup>824</sup> When two-year-old Brandie soiled her pants, she was forced by her mother's live-in boyfriend to assume what he called the "punishment position," requiring the toddler to lay on her stomach with her arms and legs raised for up to twenty minutes.<sup>825</sup> On one occasion, when Brandie was in the punishment position, the boyfriend "grabbed Brandie by the hair on the back of her head and slammed her head to the floor six or seven times."<sup>826</sup> When Brandie appeared unresponsive, the boyfriend took her into the bathroom, where he ran water over her and repeatedly hit and slapped her, "in what he claimed was an effort to obtain a response."<sup>827</sup> The boyfriend then called Brandie's mother, who was at work, telling her that Brandie had fallen off of a bed.<sup>828</sup> The mother drove Brandie to the hospital where, unfortunately, Brandie died the next day.<sup>829</sup> The cause of Brandie's death was a massive head injury that "required more than one blow."<sup>830</sup> "Thirty percent of Brandie's hair had been pulled from her scalp."<sup>831</sup> Brandie also had bruises over her entire body, a fractured left wrist and a rupture of the frenulum—the membrane that attaches the lip to the gum.<sup>832</sup>

Another particularly horrific example of unusual, and ultimately lethal, physical and psychological abuse of a child occurred in *State v. Crawford*.<sup>833</sup> In that case, six-year-old Christopher West was punished for minor rule violations by his mother's live-in boyfriend, Jonathan Crawford, by having hot sauce put on his tongue, having his mouth washed out with soap until his mouth "puffed up," and being forced to wear a diaper in public for being a "sissy."<sup>834</sup> When Christopher broke a rule by taking food from the kitchen without permission, he developed a minor rash that Crawford attributed to some sherbert the boy had eaten.<sup>835</sup> Consequently, over the next two to three hours, Crawford forced Christopher to drink copious quantities of water in order to "flush out his system."<sup>836</sup>

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824. See *State v. Elliot*, 475 S.E.2d 202 (N.C. 1996).

825. *Id.* at 207.

826. *Id.*

827. *Id.*

828. *Id.*

829. *Id.* (sustaining the mother's live-in boyfriend's conviction for murder and felony child abuse and the imposition of the death sentence).

830. *Id.* at 208.

831. *Id.*

832. *Id.*

833. 406 S.E.2d 579 (N.C. 1991).

834. *Id.* at 582.

835. *Id.*

836. *Id.*

Christopher vomited dozens of times and complained of a headache and sleepiness but Crawford continued to force him to drink as many as five quarts of water.<sup>837</sup> Ultimately, the excess water ingestion caused Christopher to scream, convulse, and lose his eyesight.<sup>838</sup> He was taken to a hospital, where he was diagnosed as suffering from water intoxication and was pronounced brain dead.<sup>839</sup> The next day, he was removed from a respirator and died.<sup>840</sup> Although not the cause of his death, an autopsy also revealed recent bruising to Christopher's head, thigh, and buttocks, some of which were not of the type that could be caused by from normal childhood activities.<sup>841</sup>

V. FAILURE TO PROVIDE FOR A CHILD'S BASIC NEEDS IS POTENTIALLY SURVIVAL-THREATENING IN FACT

Parents who physically abuse their children may also willfully neglect them by failing to provide for the child's basic needs, such as shelter, supervision, food, clothing, safety, education, medical care,<sup>842</sup> and dental care.<sup>843</sup> In fact, neglect is the most common form of child maltreatment and is three times more common than physical abuse.<sup>844</sup> Recent estimates indicate that some form of neglect is found in approximately eighty percent

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837. *Id.*

838. *Id.*

839. *Id.*

840. *Id.*

841. *Id.* at 579, 583 (noting that Crawford was ultimately convicted of felony child abuse and first-degree murder by torture and sentenced to life imprisonment, which was affirmed on appeal).

842. *See, e.g.,* *People v. Steger*, 546 P.2d 665, 674 (Cal. 1976) (Clark, J., dissenting) (stating that the stepmother failed to obtain any medical treatment after deliberately cutting her thirteen-year-old stepdaughter's chin to the bone, which would have required sutures to close the wound, nor at any other time during a month-long period of horrendous abuse ultimately leading to the child's death); *Deborah S. v. Super. Ct.*, 50 Cal. Rptr. 2d 858, 860 (Cal. 1996) (citing allegations that the mother failed to use an apnea monitor as required to care for her six-week premature daughter); *Brodie v. Summit County Child Servs. Bd.*, 554 N.E.2d 1301, 1303 (Ohio 1990) (reciting that after hitting his eleven-year-old daughter causing open wounds on her face, head, and body, her father failed to seek medical attention for his daughter causing the wounds to become infected); *Commonwealth v. Rodgers*, 528 A.2d 610, 615-16 (Pa. Super. Ct. 1987) (adjudicating a case where a two-and-a-half-year old died from malnutrition at the hands of her parents).

843. *See, e.g.,* *Polgreen & Worth*, *supra* note 646, at A1 (noting that the four boys in New Jersey, who almost starved to death in 2003, also had lice and their teeth were rotting, because they had not been to a dentist or a doctor in at least five years); *see also* *Collins & Knight*, *supra* note 634 (noting that failure to provide adequate dental care can lead to cavities and gum disease that, if left untreated, can lead to pain, infection, and loss of function).

844. *Collins & Knight*, *supra* note 634 (noting that neglect accounts for approximately two-thirds of cases of maltreatment).

of all child abuse cases.<sup>845</sup> Thus, neglect can act as a red flag to child protective services to monitor the situation for any potentially survival-threatening abuse. Although neglect may simply result in a subnormal state of general health,<sup>846</sup> it can also place the child in a situation which is survival-threatening in fact.<sup>847</sup> Neglected children can die from hypo- or hyperthermia, caused, for example, by being left in an unheated house in the cold of winter or being locked in a car in the heat of summer.<sup>848</sup> Improper supervision, combined with parental drug use, can result in the death of a child who accidentally consumes the drugs.<sup>849</sup> Moreover, neglect frequently causes a child to be very unhealthy which can become survival-threatening if it means that the child is less able to recover from other forms of abuse.<sup>850</sup> For example, in *Martin v. State*, seven-week-old Turner Martin, who died from a subdural hemorrhage, was “undernourished, anemic, and had rickets at the time of death.”<sup>851</sup> A pathologist described Turner as a “very unhealthy child,” and it was his opinion that “a normal child would not have died under the same circumstances.”<sup>852</sup>

Parental neglect in failing to provide medical care can also place the child in a situation that is survival-threatening in fact.<sup>853</sup> For example, the parents of four-year-old Kip Henson exhibited “outrageous neglect” in failing to obtain medical treatment for their son’s fatal acute bilateral pneumonia.<sup>854</sup> Although “there was more than ample proof that Kip was obviously, even to an untrained eye, a very sick child in the days before his death, the parents never took him to a doctor.”<sup>855</sup> Moreover, even though both parents recognized that Kip was ill, they hired a babysitter and “actually exacerbated the child’s condition” by telling the babysitter “not to bother with him” and by tying him up on his back in bed while they were

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845. Davis, *supra* note 3, at 11; *see also* U.S. Dep’t of Health and Human Servs., *supra* note 2 (noting that sixty-one percent of child maltreatment in 2003 was due to neglect).

846. *See* Kempe, *supra* note 17, at 17-18; Wooster, *supra* note 87, at 1808.

847. *See id.* (stating that evidence of mild cases of child abuse may manifest in symptoms so generic as to mislead a physician’s determination of the cause of death).

848. Collins & Knight, *supra* note 634.

849. *See id.*

850. *See* *Martin v. State*, 547 P.2d 396, 397, 400 (Okla. Crim. App. 1976) (demonstrating that victims of child abuse are less likely to survive the physical attacks because of the decline of the overall health).

851. *Id.* at 397.

852. *Id.* at 397, 400 (upholding the father’s conviction of first-degree manslaughter in his son’s death).

853. *See* *People v. Henson*, 304 N.E.2d 358 (N.Y. 1973).

854. *Id.* at 361-62.

855. *Id.*

gone “which, quite obviously, made it even more difficult for him to cough up the mucus which for some days had been accumulating in his throat and mouth.”<sup>856</sup> The parents subsequently went out drinking until about three in the morning, which was only eight hours before Kip died.<sup>857</sup> Tragically, expert testimony established that Kip’s pneumonia, as well as the “many other ‘fresh and recent injuries’ he had suffered during the last few days of his life” could have been successfully treated “almost up to the last moment of his life.”<sup>858</sup>

In *State v. Dumlao*, the two-year-old daughter of Paulino and Aurora Dumlao was also the victim of a combination of neglect and physical abuse by both of her parents.<sup>859</sup> She was brought to the hospital in a severely dehydrated condition, which medical experts said could not have been due to several episodes of vomiting as her parents claimed.<sup>860</sup> In addition, the toddler was covered with abrasions and bruises, some of which were from fingernails dug into her skin.<sup>861</sup> She also had several severe internal injuries including a fractured spleen, pancreatitis, and liver dysfunction.<sup>862</sup> Not surprisingly, the mother’s claim that the child’s injuries were caused when her fifteen-month-old brother hit her with a toy car was found, by the examining physician, to be inconsistent with the child’s injuries.<sup>863</sup> Although it was determined that the mother had inflicted the physical abuse, the child’s father neglected to obtain medical treatment for his daughter until approximately one week after she was hurt.<sup>864</sup> Noting that the father “had a duty to provide for the well-being of his daughter, including supplying medical care,” the court commented that the extent of the child’s injuries and her unresponsiveness indicated that “the child would have appeared to be obviously injured even to an untrained eye.”<sup>865</sup>

#### CONCLUSION

The end of this Article is not so much a conclusion as it is a beginning and a hope that, with the efforts of the SOS Team, the bleak picture of child abuse painted above will be altered and alleviated. The contrast between

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856. *Id.*

857. *Id.* at 359.

858. *Id.* at 362 (noting that the mother claimed that Kip’s many bruises and abrasions were caused by him “stumbling around the house and falling into furniture”).

859. 491 A.2d 404, 408-09 (Conn. App. Ct. 1985).

860. *Id.* at 411.

861. *Id.*

862. *Id.* at 408.

863. *Id.* at 411.

864. *Id.* at 412.

865. *Id.*

the fates of Tawnya Tanner and Aokusia T., two infants who were both diagnosed as suffering from survival-threatening failure to thrive, exemplify the tragic result that the SOS Team should try to prevent on one hand and the happy outcome that the Team should strive to achieve on the other.<sup>866</sup> Despite physical and emotional abuse, Tawnya was allowed to return to her abusive home and was ultimately beaten to death by her mother when she was three years old.<sup>867</sup> Aokusia, meanwhile, was placed in a foster home, where she thrived both physically and emotionally.<sup>868</sup> Then, when she was seven years old, her parents' rights were terminated and she was formally adopted by her foster parents.<sup>869</sup>

However, the ideal goal is to be able to protect all of America's infants and children before they ever suffer such severe, survival-threatening abuse. As the Wisconsin Supreme Court stated in *Bogges*, "[t]he gravity of child abuse and the urgent need for protecting its victims cannot be overstated. Children are our legacy and our hope, as valuable to us as they themselves are vulnerable."<sup>870</sup> The aspiration of protecting the "legacy and hope" represented by our vulnerable children can only be achieved if each of us is vigilant in observing and reporting any acts of abuse that we encounter. Although child abuse most frequently occurs "behind closed doors," in many cases the non-abusing spouse, usually the mother, does nothing to help her child, and by her silence, becomes an accomplice. Older siblings, who also reside behind the closed doors, sometimes watch the target child, their sister or brother, suffer abuse and tell no one, not even a trusted teacher or counselor.

Even in a case where both parents are actively abusing an only child, other people, such as relatives, friends, neighbors, or babysitters may notice symptoms of abuse. For example, in the case of *People v. Aeschlimann*, the murder of fourteen-month-old Todd Aeschlimann, from beatings inflicted by both of his parents, could perhaps have been prevented if any one of the numerous people who saw signs of the abuse were willing to report their suspicions.<sup>871</sup> Todd's grandmother visited the home for two weeks when the child was ten months old and observed multiple bruises on Todd's body and saw his mother "spank Todd viciously," causing the boy's

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866. Compare *In re Aokusia T.*, 1994 WL 282500, at \*3 (Conn. Super. Ct. 1994) (providing an example where the child survived the abuse), with *State v. Tanner*, 675 P.2d 539, 548-49 (Utah 1983) (providing an unfortunate example where the current system failed the child, who suffered violent abuse and then died).

867. *Tanner*, 675 P.2d at 541.

868. *In re Aokusia T.*, 1994 WL 282500 at \*3.

869. *Id.* at \*5.

870. *State v. Bogges*, 340 N.W.2d 516, 527 (Wis. 1983) (Abrahamson, J., dissenting).

871. 104 Cal. Rptr. 460, 691 (Ct. App. 1972).



buttocks to look “a mess . . . as if blood vessels could have been broken.”<sup>872</sup> Despite these observations, the grandmother did nothing to protect her grandson.<sup>873</sup> A woman who babysat for Todd on ten or twelve occasions described Todd’s “whole face” as being “black and blue” and his buttocks as being “split open.”<sup>874</sup> She also remembered Todd’s father instructing her to “beat the baby if he cries, and beat him until he stops crying. Do not pick him up, show him any love or affection.”<sup>875</sup> Yet, she also took no action to help the child.<sup>876</sup> At least five different neighbors heard or saw signs of abuse, including seeing each of the parents spank Todd and “jerk” his head around, hearing them threaten to kill their son, listening while Todd was beaten night after night, and observing the resulting black eyes and black and blue marks on his arms and legs.<sup>877</sup> But none of them ever reported the abuse. On the night of his death, two of the neighbors, who shared a common wall with the family, heard “a series of spankings” with Todd “crying his lungs out,” followed by his mother shouting, “[s]hut up, goddamn you . . . or I will kill you,” then a “thud against the (common) wall,” then Todd was “whimpering” and, finally, Todd “wasn’t crying at all.”<sup>878</sup> Any of these seven people might have saved Todd’s life if they had only taken the time to report the abuse, even anonymously, to the proper authorities. As the Wisconsin Supreme Court noted in *Bogges*: “Anyone who suspects child abuse has an obligation to report it. When you look the other way you become a co-conspirator in the crime.”<sup>879</sup>

There are, of course, many categories of people who are required by law to report child abuse.<sup>880</sup> It is imperative that people like day care providers, teachers, school counselors, and coaches, who are with children on a daily basis, are trained to recognize the signs of child abuse that they are required to report. Emergency room physicians, pediatricians, and other medical personnel, also need to be fully apprised of the subtle presenting symptoms, which can sometimes mask more severe hidden abuse. Child protection service (“CPS”) workers need to provide more intensive investigation and supervision to prevent any recurrence of the many instances of repeated abuse, as described above, which CPS either did not notice, or worse, did

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872. *Id.*

873. *See id.* (noting that the grandmother testified at trial but never mentioned going to the authorities).

874. *Id.*

875. *Id.*

876. *See id.*

877. *Id.* at 691-92.

878. *Id.*

879. *State v. Bogges*, 340 N.W.2d 516, 525 (Wis. 1983).

880. *See id.* at 525 (Day, J., concurring) (noting that anyone who suspects child abuse has a duty to report it).

not care enough to do anything about.

If each one of us is willing to do whatever we can to protect any child in danger of abuse, there is little doubt that there would be far fewer children who either die at the hands of their parents or spend what remains of their life permanently disabled. As the Florida District Court noted in *Herbert v. State*:

We want to prevent not only the immediate, painful misery of children who are subjected to maltreatment, but also to prevent those lifelong disastrous consequences that are more and more difficult to treat as the person grows older. To work toward the prevention of all these unhappy lasting effects of maltreatment is one of the most valuable things we can do to benefit our fellow human beings.<sup>881</sup>

It is hoped that the tragic stories described in this Article will serve as catalysts for all of us to strive to work together to stop the horrors of child abuse and to safeguard the survival of all of our children.

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881. *Herbert v. State*, 526 So. 2d 709, 714 (Fla. Dist. Ct. App. 1988) (Gunther, J., & Glickstein, J., concurring) (quoting Brandt Steele, M.D., *Notes on the Lasting Effects of Early Child Abuse*, 10 CHILD ABUSE & NEGLECT 283 (1986)).