

# Balance the Scales for Kids



NATIONAL DISTRICT ATTORNEYS ASSOCIATION  
NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE

# Investigation and Prosecution of Child Physical Abuse and Homicide

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# Agenda

- Corroboration
  - Areas to explore
  - Specific types of cases
  - Suspect Statements
- Overcoming Untrue Defenses

# What We Want Sitting in the Defendant's Chair



**What we often get?**



# Why do we need corroboration?

- Often, victim is the only witness to the crime
- Sexual and physical abuse occurs in private
- Delayed disclosure
- No physical evidence



# How Assaults Are Reported

Discretionary (people who are not legally required to report) :

parents - best case scenario

friends

other children

Mandatory (people legally obligated to report):

teachers

school counselors

doctors

government agencies

health care

clergy

child care workers

any law enforcement

# What CPS may know that other members of the team don't

- Family History
- Family Dynamics
- Work History
- Prior Contacts
- Drug History
- Government Assistance
- Parenting Classes
- Court Ordered Therapy
- School History

# Corroboration

## Areas to Explore

- Sensory Detail: Sights, sounds and smells that make it real for the jury
- Surrounding Details: Seemingly insignificant facts that can make all the difference
- Behavioral Changes/Emotional indicators: Changes in the child's demeanor and mood

# How and Where to Find Corroboration

- Search warrants
- Crime Scene
- Witness interviews
- Suspect interview
- Medical records
- School records

# Search Warrants

- Staleness issue
- Specificity issue
- MDT approach – beneficial to early and finely-tunes search warrant

# Sensory Detail

- The physical detail of what the child went through must be revisited as much as the possible.
- Smell is the most powerful memory trigger and sensory tool
- Gathering sensory detail as a process differs with the child's age and cognitive ability

# Sensory Detail

## Example Questions

- “Where were you when (suspect) . . . ?”
- “What did you see when you were in that room?”
- “What did you hear when (suspect) . . . ?”

# Surrounding Facts

- Think creatively: a child's life is usually controlled, even in compromised situations and time lines are very important
  - Someone else knew what the child was doing that day, and probably noted it
  - Any confirmation that the child was with the perpetrator is strong evidence



# Surrounding Facts

## Example

- Johnny was physically abused by father on a camping trip
- Johnny's mother has recorded the date of the trip on her wall calendar
  - This small fact alone says:
    - Johnny is not crazy – this trip happened
    - He is oriented to place and time, and can recall events correctly

# Behavioral Changes/Emotional Indicators

- Behaviors often seen as a result of abuse:
  - Aggression, acting out
  - Regression, pseudomaturity
  - Change in dress or grooming habits
  - Eating problems
  - PTSD symptoms, self-injurious behavior
  - School performance

# Behavioral Changes Example

- Grandmother indicates that weeks after the child says that her father beat her, the child acted “jittery”
- Always wanted to be “under her wing”
- Didn’t sleep as well, wouldn’t go to certain parts of the house on her own

# Behavioral Changes

## Use of the Evidence

- Grandmother can be called as a fact witness
  - Knows the child
  - Knows the child's typical mood and behaviors/reactions
  - How were they before offense date or time period?
  - Did she notice a change after? Describe

# INVESTIGATION

Also consider sheets, towels, Kleenex, TP, victim's underwear, sex toys, and anywhere else defendant may have touched victim. Make sure that the evidence is properly preserved.



# Interview the Suspect

- Don't need confession, but do want to lock into a story
  - Can get ridiculous statements that help as much as a confession
    - Thought that 8 year old 50 pound daughter was my 35 year old 250 pound wife
    - Tripped on a blanket and my finger went inside her vagina
    - She wanted me
    - Was examining her to see if she was still a virgin

# Interview of Suspect

- Confront each denial
- Emphasize child's love
- Emphasize suspect's love
- Focus on suspects pervious abuse
- Corroborate what the child said
- One party consent calls

QuickTime™ and a  
decompressor  
are needed to see this picture.



# Corroboration

## Failure to Thrive Cases

- Review victims entire medical history.
- Conduct a thorough search of the home
  - Medicine
  - Evidence of financial situation (alcohol, cigarettes, pet food, cable TV)
- Condition of the other children in the home (i.e. is child a “target” child?)
- Does the child improve when removed?

# Corroboration

- Description of the scene of the crime
  - Where was the child found?
  - Where was the child moved from?
  - Where the injury allegedly occurred (suspect's story)
  - Where the injury could have occurred

# Corroboration

## Physical Abuse Cases

- Photograph/videotape/diagram all possible scenes and mechanisms
- Measure all objects/distances mentioned by suspects, as well as any that might be possible defenses later

# Corroboration

## Physical Abuse Cases

- Photograph all parts of body – absence of injury/symptoms as important as presence
- Photograph hands and legs (parachute reflex develops at nine months, child puts out hands to protect)
- Bilateral photographs to show contrast (compare non-injured opposite side of the body to contrast, e.g., swelling)



# Corroboration

## Physical Abuse Cases

- Family/Caretaker Interviews.
  - What they observed
  - When and what they were told by other family members
  - When and what they were told about the child's injuries

# Corroboration

## Physical Abuse Cases

- Other witness interviews.
  - All hospital staff that had contact with family/caretakers
  - Civilians who may have had contact with/overheard family (e.g. people in emergency room, waiting room)
  - Neighbors, teachers, babysitters, daycare workers, etc

# Corroboration

## Physical Abuse Cases

- Interview medical personnel
  - Amount of force needed to inflict injury
  - Effect of delay in seeking treatment
  - Consistency of injuries with story offered



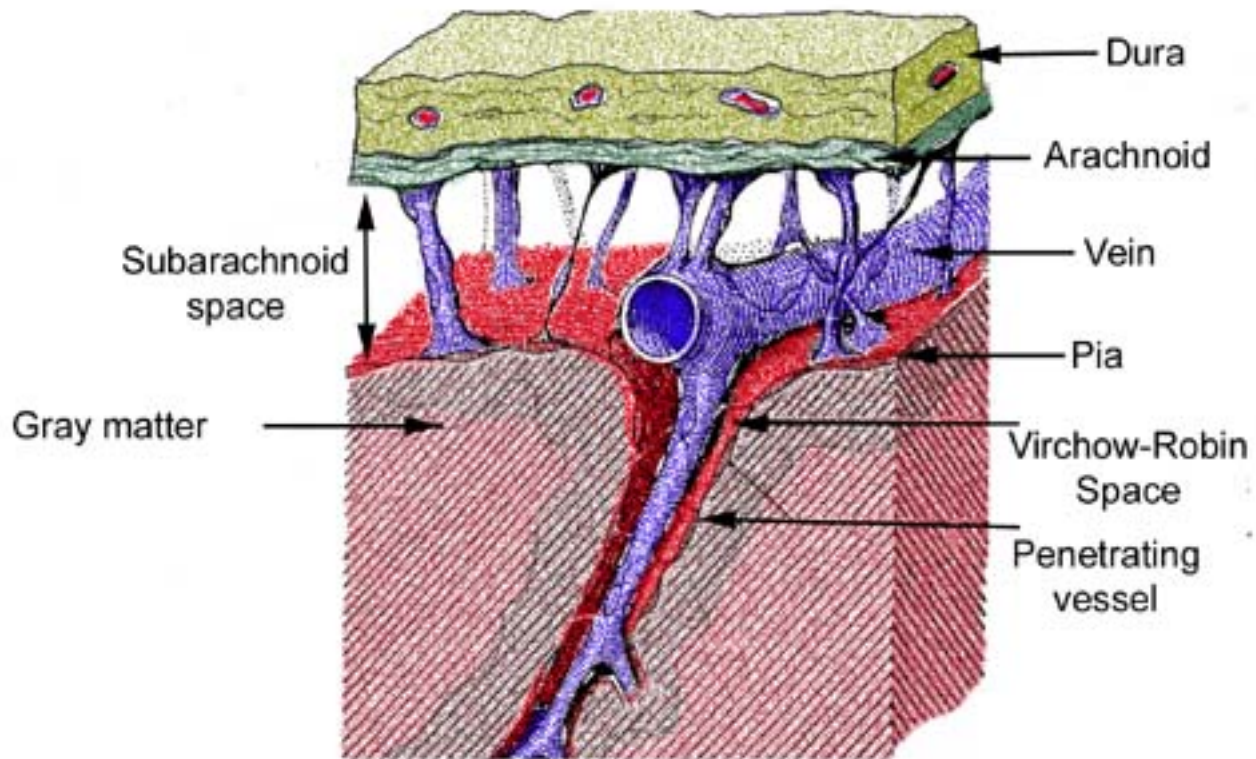
# Abusive Head Trauma

- Abusive Head Trauma not Shaken Baby Syndrome
- Make sure that medical exams or autopsy covers all potential explanations for why child injured or dead

# Head Injuries

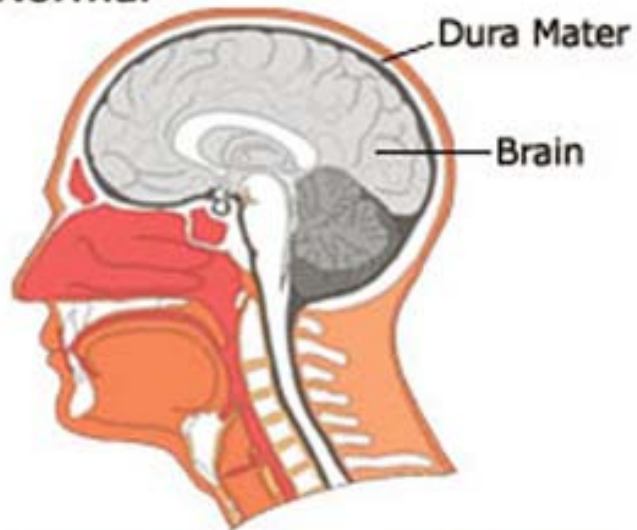
- Subdural hematoma
- Epidural hemorrhage
- Subarachnoid  
hematoma

# The Brain



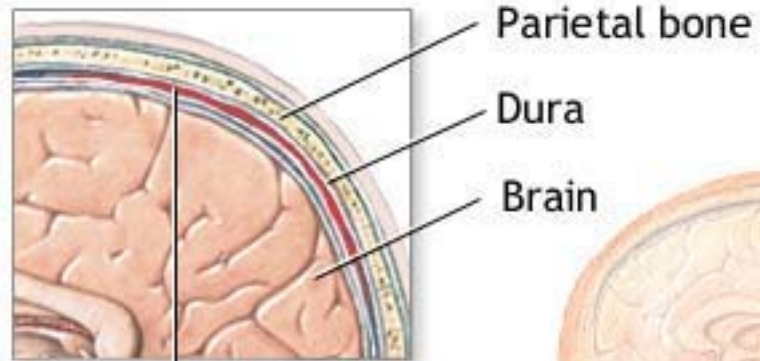
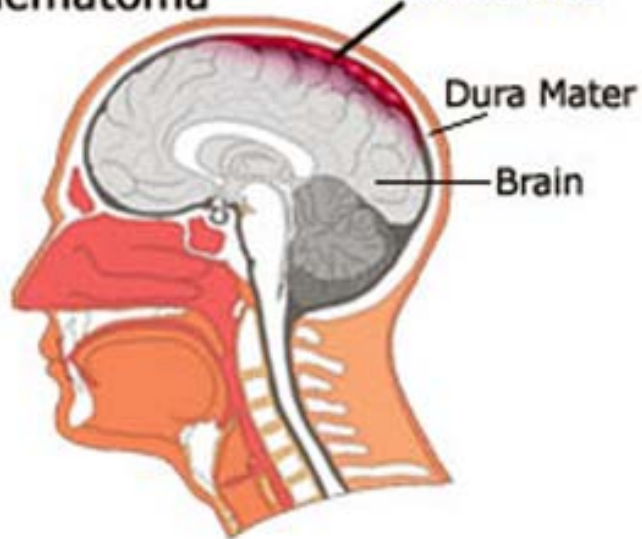
# Subdural Hematoma

Normal



Subdural Hematoma

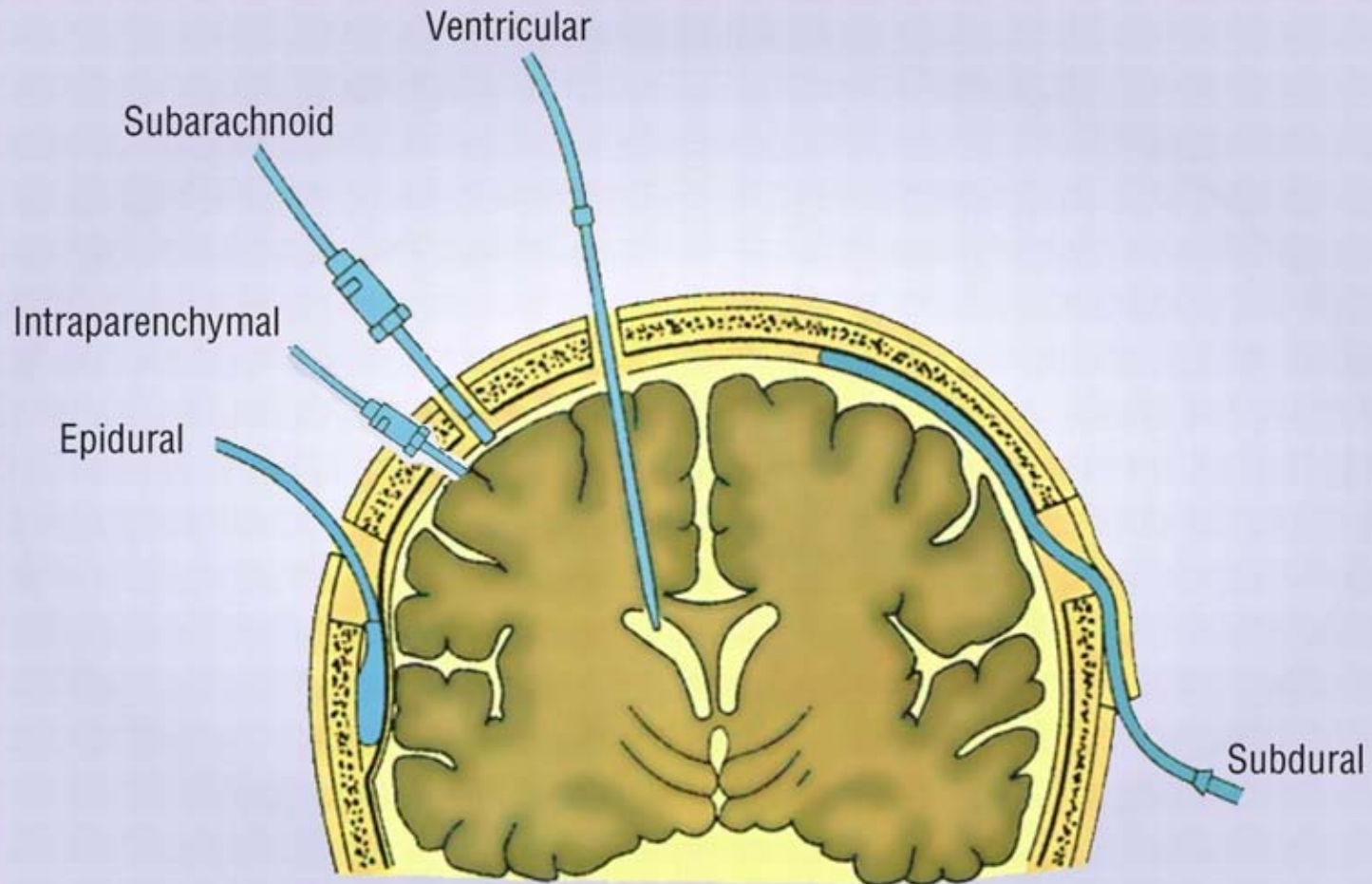
Subdural Hematoma



Blood in subdural space



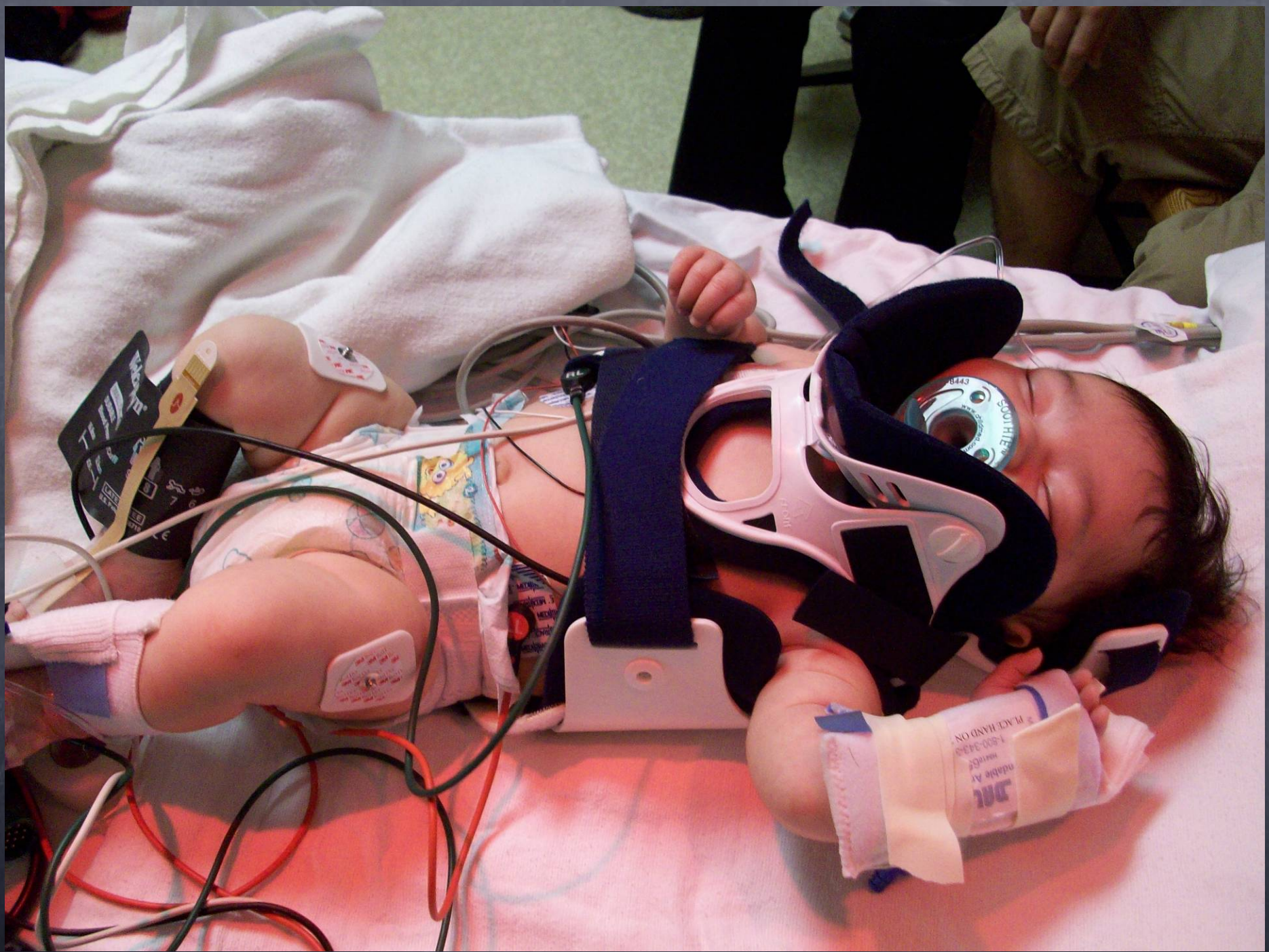
# Subarachnoid



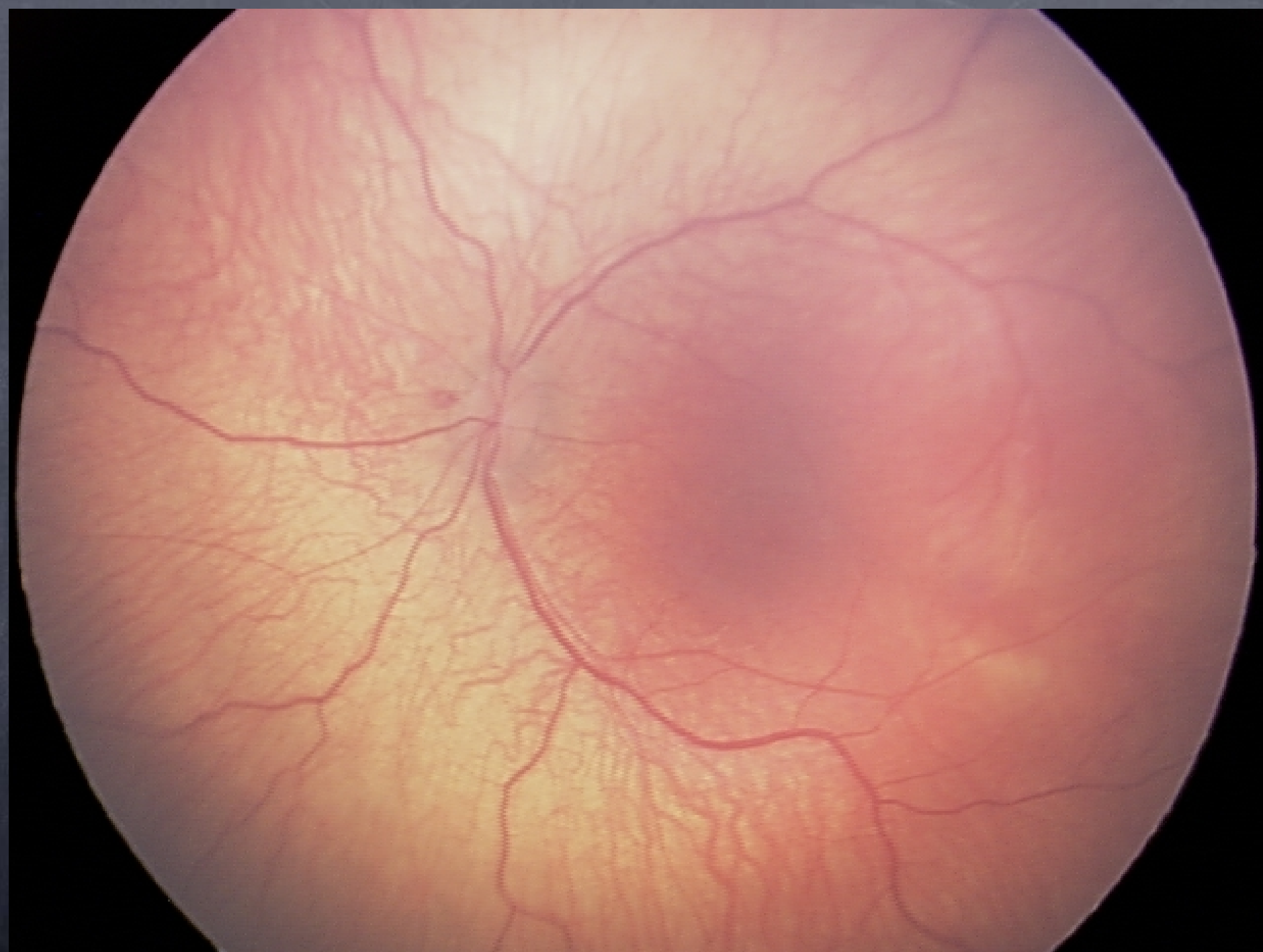
Adapted from Kerr and Crago,<sup>33</sup> with permission from Elsevier.

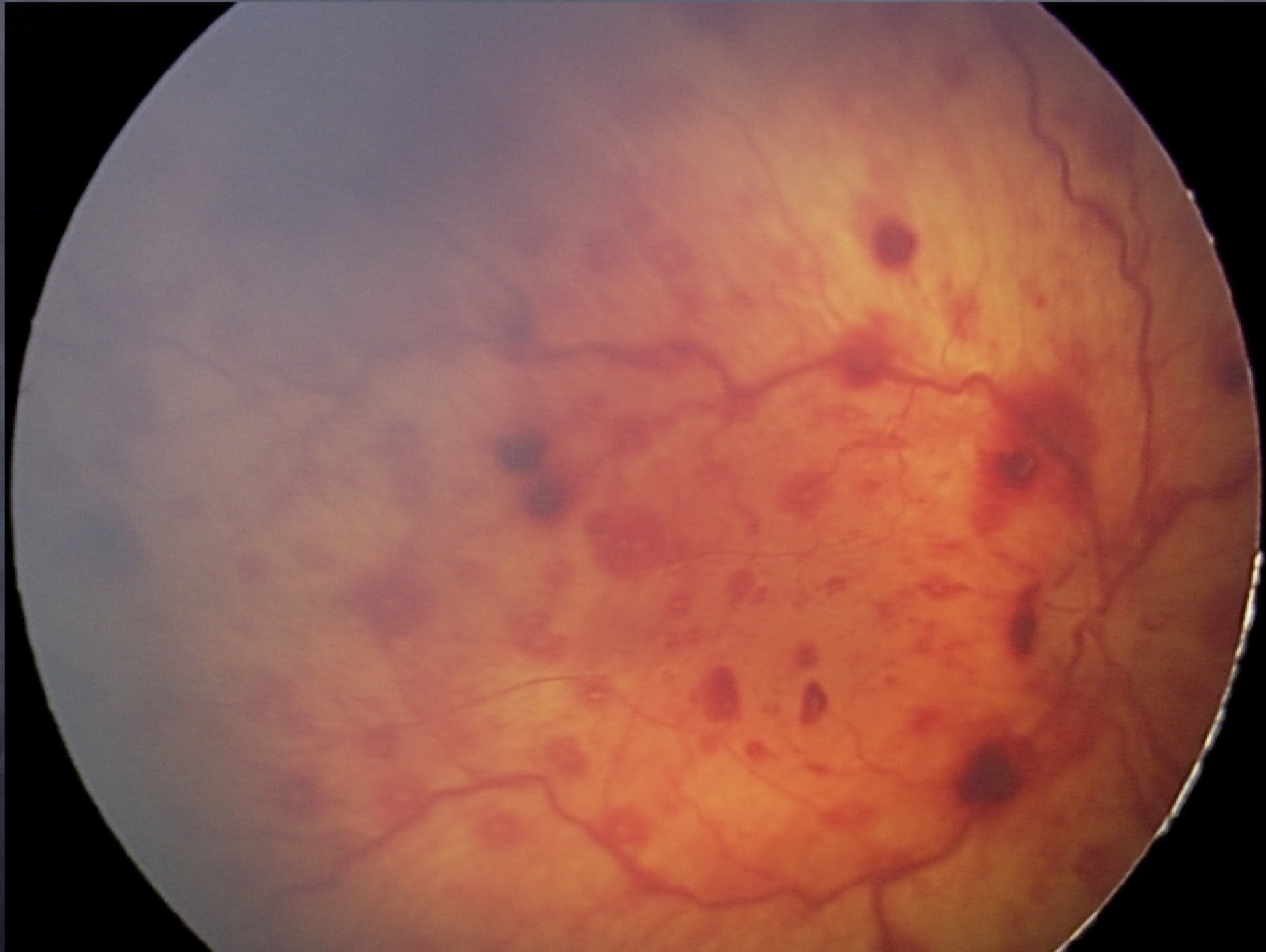
# Retinal Hemorrhages

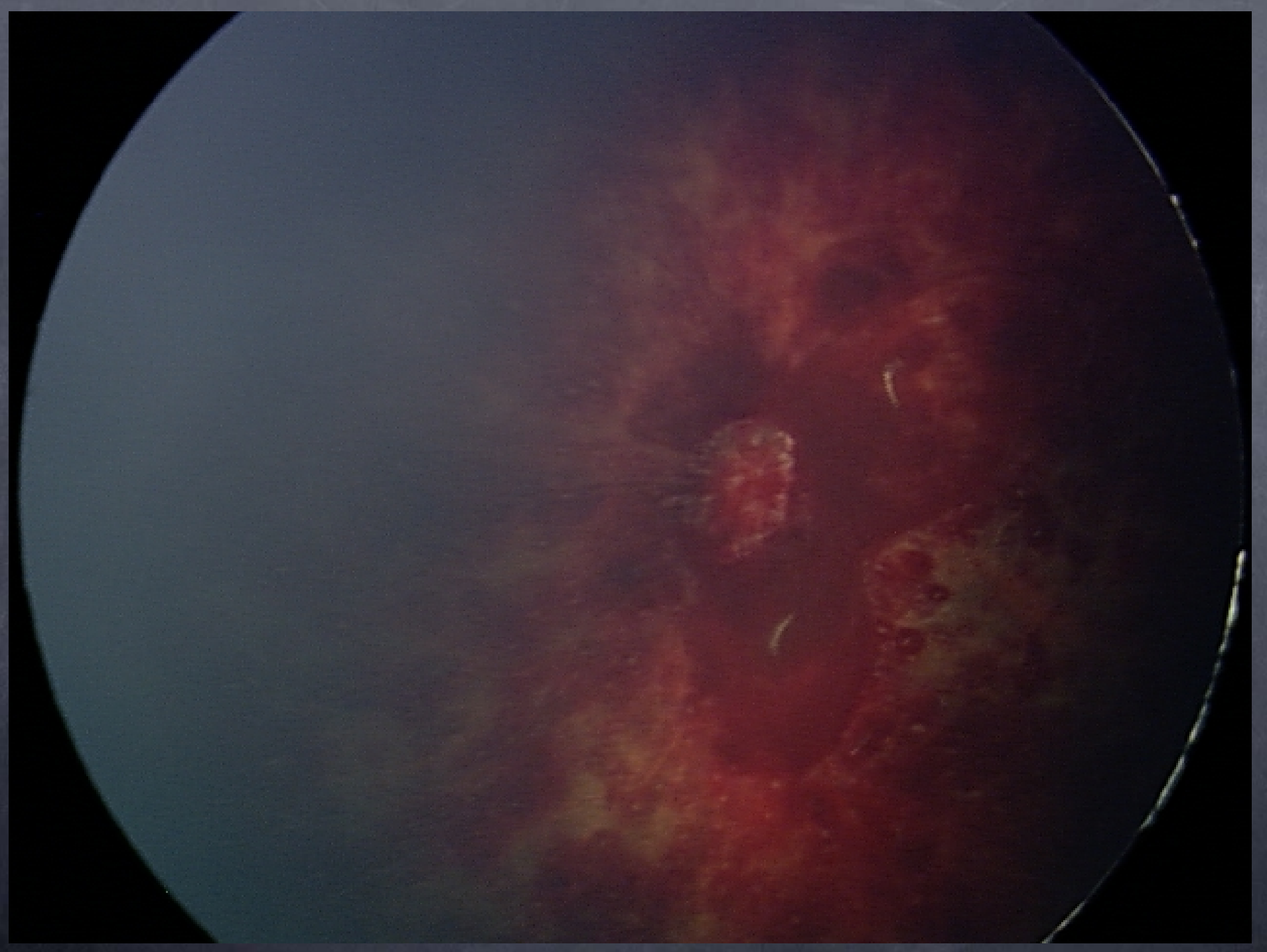


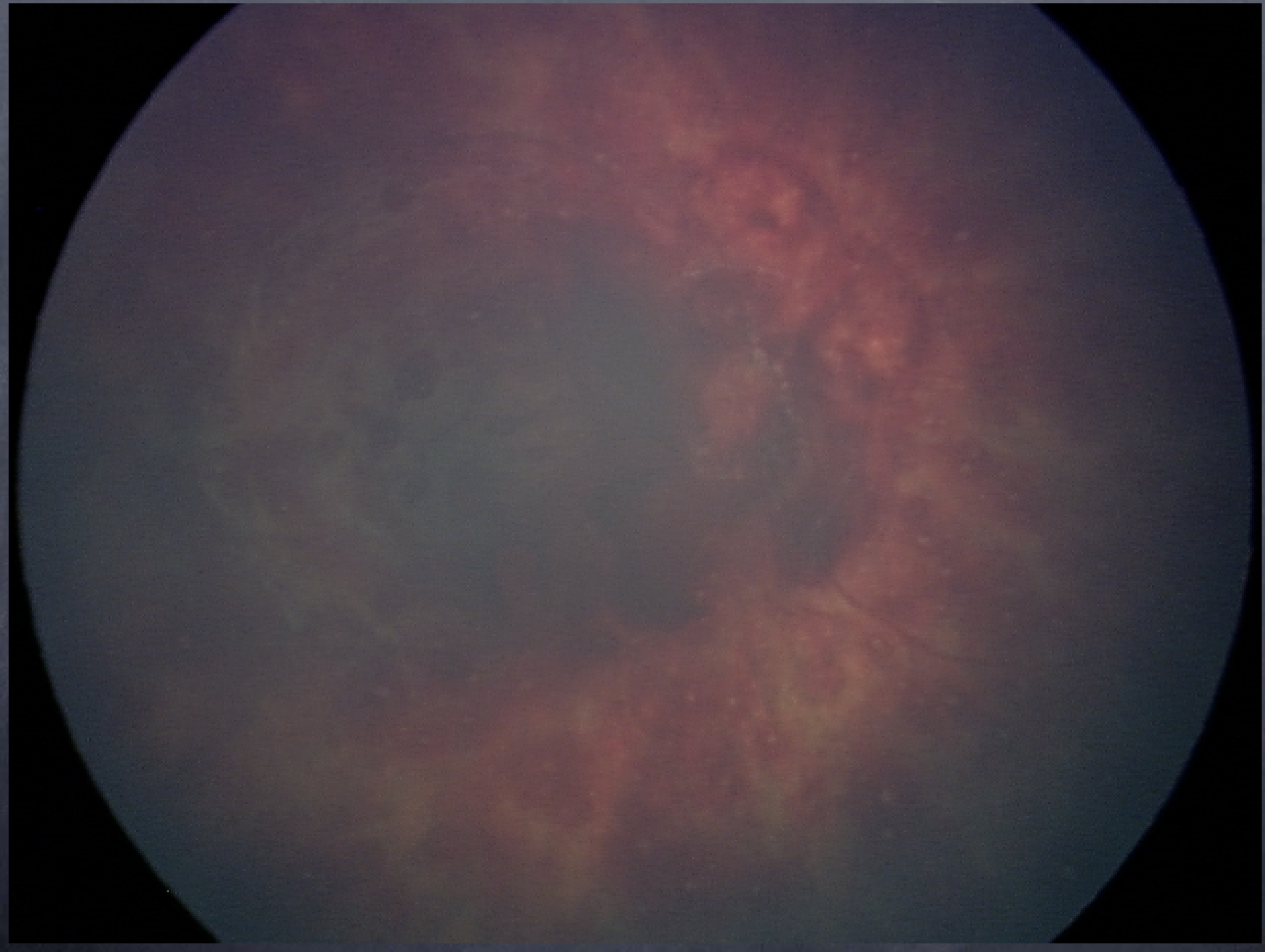












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# Corroboration Burn Cases

- Interview medical personnel
  - Nature of the burns (splash, immersion, contact) consistent or inconsistent with the history provided?
  - Depth of burns
  - If water burn, length of time for burn to occur
  - Child's capability to self inflict/level of pain
  - Indication of clothing worn when burn occurred

# Characteristics/Location of Thermal Burns Suggesting Abuse Immersion Injuries



Level of water results in uniform demarcation line

Flexing results in apposition of skin surfaces and burn protection

Surface contact protects skin from hot water

Immersion burns often result in typical patterns that give clues to mechanism of injury





# Corroboration Burn Cases

- Ease of turning on the faucet
- Measurement of tubs/sinks – compared to child's reach
- Has suspect changed the water heater setting?
- Thorough interview of the caretaker
  - Victim's reaction when burned
  - Suspect's reaction when victim burned

# Burns - Scene

- Ease of turning on faucet
- Measurements of tubs/sinks-- compare to child's reach
- Picture of water heater and temperature setting
- Picture of thermometer under water coming out of faucet –
- digital thermometer is better



# How Corroboration Supports Victim in Trial

- Give other witnesses who show VC is not making up
- Medical evidence
- Physical evidence
- Shows that VC lacks ability to pull off big lie
- Other witnesses
- Defendant's statement supports VC's version of events
- Skilled interviews and investigations
- Expert witnesses

# Defenses

## Physical Abuse Cases

- Accident/Discipline
- Self Inflicted
- Medical Condition
- SODDI
- Cultural Defense

# Preparation

- Analyze the case for probable defenses
  - Defendant's statements
  - Defense attorney's motions
  - Suspect/Victim/Family Dynamic
- Look for weaknesses in your case
  - Victims statement
  - Recantation

# Defenses

## Physical Abuse Cases

### Accident

- Injuries inconsistent with explanation
  - Mechanism
  - Force
  - Pattern
- Foreseeable nature of the injury
  - Disregarding the risk

# Accident

- Surrounding circumstances
  - Nature, number, location and constellation of injuries
  - What was said when injury inflicted
  - Triggering event – motive
  - Prior acts
  - Failure to obtain treatment
  - Failure to mention to injuries
  - “Baby don’t cruise, baby don’t bruise”

# Accident

## Abusive Head Trauma

- Have medical experts narrow time frame as much as possible
  - If expert cannot/will not, try to establish witnesses to last known well period of child and who was with baby at onset of symptoms.
  - Establish time frame/caretakers when other injuries occurred
  - Evaluate motive (e.g., target child), past abuse



# Abusive Head Trauma

- Learn all you can about child's medical history
  - Diagnoses
  - Treatment
  - Genetic issues/family history

# Abusive Head Trauma

## Medical Records

- Admitting notes
- History and progress notes
- Nursing notes
- Discharge summary
- Social worker's notes
- Lab reports

# Abusive Head Trauma

## Medical Records

- Doctors' orders
- Consultation notes
- X-Ray/CT Scan/MRI records

# Abusive Head Trauma

- Did caretaker act like child had medical problems before he/she was charged?
  - Take to doctor or administer treatment
- Innocent explanation (CPR caused retinal hemorrhages)
  - Why was there need for CPR?
  - Are other symptoms injuries consistent with CPR and the need to administer it?

# Abusive Head Trauma

- Shook to revive due to seizure or unconscious state
  - Did child have seizure history?
  - What caused unconscious state?
  - Appropriate force to revive?

# Other Medical Condition Defense

- Consult with medical personnel
  - Non-injury symptoms of claimed condition
  - Whether contrary medical evidence exists
  - Necessary medical history of condition

# Other Medical Condition Defense

## OI or TBBD

- Actual OI incidence is rare
- Consider family history, clinical indicators, elimination test
- Fractures stop when child removed?
- Consider type of fractures

# SODDI

- Establish:
  - What did suspect know
  - When did he know it
- Obtain timeline of symptoms/behaviors
- Who had access to child
- Attempt to get medical assistance
- Last visit to family doctor



# Cultural Defense

- “That’s how we do it where I come from”
- Is it true?
- Is it culture or is it abuse? Both?
- Are there areas where the defendant is not following cultural dictates?
- Hid conduct from others in culture
- Focus on conduct

# Final Thoughts

- No child must ever stand alone where there is a creative and thorough investigation and prosecution
- Investigators must fully document statements, demeanor and crime scene



# Final Thoughts

- Suggestive facts are there – look for them
- Recognize the child's courage with hard work, dedication, and determination



For when you need me

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