

# LEX ENFANTS

QUARTERLY NEWSLETTER | FALL 2019



**A MULTI-DISCIPLINARY APPROACH TO  
COMBATTING CHILD ABUSE**

# CHILD ABUSE PROSECUTION PROJECT

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QUARTERLY NEWSLETTER  
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## DIRECTORS MESSAGE:

### Welcome to the Fall 2019 Edition of LEX ENFANTS.

This issue focuses on the importance of working together effectively in our multidisciplinary teams to combat child abuse. I thank the authors of these salient articles on psychological safety and the role of the prosecutor in the multidisciplinary team. Our interagency collaboration on Child Protection Teams across the country is the bedrock for handling these complex cases to determine the best interests of child victims.

We are pleased to feature in our Spotlight section this quarter the important and dedicated work of Program Director Amelia Siders from the Traverse Bay Children's Advocacy Center in Traverse City, Michigan. Ms. Siders has spent her career assisting and supporting children and families who have experienced trauma.

Please join us for our 4th Annual Prosecutors' Conference on Child Abuse and Neglect to be held October 23-25, 2019 in Salt Lake City, Utah. We have additional cutting edge regional trainings scheduled in Albuquerque, New Mexico on September 18-20th, New York City, New York on October 28-30th, Louisville, Kentucky on December 5-6th and Bentonville, Arkansas on January 8-10, 2020. Please check our website at [www.APAinc.org](http://www.APAinc.org) for details. Our trainings are tuition free and led by faculty who are experts in their field.

Our Wednesday Webinar series continues with upcoming presentations scheduled for September 17th at 3 pm (EST) on Computer Forensics for Prosecutors, October 16th at 3 pm (EST) on Understanding Social Media and October 23rd at 3 pm (EST), a Search and Seizure Update. Past webinars on a variety of topics include *Handling Defense Attacks on Children's Suggestibility*, *Abusive Head Trauma: Update and Alternate Hypotheses* and *Why Forensic Interviewers and Prosecutors Should Explore Grooming Activities* are included in our on-line library, which can be found under our "resources" tab.

Thank you for all you do on behalf of children,

**David LaBahn, CEO/President**  
*Director, Child Abuse Prosecution Project*  
*Association of Prosecuting Attorneys*



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## SPOTLIGHT: TRAVERSE BAY CHILDREN'S ADVOCACY CENTER

INTERVIEW WITH AMELIA SIDERS, PROGRAM DIRECTOR  
TRAVERSE CITY, MI

### **Hello Amelia, please tell us about your present position.**

I am the Program Director of the Traverse Bay Children's Advocacy Center. That means I wear many different hats. I provide oversight of day-to-day operations, work to maintain relationships with our MDT partners, maintain a caseload of clients, supervise our amazing interns and staff, and work with our Executive Director and staff to make sure we are striving to provide the highest quality services to our clients and community partners.

### **What led you to this career?**

I have always been drawn to working with children and families who have experienced trauma. My first internship was at the Center for Child Protection in San Diego California. Providing counseling and support to those children and families had a profound impact on me. I have been quite fortunate to have the opportunity to support the healing process and help families build resilience following trauma.

Almost 9 years ago, I was approached to work at the Traverse

Bay Children's Advocacy Center. Being part of a team who supports families as they interface with the investigative and legal process was the missing piece of the puzzle for me.

### **Please tell us about your Children's Advocacy Center.**

The Traverse Bay Children's Advocacy Center is a regional response center for the protection and wellbeing of children. Since 2010, the Center has been the first stop for children who are suspected victims of sexual and physical abuse or who have witnessed a violent crime. Accredited by the National Children's Alliance, the TBCAC promotes a coordinated response that is compassionate, efficient, and puts the needs of children first.

Considered one of the largest CACs in Michigan, Traverse Bay Children's Advocacy Center is the only nonprofit in the Grand Traverse region involved in the investigation of crimes against children.

Through the Center's comprehensive programming, children have a voice in the investigative process, caregivers are empowered to better protect and nurture their children, and community members are educated to identify and report suspected abuse.

### **How many MDT's do you work with and in what capacity?**

Located in Traverse City, the TBCAC serves six counties — Antrim, Benzie, Grand Traverse, Kalkaska, Leelanau and Wexford — and the Sovereign Nation of the Grand Traverse Band of Ottawa and Chippewa Indians. The Traverse Bay Children's Advocacy Center serves children and teens as well as their non-offending siblings and caregivers. Clients are referred to the Center exclusively through law enforcement or child protective services. One of more of the following circumstances must have occurred

- A child is suspected of experiencing sexual abuse
- A child is suspected of experiencing physical abuse
- A child is suspected of witnessing a violent crime

Upon receiving a referral, the TBCAC promotes a coordinated multidisciplinary response that is compassionate and puts the needs of the child first. In the neutral setting of the TBCAC, team members collaborate on strategies that aid investigators and prosecutors without causing further harm to the child who has been victimized. This innovative, multidisciplinary approach significantly increases the likelihood of a successful outcome in court and long-term healing for the child.

More than 2,000 children have been referred to the TBCAC since 2010. Sadly, the most frequent age of a child seen at the Center is just four years old. The average length of services is 8 months. TBCAC utilizes a dual generation approach to protection and well-being. We encourage all members of the child's protective network to participate in the recovery process for optimal impact in ending the cycle of abuse and creating a safer community for our children.

**What disciplines are represented in the MDT's you work with?**

The CAC model and protocol requires team members to be comprised of law enforcement, prosecuting attorneys, child protective services, medical providers, and mental health professionals. Other community agencies and professionals may be part of the team as well.

**I understand you are involved in an innovative project to assist Prosecutors as part of your MDT in your jurisdiction?**

At the TBCAC we see every day how hard our teams work to bring justice to our clients. In the rural counties we serve, many of our prosecutors have a high level of cases and limited supports.

**What led you to begin the Prosecutor Toolkit Project?**

It started with the research and work I have done to prepare for being an expert witness, consultant, or to provide educational workshops on topics such as delayed disclosure, false allegations, complex trauma, and PTSD. Attending trials for our clients, I was noticing that many of these issues were being brought up by the defense. Additionally, working with our forensic interviewers and seeing how their interviews were being challenged in court, we began to discuss the commonalities of these challenges and started to operationalize them. I compiled folders with relevant research on the topics and shared them with our PAOs and asked for their feedback as to the helpfulness of the information. I realize that having the prosecution present expert witness testimony on some of the topics can be a double-edged sword, and wanted them to have pertinent research to address in rebuttal. The feedback was positive, so I have continued to update and expand the information.

**Please tell us about the Project.**

The whole idea is to support our PAOs in terms of access to information. Hopefully we are able to provide information

that could allow them to build on what they have for a case, address common challenges, and to provide information on issues and protocols that are common in our sexual abuse cases. We want to present all of our information in a trauma-informed way to support our clients.

**How do you decide what materials to include in the Prosecutor Toolkit?**

As mentioned, there are research articles that have been compiled on common issues brought up in criminal sexual conduct cases. I also include research on conducting forensic interviews, our Michigan Forensic Interview Protocol, and research on best practice in terms of forensic interviewing. I am in the process of adding research articles on the best ways to ask children questions on the stand and information about how children understand time and past incidents differently than adults.

**How has the Prosecutor Toolkit Project been received in your jurisdiction?**

We are in the beginning stages, but so far, the teams we have started sharing the information with have given us positive feedback. The goal is to be supportive and respectful of their roles. I have asked for ways to make it more useful and any additional information they would like to see added.

**What plans do you have in the future for the Project?**

My next plan is, with the assistance of our forensic interviewers, to define and then respond to the forensic interview challenges brought up by the defense. We are seeing the same issues come up over and over in terms of open vs. closed questioning, what defines a "good" interview, etc. Our staff is passionate about providing the most forensically sound interviews possible and feedback from our teams have been quite positive related to adding information that is CAC specific.

**What advice would you give other MDT's that want to replicate the Prosecutor Toolkit Project?**

Listen to your clients, your investigators, and PAOs. Invite them to give you feedback on what would be useful vs. what they already know. It took me a long time of observing and participating in trials to understand the process. If you notice "gaps", that is where I would start.



## FOCUSING ON THE CHILD: A PROSECUTION LED MULTIDISCIPLINARY TEAM APPROACH TO CHILD ABUSE

*By: District Attorney Kevin R. Steele, Brianna L. Ringwood, Assistant Chief of Trials,  
Family Protection Unit, Montgomery County, Pennsylvania*

This year, to mark National Child Abuse Prevention Month in April, the child advocacy center in Montgomery County, Pa.—Mission Kids—planted 600 blue-and-white pinwheels along a major thoroughfare, one for each child helped annually by Mission Kids. These carefree, spinning pinwheels represent the kind of childhood that every child deserves. A childhood full of fun, play, laughter and love.

But sadly, that's not the kind of childhood all kids have. And that's why Mission Kids, and all child advocacy centers across the country, exist. Children are beaten, abused,

sexually assaulted and even murdered by the very people who are supposed to protect them—their families, other caretaking adults or someone they trust. And sometimes, children are witnesses to crime, some very horrific crimes, and they are terrified and confused as they are thrust into the criminal justice system.

When adults do these horrible things to children, it's our job as prosecutors to join together with other dedicated law enforcement personnel, child welfare caseworkers and other service agencies to hold perpetrators accountable,



see that justice is served and to protect the child from unnecessary trauma. The most effective way to do that is through the multidisciplinary team (MDT) approach. Here in Montgomery County, we have found that at the core of every successful child abuse prosecution is an effective MDT made up of team members who understand their role and the ultimate objective, which is to make and keep kids safe. Every MDT member needs to be invested in the multidisciplinary team and its success, and each needs to be willing to coordinate their response to reports of child abuse.

Each multidisciplinary team is unique but driving the process within an effective MDT is a strong prosecutor. In Montgomery County, our Assistant District Attorneys (ADAs) are those strong and present leaders. They strive to be in attendance at all forensic interviews, pre- and post-interview team meetings and case reviews. They come prepared, having reviewed relevant investigatory materials, and are ready to provide guidance regarding the next steps.

A key element driving the success of the MDT process is good communications and teamwork. Each team member, whether widely experienced or new to their job, brings something unique to the table. Inexperienced team members provide a fresh perspective and energy that can be extremely valuable to the team, while experienced members can provide the knowledge and wisdom gained from past investigations. But whether a team member is new or seasoned, each team member has a slightly different lens through which they view the process based on their own agency and its focus and needs. Each agency is subject to different standards and deadlines, all of which needs to be respected, guided, assisted and coordinated. Oftentimes, the prosecutor is in the best position to prioritize and coordinate each agency's efforts in order to avoid duplication, thereby streamlining the process. Of course, conflicts within a multidisciplinary team do arise, but by keeping in mind the ultimate purpose of coming together as a team—to keep kids safe—the prosecutor and others can overcome these hurdles in the path to seeking justice.

Meetings with the MDT is just one part of a prosecutor's role in these types of investigations. Beyond these meetings, and even more important, is the prosecutor's follow up, follow through and hard work that leads to the most successful results for the child and everyone involved. The most crucial role and responsibility of the prosecutor is to consider all legal issues, assess the evidence and make a timely decision about filing criminal charges. As the only member of the multidisciplinary team that is responsible

for safe-guarding the rights of all parties, including the defendant, the ADA must objectively weigh the evidence, the long- and short-term interests of the child, the desire to avoid further trauma, the need for accountability and the protection of the public. After having weighed each of these sometime conflicting interests, the prosecutor must have the courage to make informed, fair and often difficult decisions—whether the decision is to proceed or not to proceed with an interview, the decision to charge or not charge, or any decision regarding a plea offer. With so many agencies and people involved, the prosecutor's objectivity is vital to achieving the right result for the right reasons. These decisions are difficult and are made based on the totality of facts and circumstances surrounding each individual case.

Ultimately, it takes a village, as the saying goes. A successful child abuse prosecution is only achieved through the efforts of many professionals all working toward the common goal of what's best for the child. Remaining firmly focused on that objective is key to multidisciplinary team's success.

It is our fervent hope that someday we wouldn't need to work in multidisciplinary teams on child abuse and child sexual assault cases because ALL children would be living happy and healthy lives untouched by crime.

But until that day comes, the District Attorney's Office of Montgomery County and District Attorney's Offices across the country will be partnering together with other relevant agencies and with other members of the multidisciplinary team, to make sure that young victims and witnesses of crime get through the criminal justice process without being re-victimized and without suffering any additional trauma.





# MANAGING CONFLICT ON MDTs THROUGH PROMOTING PSYCHOLOGICAL SAFETY

*By: Jerri Sites, MA, Regional Training Specialist, Southern Regional Children's Advocacy Center*

Multidisciplinary teams (also known as child protection teams) are considered to be the foundation of the Children's Advocacy Center movement. The Children's Advocacy Center (CAC) model began in the early 1980's in Huntsville, Alabama, when then District Attorney Bud Cramer, saw the need to create a better system to help abused children. Through his vision, law enforcement, criminal justice, child protective services, medical and mental health professionals came together to form a coordinated team to address child abuse in their community. The National Children's Advocacy Center was born in 1985 and has served as a model for the 1000+ CACs throughout the United States and in more than 34 countries worldwide. ([www.nationalcac.org/history](http://www.nationalcac.org/history))

Although there are over 1,000 communities with functioning CACs throughout the United States, there are many more communities that do not have access to the services of a Children's Advocacy Center. However, this does not prohibit these communities from utilizing the multidisciplinary team approach to child abuse. In fact, the federal government enacted the Children's Justice and Assistance Act of 1986 to encourage states to establish multidisciplinary task groups aimed at improving the investigation and prosecution of child abuse cases (Jacobson, 2001). Today, most states have mandated the multidisciplinary team approach for the

investigation and prosecution of child abuse of a serious nature in an effort to improve the system's response and reduce potential trauma children and families may experience while moving through the criminal justice process. ([https://ndaa.org/wp-content/uploads/MDT-draft-for-MAB\\_-01052015-last.pdf](https://ndaa.org/wp-content/uploads/MDT-draft-for-MAB_-01052015-last.pdf))

Child abuse multidisciplinary teams are complex by nature. The core disciplines of a multidisciplinary team include law enforcement investigators, child protective services workers, prosecutors, medical and mental health professionals, Children's Advocacy Center staff, and in some communities, juvenile justice, and school personnel. Each agency has their own policies and procedures, and roles and responsibilities that differ from the other disciplines on the team. Couple that with varying levels of expertise and authority among members of the team, high caseloads, high job turnover, and secondary traumatic stress/vicarious trauma due to exposure to working these highly sensitive cases, MDTs are faced with many challenges that can create conflict if they don't have a sense of purpose, and the willingness and supportive relationships to overcome these obstacles.

A recent study conducted by Debra Nelson-Gardell and Teresa Young (2018) "provides the perspectives of



frontline team members about the impact of collaboration on multidisciplinary team functioning in child abuse investigations. The findings emphasize the importance of collaborative relationships to enhance communication and information sharing. The study participants clearly indicated that what they most needed from other team members in order to do their jobs was information.” Team members in this study (n=43) indicated that reciprocity had a strong bearing on collaborative relationships. Meaning, they were more willing to share information with other team members with whom they had grown to respect and trust and who were equally willing to share information with them in return.

With this in mind, in order to function well, it is critical that multidisciplinary teams establish a culture of trust and psychological safety among their members. The concept of team psychological safety was developed by organizational behavioral scientist, Amy Edmondson, PhD, of Harvard Business School. It is defined as “the shared belief that the team is safe for interpersonal risk taking... a sense of confidence that the team will not embarrass, reject, or punish someone for speaking up. This confidence stems from mutual respect and trust among team members.”(Edmondson, 1999).

As part of her research, to measure a team’s level of psychological safety, Dr. Edmondson asked team members how strongly they agreed or disagreed with these statements, all of which could be applied to our work with MDTs:

1. *If you make a mistake on this team, it is often held against you.*
2. *Members of this team are able to bring up problems and tough issues.*
3. *People on this team sometimes reject others for being different.*
4. *It is safe to take a risk on this team.*
5. *It is difficult to ask other members of this team for help.*
6. *No one on this team would deliberately act in a way that undermines my efforts.*
7. *Working with members of this team, my unique skills and talents are valued and utilized.*

To further Dr. Edmondson’s construct of team psychological safety, researchers at Google, through Project Aristotle (a tribute to Aristotle’s quote, “the whole is greater than the sum of its parts”), identified **five key dynamics for effective teams, which include:**

1. **Psychological Safety:** As defined above;

2. **Dependability:** Members reliably complete quality work on time;
3. **Structure and Clarity:** Members’ understanding of their job expectations and the roles and responsibilities of other team members;
4. **Meaning:** A sense of purpose in the work itself; and
5. **Impact:** The subjective judgment that the work of the team is making a difference.

Google researchers also encourage the implementation of **three steps to ensure teams effectiveness:**

1. **Establish a Common Vocabulary** - Define the team behaviors and norms.
2. **Create a Forum to Discuss Team Dynamics** - Allow for teams to talk about subtle issues in safe, constructive ways. An HR Business Partner or trained facilitator may help.
3. **Commit Leaders to Reinforcing and Improving** - Get leadership onboard to model and seek continuous improvement.

All of these factors, from Dr. Edmondson’s research to Google’s Project Aristotle, apply directly to the functioning of multidisciplinary teams. It is well known that no one discipline of an MDT has the resources, capacity, or knowledge to provide all investigative and intervention services on its own. The most effective teams have a sense of interdependence. Meaning, members realize they cannot perform their duties without the support and coordinated efforts of the other disciplines on their team. In order to achieve this, team members must have a high level of trust and psychological safety. They should be able to depend on one another to determine whether abuse occurred, as well as identify necessary resources to be made available to children and families to help them heal. Structure and clarity can be provided through MDT investigative protocols, orientation to protocols for new members, and cross training, so that team members have a clear understanding of the roles and responsibilities and limitations of each of the respective disciplines. In the field of child abuse investigations, most professionals do find meaning, or a sense of purpose in their work, and high-functioning teams see the impact of their work through high levels of communication among the disciplines and by sharing case outcomes – good and bad. When teams realize a victim or family has found justice, or has completed therapy and begun to heal, they can share in their success. In times when cases do not go well, high-functioning teams take the opportunity to review the process in an effort to learn from the case and move on, rather than place blame and focus on mistakes.

## Considerations for managing conflict on MDTs:

Leaders of the multidisciplinary agencies play a significant role in the performance of the MDT. They set the tone of the culture, establish norms, and identify expected behaviors of the team members. It is their responsibility to ensure communication occurs across supervisory and administrative levels of the MDT and with their staff working on the frontlines. Case review provides an opportunity for investigators and practitioners to meet on a regular basis to review child abuse cases as a team, and it provides a forum to discuss team dynamics. Although case review meetings are part of the function of an MDT, oftentimes, supervisors and agency decision makers are not present at these meetings. Implementing bi-monthly or quarterly meetings of supervisory team members can be an effective way to create a shared leadership model and address higher level issues, such as a review of policy and procedures, team protocol revisions, and conflicts that may arise on the team. This also allows for an opportunity for collaborative relationships to be built among those who oversee members of the MDT.

Google researchers have created several guides to promote healthy teams that are available online at no cost at <https://rework.withgoogle.com/guides/>. The guide “How to foster Psychological Safety on your teams,” can serve as a terrific resource for supervisory level MDT members. The topics include: demonstrate engagement; show understanding; be inclusive in interpersonal settings; be inclusive in decision-making; and show confidence and conviction without appearing inflexible (<https://rework.withgoogle.com/guides/understanding-team-effectiveness/steps/foster-psychological-safety/>)

By ensuring psychological safety among the team and supervisors, a culture will be established that promotes the well-being and consideration of each member. That said, it is critical that within this culture, MDT members are made aware of signs and symptoms of secondary traumatic stress (STS), which is an occupational hazard of this work. By recognizing signs of STS in one another, hopefully team members will be able to offer support to one another in an effort to mitigate the impact of exposure to trauma. This can be done directly on an individual basis, and when appropriate, addressed as at team when experiencing complex, difficult cases.

Additionally, it is important to identify an individual to perform the duties of the team facilitator. This can be an existing member of the MDT, or ideally, someone hired specifically for this position. In order to be an effective MDT Facilitator, it is critical this individual be actively engaged

with the MDT members on nearly a daily basis. Some of the ideal competencies of a team facilitator would include: providing and receiving feedback; navigating conflict; asking powerful questions; fostering a trusting environment; encouraging participatory decision making; defining roles and responsibilities of team members; adhering to mission, vision, and values of the team; ensuring trauma-informed practices; exhibiting emotional intelligence; and diplomacy, all of which fall in line with Google’s key dynamics of effective teams.

With this infrastructure in place, when a conflict does arise, there is a mechanism to address it by promoting individual support and safely sharing concerns at a team meeting and facilitating discussion to find solutions of needed. If the problem can’t be resolved in the team setting, the supervisory level MDT can take on the task of working through the issue, which may involve reviewing policies and procedures, revising team protocol, or taking action within their own agency or the team. When a supportive culture at all levels of the MDT exists, team conflict can be seen as an opportunity to grow and learn, rather than an impediment to the functioning of the team.

Dr. Edmondson’s concept of team psychological safety and the Google Project Aristotle research are central themes in the trainings SRCAC provides to MDTs. Training Specialists for SRCAC provide on-site, customized trainings for MDTs and CACs within the sixteen states in the southeastern region of the US. Requests for training provided by SRCAC can be made by completing a training request form at <http://www.srcac.org/customized-trainings/>.

The Southern Regional Children’s Advocacy Center (SRCAC) is a project of the National Children’s Advocacy Center and is supported by Grant #2016 CI-FX-K002 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this article are those of the author and do not represent the official position or policies of the United States Department of Justice.

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# BENCHMARKS



## Two-way Audiovisual Transmission Held Not To Violate Confrontation Right

The State Supreme Court of Nevada found that “during defendant’s trial on charges of sexual assault and attempted sexual assault, his confrontation right under U.S. Const. amend. VI was not violated where the victim testified via two-way audiovisual transmission because, in accordance with the test set forth in *Maryland v. Craig*, the procedure was necessary to protect the victim’s well-being and use of the audiovisual transmission procedure, Nev. Sup. Ct. R. IX-A(B), adequately ensured the testimony’s reliability”.

The Court further stated, “we take this opportunity to adopt the test set forth in *Maryland v. Craig*, 497 U.S. 836, 850, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990), to determine whether a witness’s testimony at trial via twoway audiovisual transmission violates a defendant’s right to confrontation. Under *Craig*, two-way video testimony may [\*2] be admitted at trial in lieu of physical, in-court testimony only if (1) it “is necessary to further an important public policy,” and (2) “the reliability of the testimony is

otherwise assured.” 497 U.S. at 850. Applying this test here, we conclude that the district court did not abuse its discretion in allowing the victim, who was admitted to an out-of-state residential treatment center, to testify by two-way audiovisual transmission at trial. First, the use of the audiovisual procedure was necessary to protect the victim’s wellbeing, an important public policy goal, while also ensuring that the defendant was provided a speedy trial. And second, the audiovisual transmission procedure, as set forth in Supreme Court Rules Part IX-A(B), adequately ensured the reliability of the testimony, as it allowed Lipsitz to cross-examine the victim and the jury could hear and observe the victim”.

*Lipsitz v. State Supreme Court of Nevada* 2019 Nev. LEXIS 30 \*; 135 Nev. Adv. Rep. 17; 2019 WL 2397625, June 6, 2019, Filed

## Other Bad Acts Evidence Admitted to Show Defendant’s Plan or Scheme

The Court of Appeals of Mississippi held that the trial court did not abuse its discretion by admitting evidence of defendant’s other bad acts under Miss. R. Evid. 404(b)



because “the purposes of the witnesses’ testimony was to show defendant’s plan or scheme, as he saw young girls, tried to talk to them, and went after them through a window”. The Court of Appeals agreed with the circuit court that acknowledged that the “evidence would not be admissible to prove Sullivan’s character under Rule 404(b) but that it was admissible to show a common plan or scheme and identity”. The Court of Appeals further found that “here, the prosecutor clearly presented the alternative purpose of K.L.’s and R.M.’s testimonies, which was to show Sullivan’s plan or scheme.” Further, the Court of Appeals found “that there was no error in the admission of the testimonies of K.L and R.M as they were entered for an alternative purpose under 404(b), and their probative value outweighed the prejudicial effect to Sullivan”.

[\*Sullivan Appellant v. State of Mississippi, Appellee\*, Court of Appeals of Mississippi, 2019 Miss. App. LEXIS 267 \\*; 2019 WL 2428773, June 11, 2019, Decided](#)

## **Granting Motion to Close Courtroom Ruled Structural Constitutional Error**

The Court of Criminal Appeals of Tennessee held that the trial court “committed structural constitutional error by granting the State’s motion that the courtroom be closed to the media and all persons not required by law or requested by the child to be present in the courtroom during the child victim’s testimony”. The Court reasoned that “by focusing on defendant’s constitutional right to confrontation and implicitly basing its ruling in substantial part on defendant’s family members not having a right of confrontation, the trial court failed to address the issue of excluding all members of the public from the courtroom during the victim’s trial testimony in light of defendant’s Sixth Amendment constitutional right to a public trial. The trial court had to consider reasonable alternatives to the closure of the trial, which the trial court failed to do. The error plainly and adversely affected Defendant’s substantial right requiring automatic reversal”.

[\*State of Tennessee v. Cordarious Franklin\*, Court of Criminal Appeals of Tennessee, 2019 Tenn. Crim. App. LEXIS 377 \\*; 2019 WL 2714380, September 5, 2018, Session; June 28, 2019, Filed](#)

## **Statements Made for Primary Purpose of Medical Diagnosis Properly Admitted**

The Court of Appeals of Ohio held that the “trial court did not act unreasonably allowing jury to hear victim’s statements to a family services coordinator at child advocacy center about specific sex acts defendant performed on her because those statements referenced multiple instances of

sexual contact, and the trial court acted within its discretion in concluding that the primary purpose of the statements was medical diagnosis”. The Court further reasoned that “although A.D. already had undergone a sexual-assault-kit examination by nurse examiner Kelly Azzam shortly after the last incident of abuse, the information Ferguson obtained during the interview at Michael’s House was forwarded to Dr. Liker, who received the referral and used the information when conducting a more complete medical examination”.

[\*State Of Ohio, Plaintiff-Appellee v. Anthony R. Moore, Defendant-Appellant\*, 2019-Ohio-1671; 2019 Ohio App. LEXIS 1753 2019 WL 1970230 May 3, 2019, Rendered](#)

## **Court Holds Expert’s Testimony Improperly Vouched for Victim’s Credibility**

The State Supreme Court of Wyoming ruled that “the admission of expert testimony, under Wyo. R. Evid. 702, entitled defendant to a new trial on a charge of incest because the expert’s testimony that the basis of the victim’s PTSD was her reported sexual abuse improperly vouched for the victim’s credibility when the only “reported sexual abuse” was defendant’s alleged conduct”, and “this opinion was necessarily linked with the victim’s version of the events such that a jury would reasonably conclude the expert believed the victim”. The Court found that “admitting the expert’s testimony was prejudicial because the State’s case largely depended on the victim’s credibility, with which there were significant concerns, and the prosecutor emphasized the testimony”.

[\*Spence v. State Supreme Court of Wyoming\* 2019 WY 51 \\*; 441 P.3d 271 \\*\\*; 2019 Wyo. LEXIS 51 \\*\\*\\*; 2019 WL 2137151, May 16, 2019, Decided](#)

## **Forensic Interview Recording Held Admissible**

The Court of Criminal Appeals of Tennessee held that “the trial court did not err by admitting the recording of the child victim’s forensic interview under Tenn. Code Ann. § 24-7-123 because the victim authenticated the recording and was subject to cross examination by defendant, she testified about the recording at trial, and defendant was provided an opportunity to cross-examine her about the statements in the recording and any inconsistencies”. The Court further concluded that “the evidence presented at the pretrial hearing showed that the requirements of Tennessee Code Annotated section 24-7-123 were satisfied”.

[\*State v. Barnett\*, 2019 Tenn. Crim. App. LEXIS 333, 2019 WL 2339563 March 5, 2019, Assigned on Briefs; June 3, 2019, Filed](#)

## Joinder Allowed in Similar Cases of Sexual Assault of Minors

The State Supreme Court of Wyoming ruled that “it was not an abuse of discretion to join sexual abuse charges as to two victims under Wyo. R. Crim. P. 8 and 13 because the crimes were alike and involved events over a few days, and two trials would have required the same testimony”. The Court found that “on March 22, 2017, the State filed a motion to consolidate the cases for trial and sentencing. Following a hearing, the district court granted the State’s motion over Mr. Sparks’ objection. In ruling that joinder was appropriate, the court found that the offenses were of similar character in that they involved sexual abuse of minors. The court further found that the acts were part of a connected transaction, though Mr. Sparks’ behavior with DJJ progressed further”.

***Sparks v. State Supreme Court of Wyoming*** 2019 WY 50 \*; 440 P.3d 1095 \*\*; 2019 Wyo. LEXIS 50 \*\*\*; 2019 WL 2119813, May 15, 2019, Decided

## Prior Acts Evidence Admitted Due to Clear Pattern

The Court of Appeal of Louisiana held that “the court properly allowed prior acts evidence under La. Code Evid. art. 404(B) because all of defendant’s victims were in their early-to-mid teens, and defendant was in a position of authority over them as a caregiver, “patriarch,” teacher, or scout leader; three victims found themselves alone with defendant in a classroom, tent, or bed, where he began to fondle their genitals with his bare hand, and two victims were family members and in defendant’s care when he repeatedly raped them”. The Court further found that “there is a clear pattern in the ages, gender, and status of all of defendant’s victims notwithstanding that the abuse occurring over decades”. The Court concluded “accordingly, we find no error in the trial court’s admission of all eight witnesses’ testimony into evidence”.

***State v. Mischler Court of Appeal of Louisiana***, First Circuit 2019 La. App. LEXIS 1003 \*; 2018 1352 (La.App. 1 Cir. 05/31/19); May 31, 2019, Judgment Rendered

## Motion for victim’s preschool records denied

The Massachusetts Appeals Court held that “a District Court judge did not abuse his discretion in denying a motion, brought by a criminal defendant charged with, inter alia, rape and indecent assault and battery on children under the age of fourteen, seeking records from one victim’s

preschool, where there was no basis for concluding that anything in the possession of the preschool would be evidentiary and relevant to the issue of the origin and cause of a vaginal scar on that victim, and where the defendant did not demonstrate that he could not properly prepare for trial without production and inspection of the records”.

The Court further reasoned that “given that there was no sexual abuse disclosure or any reason to think that the original Head Start records would have provided any more information than was provided in the § 51A report, the defendant failed to demonstrate either that there were evidentiary and relevant documents in the Head Start file, or that he could not properly prepare for trial without production and inspection of those”.

***Commonwealth v. Michalski***, Appeals Court of Massachusetts 95 Mass. App. Ct. 520 \*; 2019 Mass. App. LEXIS 77 \*\*; 2019 WL 2589005, November 15, 2018, Argued; June 25, 2019, Decided





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