

Infant Death Investigations

Katharine B. Folger
Chief, Child Protection Unit
Middlesex DA's Office

CPU: 781.897.8400
Cell: 617.201.0281

Criminal Conduct v. Medical Call

- Criminal Conduct – Homicide
 - Abusive Head Trauma/Shaken Baby Syndrome
 - Blunt Force Trauma (e.g., abdominal)
- Child Fatality Review Team – M.G.L. c. 38, s. 2A
 - Review all deaths of children <18YO
 - Purpose: make recommendations to prevent similar deaths in the future
 - Examples: SIDS, SUID, Accident, Natural
 - SIDS (natural after rule out external risk factors and clinical history)
 - SUID (generally undetermined after rule out traumatic cause, rule out or uncertain medical cause and when suggest an associated external risk factor such as unsafe sleep)

*** YOU MAY NOT KNOW WHAT YOU ARE DEALING WITH UNTIL AUTOPSY ***

Challenges in Criminal Conduct Cases

- Delayed recognition of crime
 - Treated as “medical call”
- Timing of injury/injuries
- Multiple potential perpetrators
- Conceptualizing caregiver as abuser
 - My client is ... Mary Poppins, has no record, mild-mannered ...

Common Defenses

- **IT WASN'T ME**

- Attacks timing of injury
 - Lucid Interval
 - Access by others w/in timeframe

- **IT WASN'T ABUSE**

- Rare medical disease/explanation – CPR, vaccines, bleeding disorder, OI
- Accident – short fall, rough play

- **IT WASN'T THAT BAD**

- Fragile/sick/already injured – rebleed (often combined with 3P or accident)
- Shook but not violently (often clarifies admission later as “did to revive”)

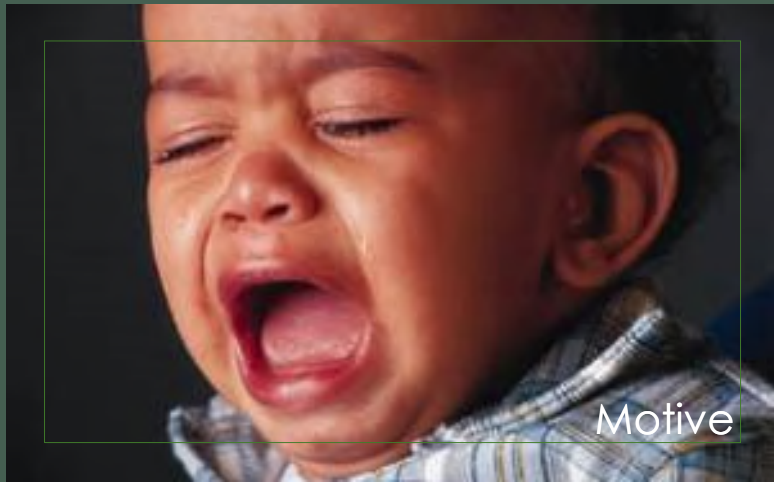
For jury - all have an element of “there but for the grace of God”

“There but for the Grace of God go I”

- Generalized belief that loving caregivers would never intentionally harm a child
- Many jurors:
 - Have been stressed by the demands of caring for an infant
 - So feel a connection to the defendant
 - Understand how “just lost it” so view incident as not intentional

= Makes jurors willing to accept a completely implausible theory of causation as it is preferable to thinking a “normal person” could inflict such violence upon a baby

Video clip



Investigation Tips

Timing

Access

Knowledge

Guidelines

- Multidisciplinary approach
 - Each team member has a complimentary role that can be effective in learning not only HOW the child was injured but WHO inflicted the injury
 - Medical, social work, law enforcement, child protection, prosecution
- Focus on:
 - Possible & reported mechanisms of injuries (“wasn't abuse”)
 - Timing of Injuries & access to child during timeframe (“wasn't me”)
 - When baby last appear normal (“wasn't that bad”)

Biographical Information

- Child's name, DOB, gender
- Parents' names, DOBs, marital status
- Where does child live
- Number of siblings, ages, gender, addresses
- Names of recent & current caretakers
- Other children in caretakers' care – names, DOB, gender, parents
- Family involved with DCF or other social services

Medical Team Interviews

- Prognosis
- Extent of injuries – presence of old injuries
- Any medical conditions/treatment account for any of the injuries
- Mechanism of injury
- Timing
- Who brought child to hospital
- Chief complaint
- History provided – did it change? Does it account for injuries?
- Any delay in seeking care
- Diagnostic tests & studies?
- Laboratory results?
- Genetic testing?
- “Normal” developmental level for child this age

*** ATTEND CPT MEETINGS ***

Differential Diagnosis

The differential diagnosis (potential causes) can be extensive ...

- Trauma
 - Accident
 - Inflicted
 - Birth-related
- Metabolic Disease (Glutaric Aciduria I)
- Genetic Syndromes (OI, EDS)
- Coagulopathies
- Infection
- Hypoxia
- ICP

It is important to understand what is supported by the medical literature & what has been debunked.

Arriving at the AHT diagnosis is no different than arriving at any other clinical, medical diagnosis – it starts with a “chief complaint” ...

First Responders

- 911 call – listen & preserve
- Child's condition on arrival
- Where was child found
- Who was present at scene
- Who provided history
- Any statements by caretakers
- Demeanor of caretakers
- Was child moved – by whom & where
- Scene altered by first responders
- File a 51A report?

Interviewing Caretakers 101

- First interview should be non-confrontational & you should express condolences
- Let them talk – narrative form at beginning then ask follow up
- Ascertain what think caused the injury – don't dispute their story
- Ask to clarify details (e.g., which couch? Surface landed on? Part of body hit first? Child's reaction? Changes in appearance?)

Interview ALL Caretakers

- Who was present when child became symptomatic
- When was last time child appeared "normal"
- Who was in contact with child during timeframe
- Who called 911/sought medical help
- Explanation for any delay in seeking care
- Access – babysitters, family, anyone drop by
- Anyone left alone with child
- SBS education or parenting classes
- ANY explanation for injuries (known or may find) – car accident, fall, drop, shake

Ask about ...

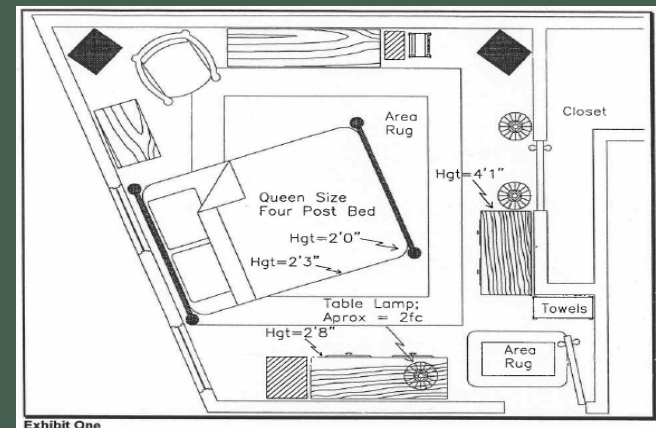
- Unexpected or unwanted birth
- Post-partum depression
- Frustration with child care responsibilities
- Attitude toward/relationship with child
- Marital problems
- Lack of experience with children
- Financial stresses
- Drug/alcohol use
- Physical abuse of caretaker when he/she was a child
- Household dynamics & attitudes toward children
- Cultural beliefs/practices concerning discipline

Get to know the victim ...

- Pregnancy complications?
- Premature?
- Developmental level
 - Roll, sit up, crawl, stand, climb, follow with eyes, feed self
- Daily schedule
- Eating patterns
 - Nurse, bottle, solids, how often, last time ate & what
- Sleeping patterns
 - How long, how get to sleep, where sleep
- Diapering patterns
 - Last time changed, how often, before or after eats
- “Good baby”?

Evidence Collection Consent or Search Warrant

- Photograph & video entire scene
 - Pay particular attention to stairs, baby equipment, floor surfaces, wall surfaces, countertops, toys, bathroom fixtures
 - Look for “triggers” (dirty diaper, vomit, soiled clothes, cereal on wall, drugs/alcohol, layoff notice)
- Measurements
 - Height & number of stairs
 - Distance from crib/bed/couch/changing table to floor, including thickness of carpet & carpet pad
- Floor plans
- Digital devices (look up SBS?)



Collection cont'd

- Anything that corroborates/contradicts story or timeline
 - Car seat, toys, bed frame, crib slats, computer
- Child care & SBS Prevention lit. (hospital, pediatrician, DCF)
- Medical and health care documentation
 - Doctors names, visiting nurses, public health agencies
- Child care logs
 - Records, journals, notes of feeding times, schedules
- Bedding, bottles, food containers, trash and diaper pail, burp rags, towels
- Check refrigerator and cabinets for food and medicine (baby or caretaker)
- Any recent photos and videos of child (show developmental level, lack of injury)



Records

- Talk to ADA about getting releases/subpoenas for records & to talk to providers:
 - EMT
 - Hospital medical team – outside hospital + trauma hospital
- OB/GYN
- Birth hospital – baby + mom's labor/delivery
- Pediatrician
- Specialty consultations (early intervention)
- Drug treatment & habit management
- School/daycare
- Medical records for siblings
- Phone records

Interviewing the Suspect

- Always record when possible – video is preferable
- Listen – let them talk & lock into a story
- Develop timeline – have describe events *in detail*
 - For day – hold bottle, follow with eyes, react to voice/face, play with toys, feedings, naps
 - For days/week prior – any changes in behavior, concerns
- Don't just account for known injuries; instead, ask, "Any reason doctors will find fractures?" "Any reason doctors will find evidence you've hurt the baby before?"
- If makes admission:
 - Have demonstrate – ideally with something
 - Ask to describe what the baby did as assaulted them (they won't want to)
 - Ask how quickly the baby became symptomatic
 - Ask how long were they with baby before inflicted injuries
 - Delay in calling for help
- Ask what know about handling of baby and education re: SBS/warnings about being "rough"
- Confirm nobody else present – Anyone stop in even briefly? Ever leave baby alone?

Video clip

Video clip

Other Considerations

- Notifying & get information from DCF, EEC
- Interviewing child witnesses – forensic interview?
- Medical check for other children present

Keep in mind ...

- These cases are NOT “there but for the grace of God”
- These are the defendants juries LEAST want to convict
- These children were real people who will never grow up to show the world who they could be
- We need EVERY TOOL POSSIBLE to help the jury understand and hold caretakers responsible for the violent homicides of these children