



# SEXUAL ABUSE LITIGATION & COVERAGE CONFERENCE

NEW YORK CITY BAR ASSOCIATION | OCTOBER 17, 2024

## DAMAGES, VALUATION, SETTLEMENTS, AND NUCLEAR VERDICTS®



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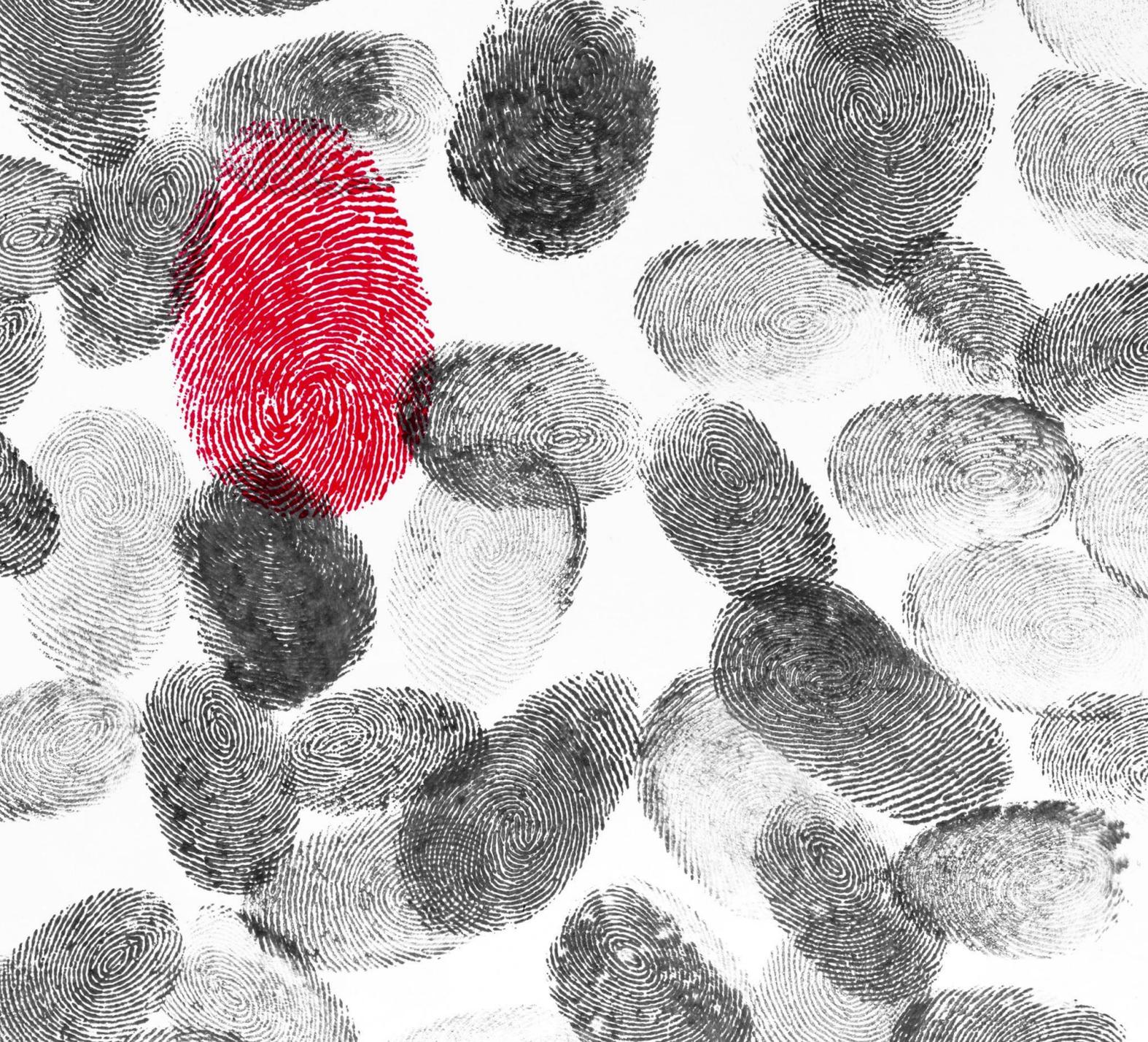
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# Criminal Investigation

# INVESTIGATING A CHILD ABUSE CASE

- ▶ Outcry Witnesses
- ▶ Medical Exam/Medical History
- ▶ Child Protective Services History
- ▶ Corroborating Evidence – interview of relatives, friends, teachers; school records, social media, diaries
- ▶ Search Warrants
- ▶ Controlled Phone Call

# What in the investigation?

- ▶ School Records
- ▶ Primary Care Records
- ▶ Medical Evaluation Records
- ▶ Social Media Photos
- ▶ Diaries
- ▶ Speaking to other members of family
- ▶ Search Warrant Results

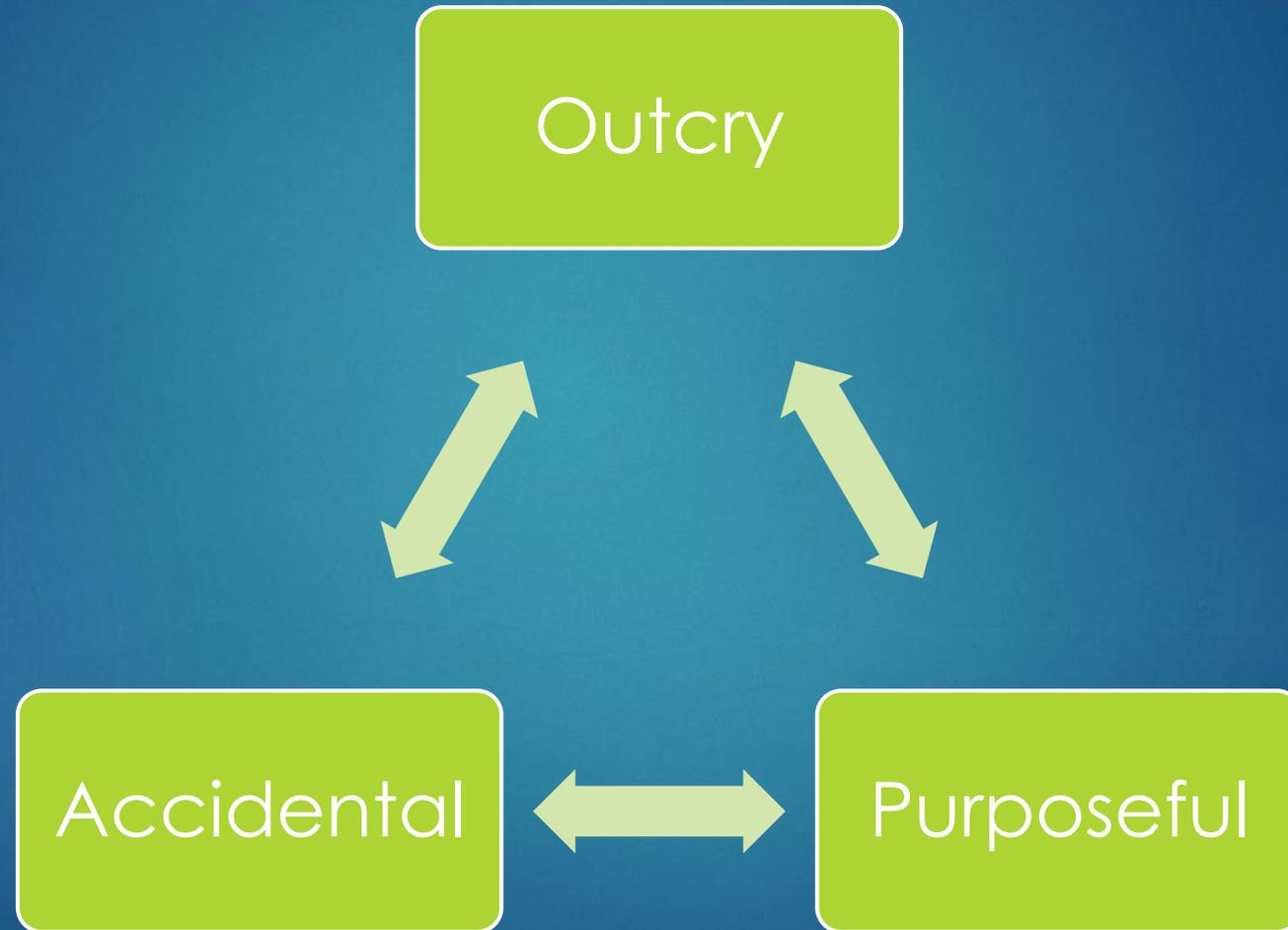
# Process of Investigation

- ▶ Allegation is made
  - ▶ Usually through child protective services
  - ▶ Call goes to States central registry
  - ▶ Dispatch to proper local agencies
- ▶ Child is Brought to a Child Advocacy Center
  - ▶ Child is interviewed and assigned team members are observing and can ask questions through trained interviewer .
- ▶ Law Enforcement continue investigation
- ▶ L.E. may consult with Prosecutor to determine charges, if any.



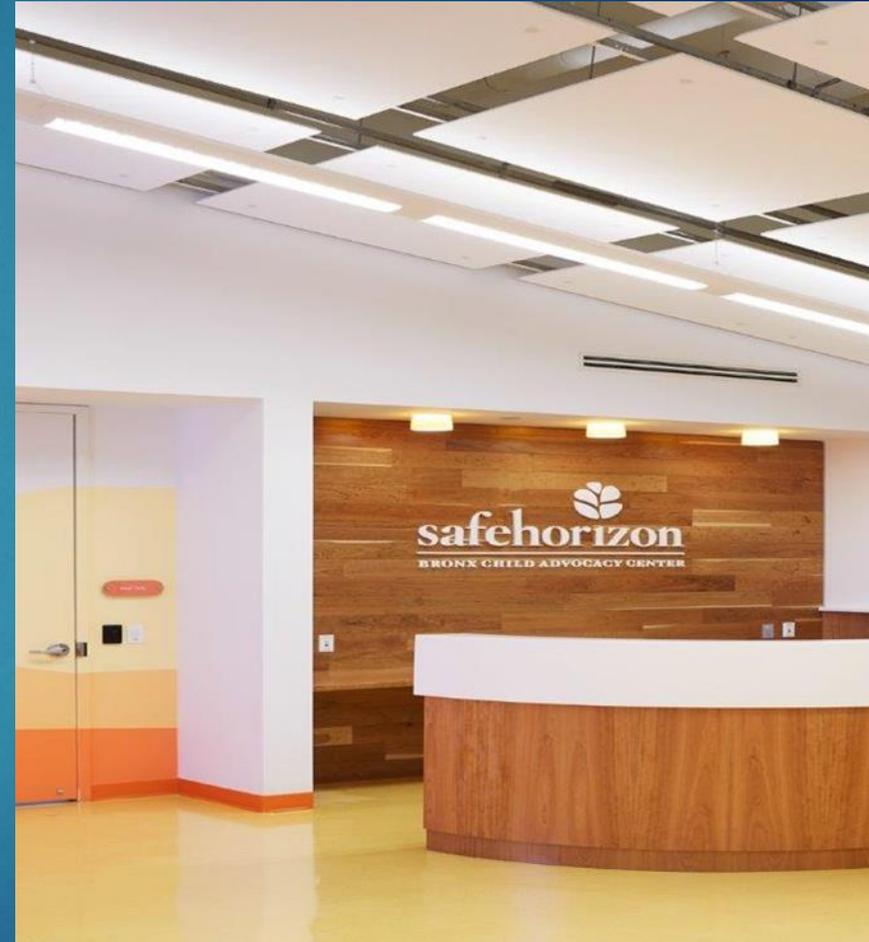
# Best Practices

# Types of Disclosure



# Child Advocacy Centers

- ▶ Child friendly setting
- ▶ All experts under one roof:
  - ▶ NYPD Child Abuse Squad
  - ▶ ACS
  - ▶ Specialized medical treatment
  - ▶ Safe Horizon forensic interviewers
  - ▶ Safe Horizon services & counseling
  - ▶ DA's Office
- ▶ Avoids repeated interviews of children, reducing trauma to the victims and their families
- ▶ Videotaped interviews





How it Works

# A Moment On Statements by the Suspect

## Sometimes, they confess

*I need help.*

*She seduced me.*



## Sometimes, they give insane denials

*E.g. IRT: She says you put her mouth on her vagina*

*• Suspect: No, no – she put her vagina on my mouth*



## Sometimes, they deny the abuse but acknowledge something valuable to the case

Opportunity to commit the crime

No axe to grind for the victim

A legitimate defense that we want to investigate



# Controlled Communications

Always look  
for the  
“evidence”

- ▶ Medical Evaluation
  - ▶ Photos
  - ▶ Search Warrants
    - ▶ Porn
    - ▶ Recorded Acts
    - ▶ Communications
    - ▶ Grooming
    - ▶ Opportunity
- Ex) Perez

# Outcomes for police investigations

Unounded

Undetermined

arrest



## Penal law offenses

- ▶ Sexual Offense Crimes
- ▶ Know the elements

Find your Senator and share your views on important issues.

BLY, DO ENACT AS FOLLOWS:

Section 1. Sections 130.40, 130.45 and 130.50 of the penal law are REPEALED.

§ 2. Subdivisions 1 and 2 of section 130.00 of the penal law, subdivision 2 as amended by chapter 264 of the laws of 2003, are amended to read as follows:

1. "[Sexual intercourse] VAGINAL SEXUAL CONTACT" [has its ordinary meaning and occurs upon any penetration, however slight] MEANS CONDUCT BETWEEN PERSONS CONSISTING OF CONTACT BETWEEN THE PENIS AND THE VAGINA OR VULVA.

2. (a) "Oral sexual [conduct] CONTACT" means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.

(b) "Anal sexual [conduct] CONTACT" means conduct between persons consisting of contact between the penis and anus.

§ 3. Section 130.25 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 130.25 Rape in the third degree.

A person is guilty of rape in the third degree when:

1. He or she engages in [sexual intercourse] VAGINAL SEXUAL CONTACT with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

Keep up  
with  
Changes  
in the Law

PERSISTENT SEXUAL ABUSE	Multiple sex offender	<a href="#">130.53</a>	<a href="#">PDF</a>
SEXUAL ABUSE 3	Forcible Compulsion	<a href="#">130.55</a>	<a href="#">PDF</a>
	Incapacity to Consent	<a href="#">130.55</a>	<a href="#">PDF</a>
	No Acquiescence	<a href="#">130.55</a>	<a href="#">PDF</a>
SEXUAL ABUSE 2	Incapacity to Consent Not by Age	<a href="#">130.60(1)</a>	<a href="#">PDF</a>
	Complainant < 14	<a href="#">130.60(2)</a>	<a href="#">PDF</a>
SEXUAL ABUSE 1	Forcible Compulsion	<a href="#">130.65(1)</a>	<a href="#">PDF</a>
	Physical Helplessness	<a href="#">130.65(2)</a>	<a href="#">PDF</a>
	Complainant < 11	<a href="#">130.65(3)</a>	<a href="#">PDF</a>
	Complainant < 13; Defendant 21 >	<a href="#">130.65(4)</a>	<a href="#">PDF</a>
AGGRAVATED SEXUAL ABUSE 4	Foreign Object; Incapacity to Consent Not by Age	<a href="#">130.65-a(1)(a)</a>	<a href="#">PDF</a>
	Finger; Incapacity to Consent Not by Age	<a href="#">130.65-a(1)(b)</a>	<a href="#">PDF</a>
AGGRAVATED SEXUAL ABUSE 3	Foreign Object or Finger; Forcible Compulsion	<a href="#">130.66(1)(a)</a>	<a href="#">PDF</a>
	Foreign Object; or Finger; Physically Helpless	<a href="#">130.66(1)(b)</a>	<a href="#">PDF</a>
	Foreign Object; or Finger; Complainant < 11	<a href="#">130.66(1)(c)</a>	<a href="#">PDF</a>
	Foreign Object; or Finger; Complainant < 13 defendant > 18	<a href="#">130.66(1)(d)</a>	<a href="#">PDF</a>
	Foreign Object; Incapacity to Consent	<a href="#">130.66(2)</a>	<a href="#">PDF</a>
AGGRAVATED	Finger; Forcible Compulsion	<a href="#">130.67(1)</a>	<a href="#">PDF</a>

	Anal contact: totality of circumstances	<a href="#">130.30(1)</a>
RAPE 2	Vaginal contact: defendant 18>; complainant <15	<a href="#">130.30(2)</a>
	Oral contact: defendant 18>; complainant <15	<a href="#">130.30(3)</a>
	Anal contact: defendant 18>; complainant <15	<a href="#">130.30(4)</a>
	Vaginal contact: mentally disabled or incapacitated	<a href="#">130.30(5)</a>
	Oral contact: mentally disabled or incapacitated	<a href="#">130.30(6)</a>
	Anal contact: mentally disabled or incapacitated	<a href="#">130.30(7)</a>
RAPE 1	Vaginal contact: forcible compulsion	<a href="#">130.35(1)(a)</a>
	Vaginal contact: physical helplessness	<a href="#">130.35(1)(b)</a>
	Vaginal contact: complainant <11	<a href="#">130.35(1)(c)</a>
	Vaginal contact: complainant <13; defendant 18>	<a href="#">130.35(1)(d)</a>
	Oral contact: forcible compulsion	<a href="#">130.35(2)(a)</a>
	Oral contact: physical helplessness	<a href="#">130.35(2)(b)</a>
	Oral contact: complainant <11	<a href="#">130.35(2)(c)</a>
	Oral contact: complainant <17;	<a href="#">130.35(2)(d)</a>

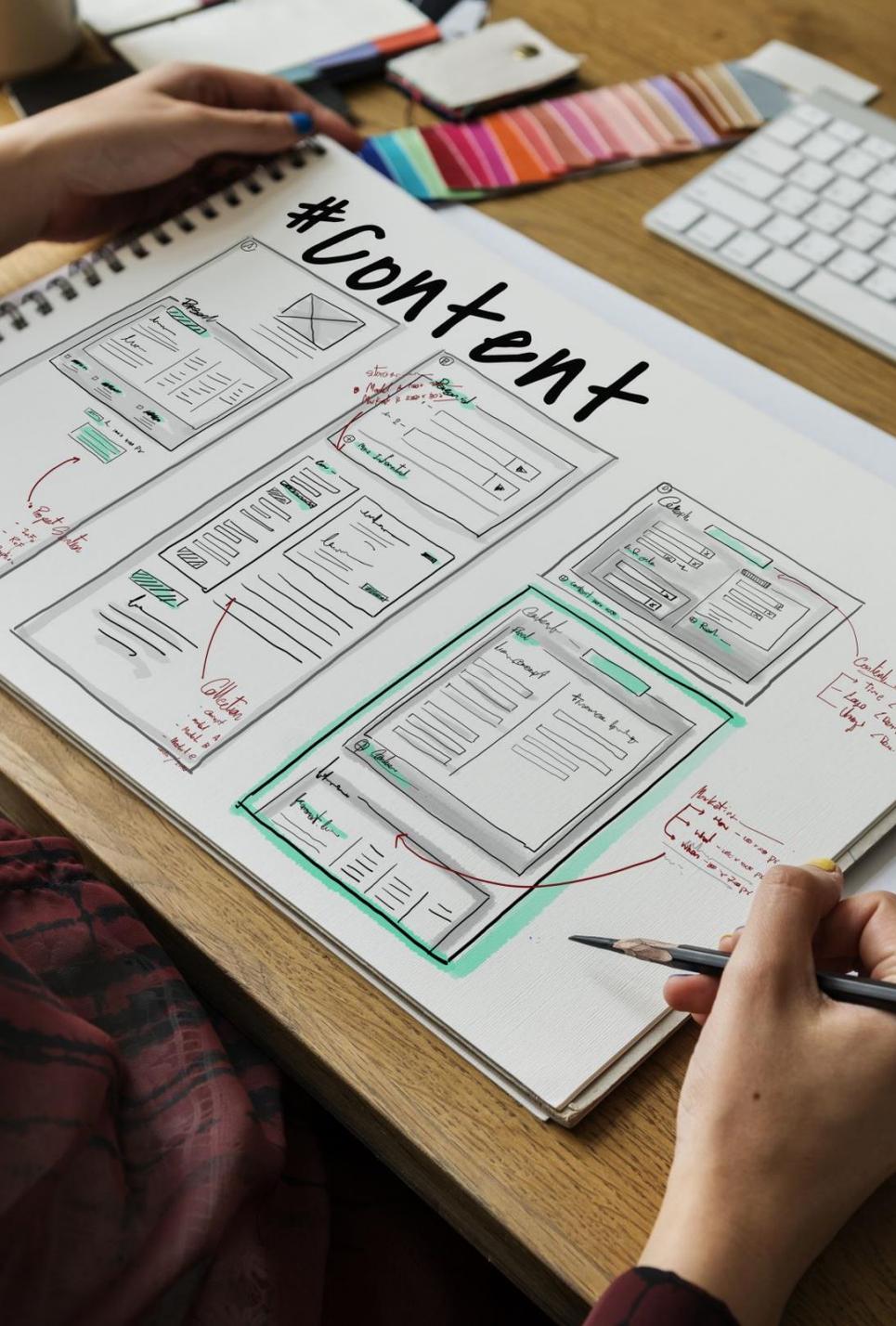
# Pre Suit-Investigations

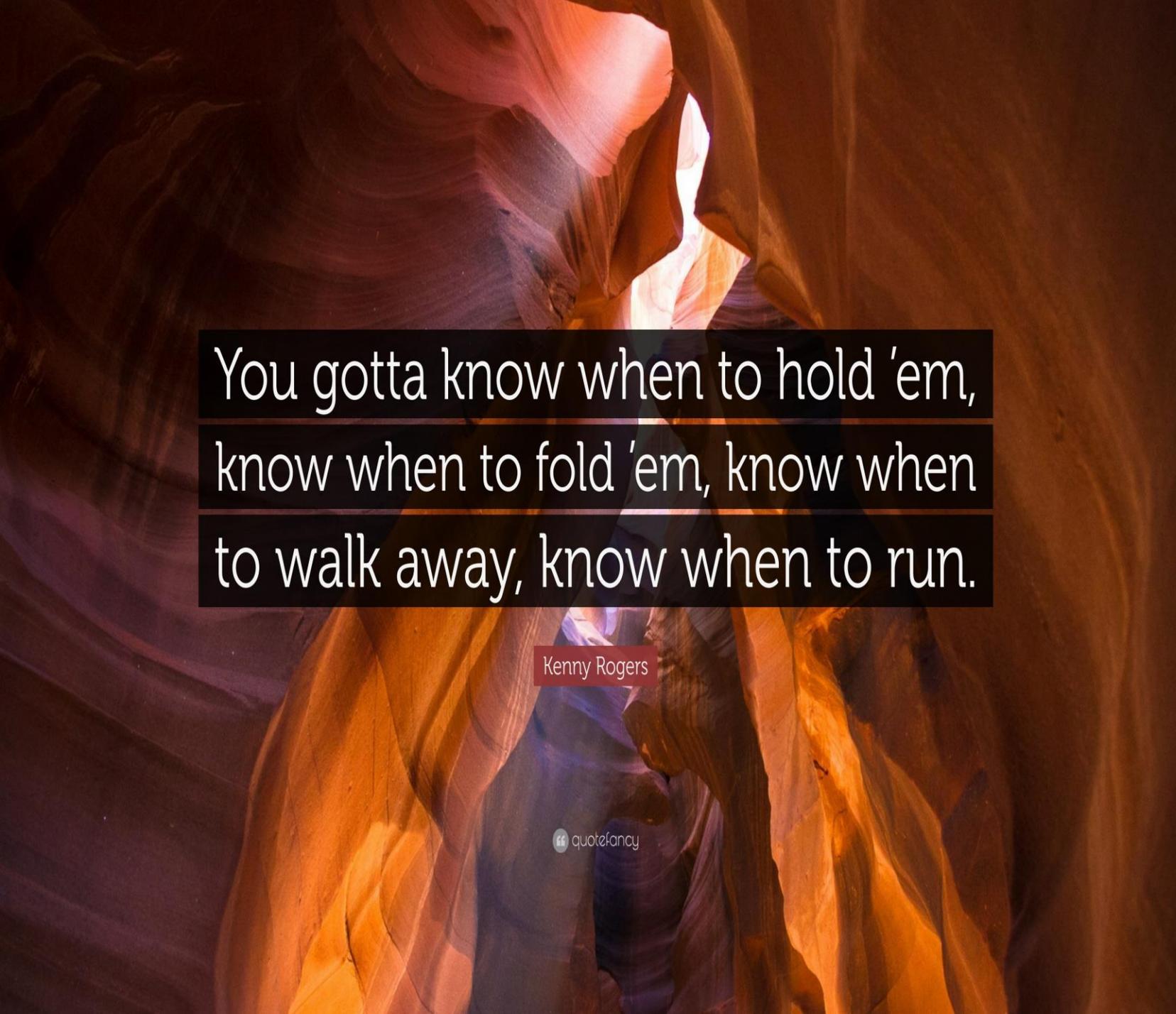
What can  
we do

Why they  
work

# Toolkit takeaways

- ▶ Collaborate early
- ▶ Be proactive





You gotta know when to hold 'em,  
know when to fold 'em, know when  
to walk away, know when to run.

Kenny Rogers

quotz fancy



Why Does  
all this  
matter to  
Valuation?

# **Damages in Sexual Misconduct Litigation**

Presented by: Ashley R. Lynam



## Ashley R. Lynam, Esq.

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Chair, Sexual Misconduct Liability Practice Group

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Ashley R. Lynam is Chair of the firm Montgomery, McCracken, Walker & Rhoads, the first woman and youngest person to hold the position in the firm's 110 year history. Known for her ability to creatively advocate, Ashley has handled the investigation, prosecution and defense of claims for clients including high-profile commercial organizations, publicly-traded companies, sports teams, startups, technology companies, pharmaceutical companies, homeowners, hotels, educational institutions, charitable and social services organizations and more.

Ashley started her career as a rape prosecutor at the Philadelphia District Attorney's office. She is known for vigorously protecting her client's confidentiality while nevertheless providing aggressive representation, given the sensitive nature of sexual misconduct claims.

Ashley graduated summa cum laude from Villanova's Business School and Cum Laude from Villanova's Law School. She lives in Berwyn with her husband and three children, and never misses a Nova basketball game.

# Common Myths in SML



"Look at these headlines!"

"These cases settle for millions."

"There's no real way to value a sexual abuse case."

"Runaway verdicts are the new normal!"

## PROGRAM OBJECTIVES

# Clarity & Methodology in SML



### 1. Framework

Provide analytical framework for evaluation sexual misconduct claims

### 2. Legal

Review legal bases for reducing damages claims

### 3. Historical Data

Identify relevant settlement history data points for use in negotiating resolutions

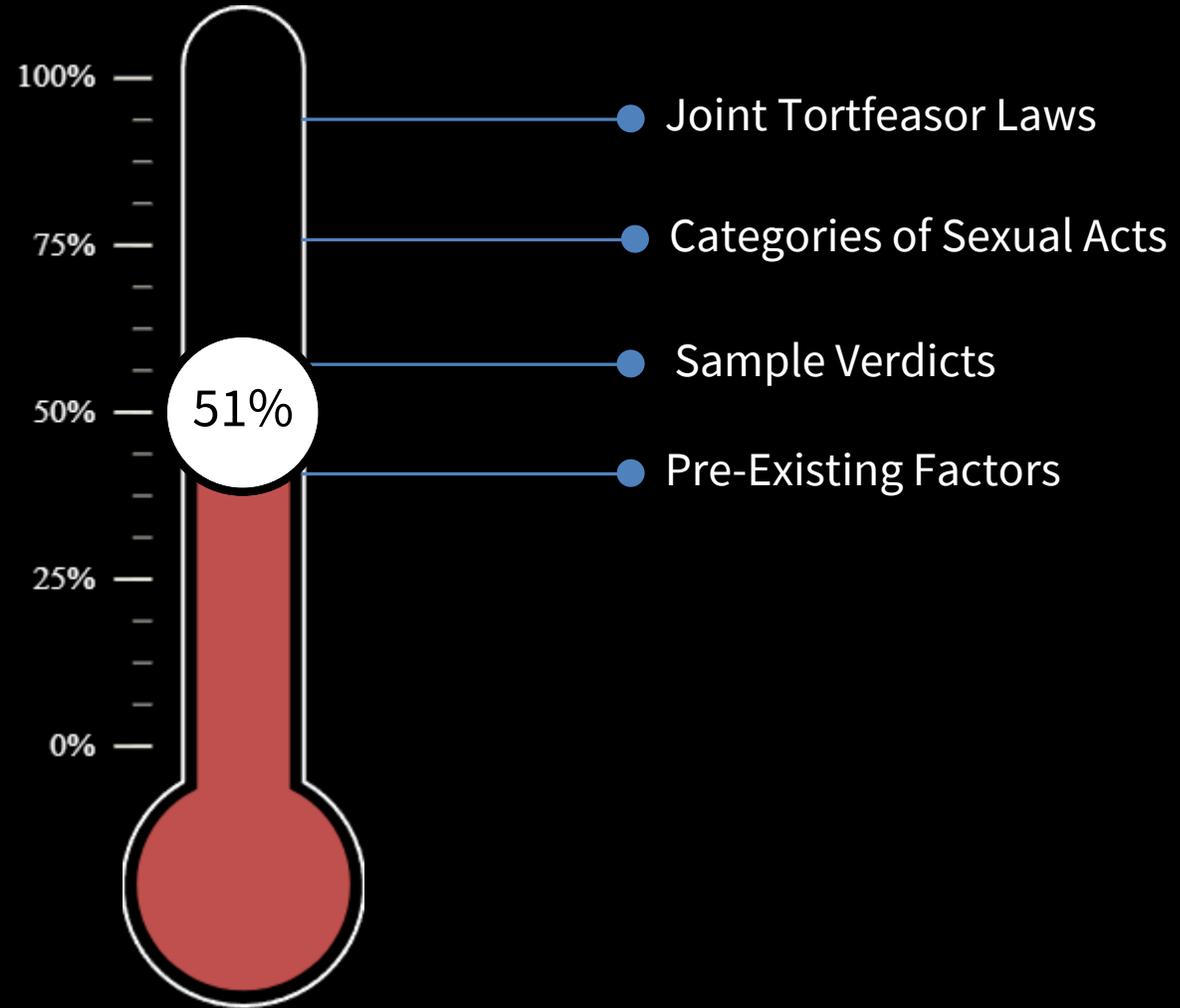
### 1. Scientific Data

Evaluate scientific data points available for reduction of damages

### 2. Reputation

Assess the value of reputational goodwill and its impact on settlement

# SLIDING SCALE TO CONTROL VALUE



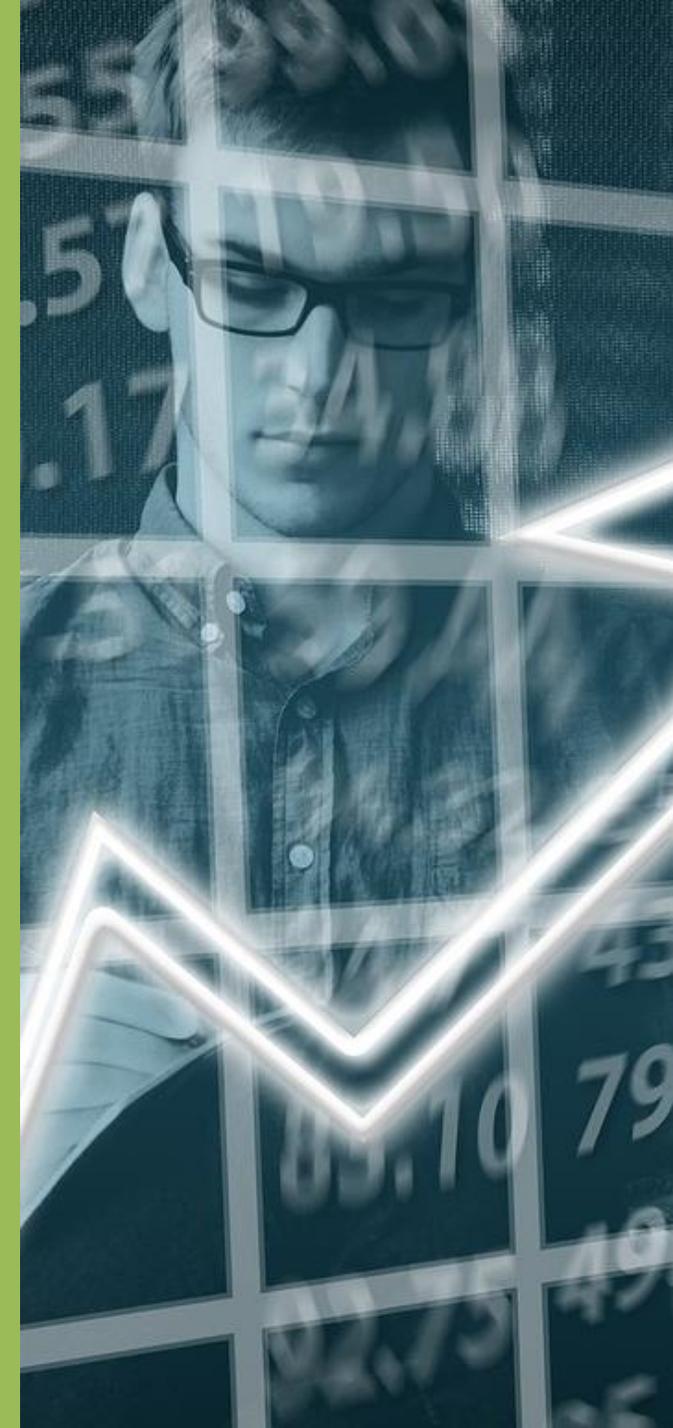
# JOINT TORTFEASOR LIABILITY

**Joint tortfeasors: two or more persons whose negligence in a single accident or event causes damages to another**

**When two or more parties are jointly and severally liable for a tortious act, each party is independently liable for the full extent of injuries stemming from the tortious act**

**If a plaintiff wins a judgment against all defendants collectively, the plaintiff may collect the full value of the judgment from any one of the individual defendants**

**That defendant may then seek contribution from the other defendants.**



# KNOW YOUR JOINT TORTFEASOR JURISDICTION



**Pennsylvania**



**New Jersey**



**New York**



# Pennsylvania: Fair Share Act

## 42 Pa.C.S.A. Section 7102

- A defendant will only be responsible to pay a portion of any judgment equal to that party's percentage of liability
- EXCEPTIONS:
  - Strict joint and several liability applies to actions arising from a claim of an intentional tort, meaning that any one defendant who may be deemed liable would be responsible for the entire judgment
  - A tortfeasor found **60%** liable or more remains jointly and severally liable
- CONSIDER:
  - Did your plaintiff's initial demand attempt to apportion liability between tortfeasors reasonably?
  - Did negotiations occur with an assumption of illiquidity of the joint tortfeasor? If so, why?



# New Jersey

N.J.S.A. 2A:15-5.2d

- A plaintiff is entitled to recover the **full amount** of the damages from a defendant found to be **60% or more at fault.**
- A plaintiff, however, may recover **only that percentage of damages** directly attributed to a defendant found to be **less than 60% at fault.**
- A defendant who pays more than his percentage share of an award may **seek contribution** from the other joint tortfeasors for the amount he has overpaid.



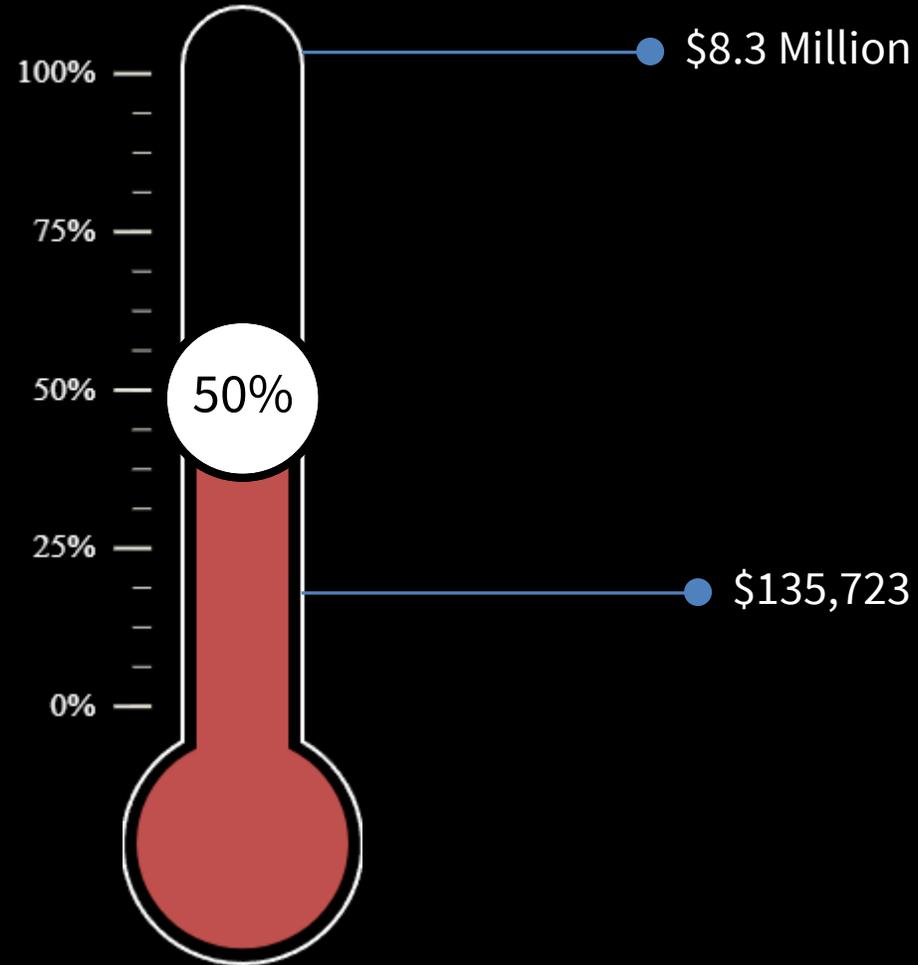
# New York

## C.P.L.R. Article 16

- Traditional rule that joint tortfeasors are jointly and severally liable to Plaintiff for the full amount of damages.
- In a personal injury action involving two or more tortfeasors, a defendant found to be 50% or less at fault is responsible only for its proportionate share of non-economic loss.
- Defendants remain jointly and severally liable for any economic loss.
- Most **plaintiff-friendly** of three- states surveyed.

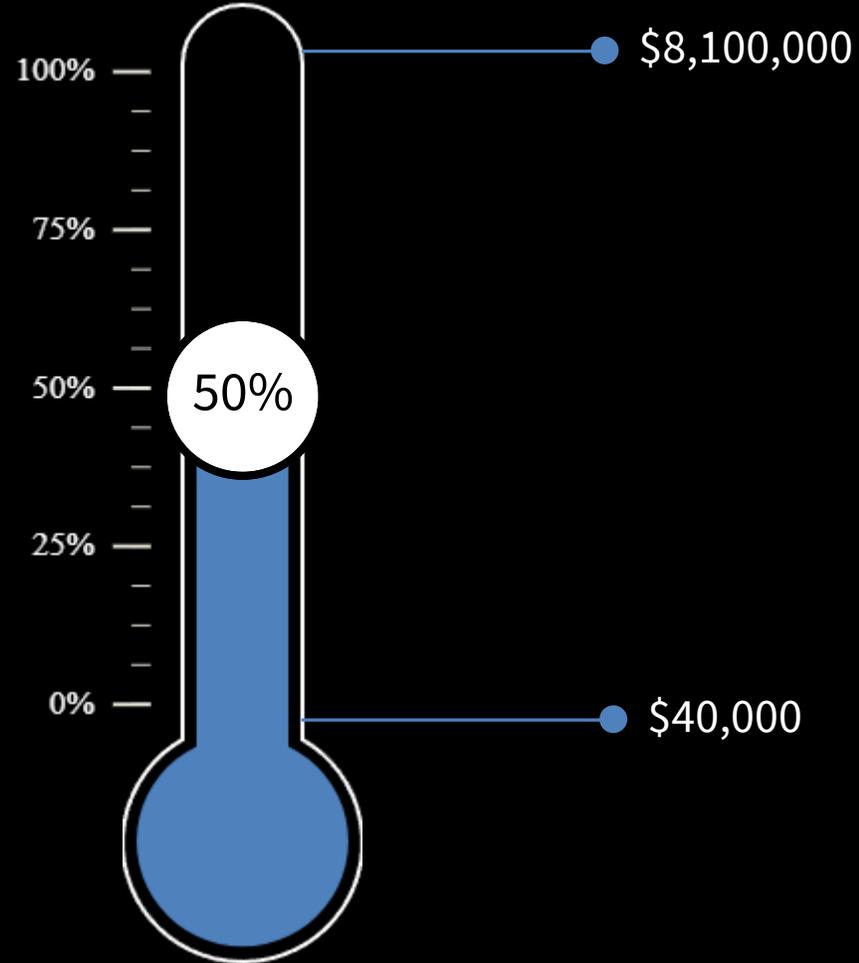
# JURISDICTION: SAMPLE VERDICTS

Pennsylvania



# JURISDICTION: SAMPLE VERDICTS

Georgia



# Understanding the Data: *the headline is not the whole story*



NATION

## Boy Scouts bankruptcy case reaches settlement, insurer agrees to pay \$800M into fund for victims

Randall Chase Associated Press

Published 12:58 a.m. ET Dec. 14, 2021



**The headline:** \$800 million proposed settlement

**The reality:**  
*approximately \$9,756.10 per claimant*

# Understanding the Data: *Jury Verdict Summaries*

## SUMMARY

Outcome: Plaintiff Verdict

Non Verdict Award:

Total Verdict: \$8,300,000

Judge Reduced Award To:

Claimed Past Medical:

Claimed Future Medical:

Claimed Past Wage Expense:

Claimed Future Wage Expense:

Plaintiff's Economist:

Defendant's Economist:

## DAMAGES:

Past Medical:

Future Medical:

Past Wage:

Future Wage:

Pain and Suffering: \$1,300,000

Other:

Total: \$1,300,000

Punitive:

Hedonic:

Property:

Other: \$7,000,000

Interest:

Loss of Services:

## SUMMARY

Outcome: Plaintiff Verdict

Total Verdict: \$160,000

## EXPERT-WITNESSES:

## ATTORNEY:

Plaintiff: Terence T. Thomas, Atlanta, GA

## JUDGE:

RANGE AMOUNT: \$100,000-199,999

STATE: Georgia

COUNTY: DeKalb

→ PRIMARY INJURY: Sexual Assault

## SUMMARY

## PLAINTIFF:

Sex: Female

Age: 25

## DECEDENT:

## DEFENDANT:

Type: Single individual

Sex: Male

General Occupation: DOCTOR

## DAMAGES:

Other: \$160,000

Total: \$160,000

## FACTS:

A 25-year-old female exotic dancer suffered **posttraumatic stress disorder** after she was sexually assaulted by the male defendant and codefendant police officers. At the time of this incident the plaintiff was told to get into their police cruiser being that she was needed for questioning and was going to be brought to the police station. The plaintiff contended that that defendants forced to engage in sexually assaulting her, that she did nothing to provoke the defendants' actions, the attack was willful and malicious with intent to harm, and that they violated her civil rights. The defendants denied liability and disputed the extent of the plaintiff's injuries. The verdict award was paid consecutively by both defendants.

## FACTS:

→ A 25-year-old female suffered emotional distress when she was **sexually assaulted** when she presented to the male defendant doctor for treatment of mouth injuries she sustained in a vehicular accident. The plaintiff contended that the defendant fondled her breasts and put his hands beneath her clothing, which was not indicated in any way for evaluation of her specific condition, and that his assault caused her great emotional distress. The defendant denied liability and failed to appear at the trial.

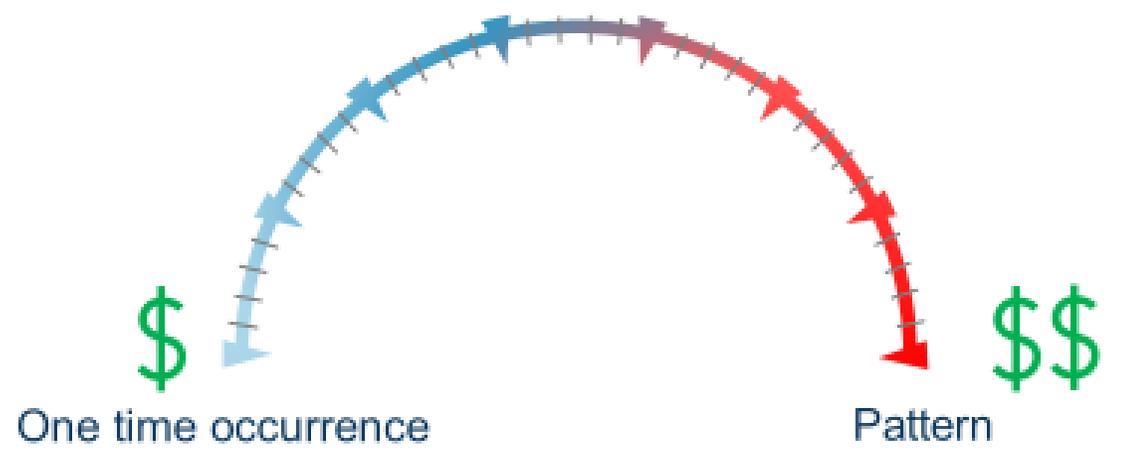
Jury Verdict Research

COURT: State

# TYPE OF SEXUAL ACT



# OCCURRENCE



# OXYTOCIN: *the love hormone*

- Neuropeptides are chemical messengers made of small chains of amino acids that are synthesized and released by neurons
- Oxytocin is a hormone and neuropeptide produced in the hypothalamus
- The hypothalamus is the region of the forebrain below the thalamus which coordinates both autonomic and nervous system and the activity of the pituitary
- It controls things like body temperature, thirst, hunger, and other homeostatic systems, including sleep and emotional activity



- Oxytocin is released into the bloodstream upon physical touch, in particular during sex and childbirth
- It has physical and psychological effects, including influencing emotional, cognitive, and sexual behaviors
- ***What happens when this neurological bonding process is created by predatory, non-consensual, or even violent touching?***



# PRE-EXISTING FACTORS

The presence of pre-existing risk factors work to undermine, or at least lessen, the contribution of subsequent trauma to future damages assessment

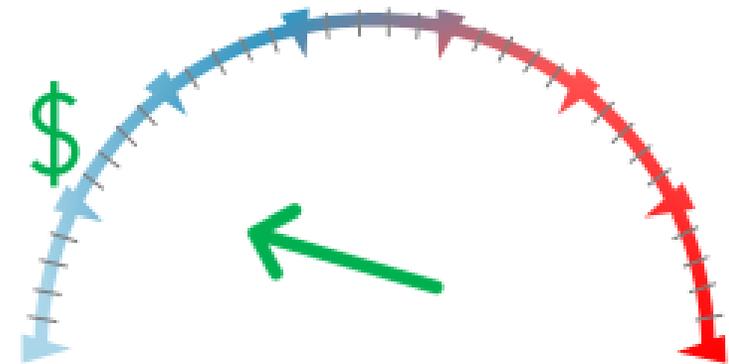
Pre-existing factors include:

- childhood trauma
- abusive and unstable home environments
- early school or court-ordered psychiatric intervention
- participation in suggested psychoanalysis

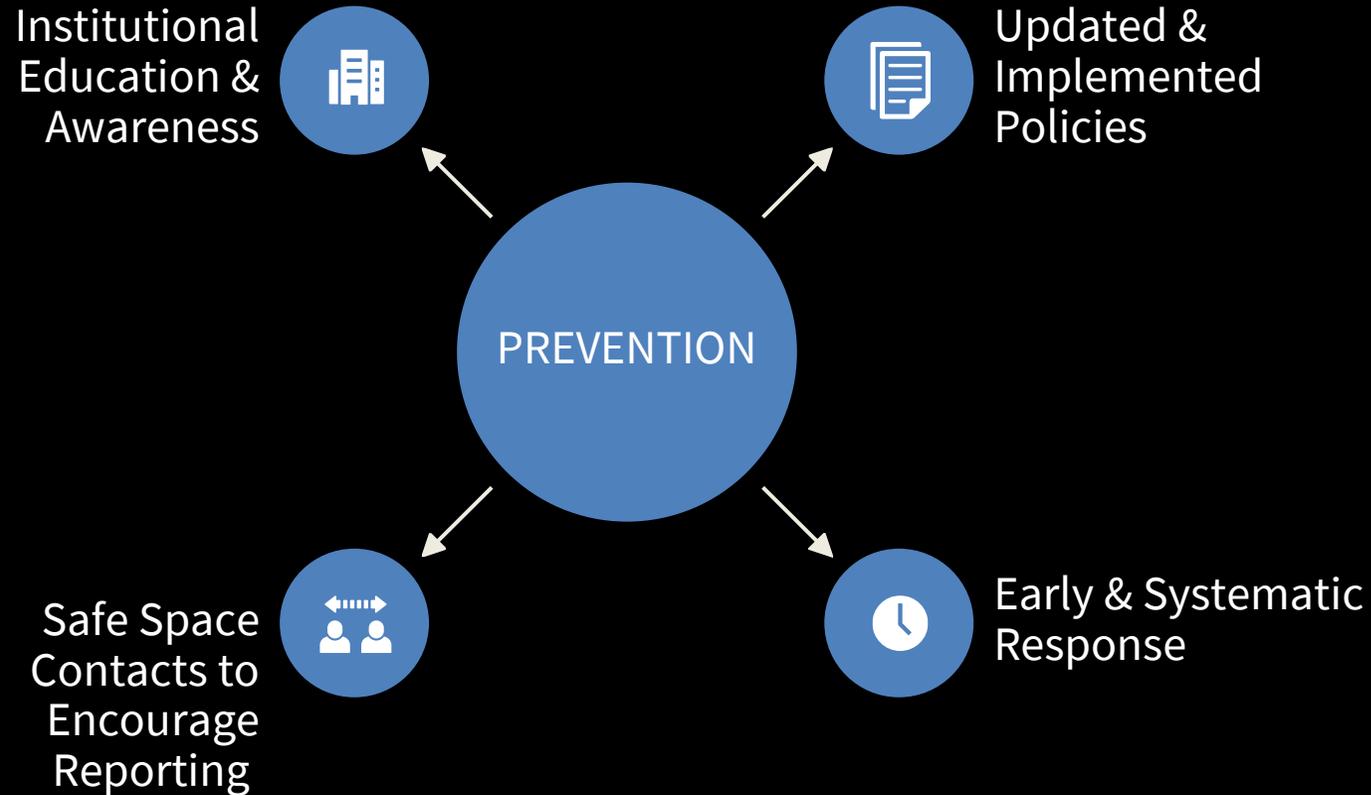
Consider: how will this impact economic damages claimed?

Length of treatment? Intensity?

What is the value of one more topic of discussion when a lifetime required treatment?



# Prevention & Crisis Management



# Perrin Sexual Abuse Litigation and Coverage Conference

Damages, Valuation, Settlements and Verdicts

October 17, 2024

Confidential

**BATES  
WHITE**  
ECONOMIC CONSULTING

## What We Do

- Market leader in mass tort valuation, liability forecasting and estimation
- Generally engaged in SA bankruptcy cases
  - Examples include BSA and USAG
- We provide a variety of services that include, but are not limited to:
  - Proof of Claim (POC) processing and standardization
  - Analysis based on processed POC data
  - Estimation modeling
  - Insurance allocation
  - Mediation-related support

## Proof of Claim processing

- Proof of Claim (POC) forms require claimants to provide information about their abuse, including:
  - Alleged abuser(s)
  - Allegation
  - Dates of abuse
  - Location(s) of abuse
- POCs generally allow survivors to provide information in an open-ended, long-form text format
  - Difficult to easily utilize in analyses
  - Requires processing and standardization to generate a database that consistently reflects dates, allegations, names and more
    - Complicated process that requires expertise
    - Aim is to provide an accurate representation of the POC submissions
    - Allows for ease of use in analyses and tabulations
- Duplicate analysis and evaluation of submissions v. unique claimants

## Estimation modeling

- Our models are flexible scenario- and parameter-based tools, the inputs of which depend on the case
- We generally provide a range of estimates based on the standardized POC data
- Key parameters can include:
  - Allegation
  - Abuser information
  - Historical and comparable claim values
  - Extraordinary circumstances
- Our models calculate total amounts, as well as shares based on organizational responsibility, availability of insurance etc

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Ben Mermelstein PhD, FCAS  
Partner, HighRock Analytics

HighRock  
Analytics

# Allocating abuse settlements to insurance

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- Trigger theory
- Occurrence definition
- Allocation law
- Coverage defenses
- Solvent vs. bankrupt defendant

# Valuation factors' affect on insurance coverage

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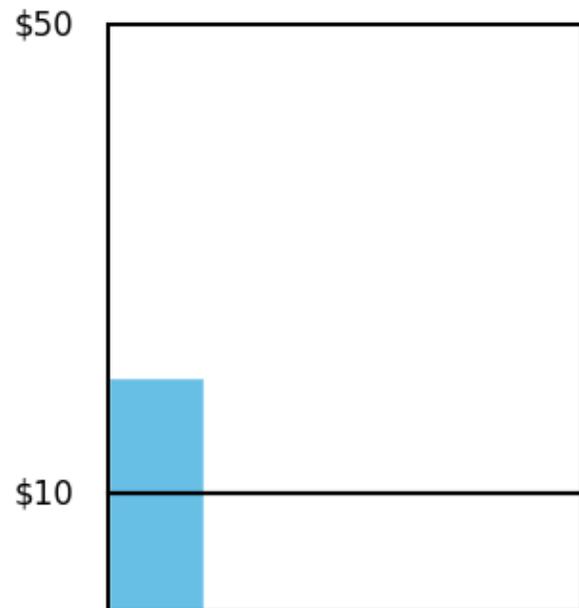
- Higher values, all else equal → More coverage
- Institutional malfeasance → ???
- More incidents of abuse → ???
- Prolonged period of abuse → ???
- Distribution of values → ???

# More incidents of abuse

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- More incidents of abuse typically would lead to higher valuation but could lead to less and/or different coverage if per-incident occurrence definition is argued

\$20 value - one incident



\$50 value - five incidents

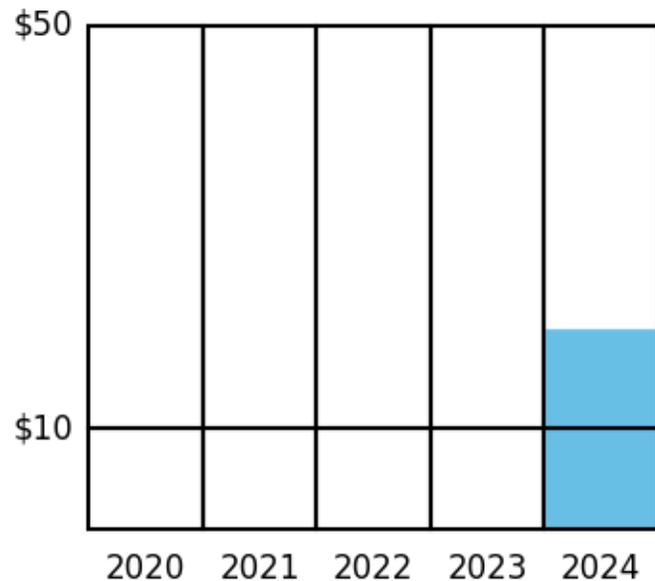


# Prolonged period of abuse

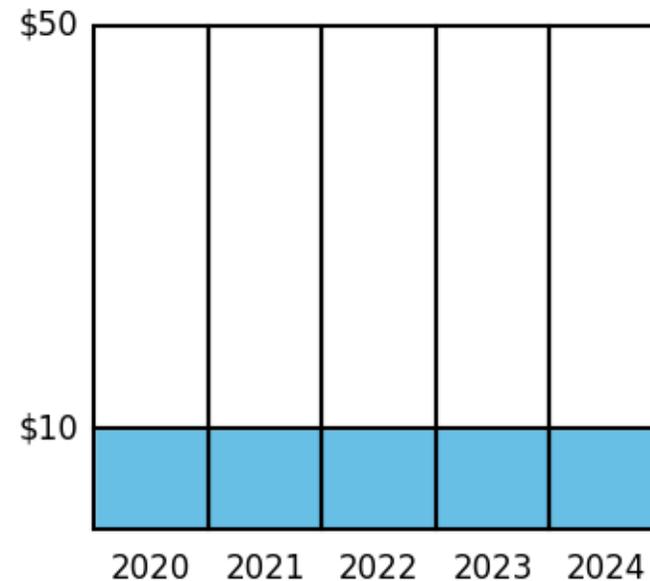
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- Prolonged period of abuse typically would lead to higher valuation but could lead to less and/or different coverage depending on policy chart

\$20 value - one year of abuse



\$50 value - five years of abuse

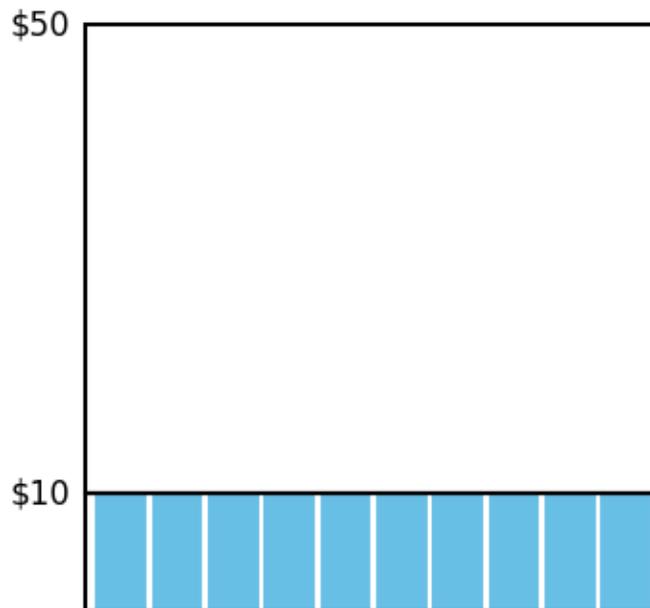


# Distribution of values

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- If a per-claimant occurrence definition is argued how the total pot is split across claimants can affect coverage

\$100 fund - even split



\$100 fund - variable awards

