

Falls and Childhood Deaths

continued from page 24

The physician faced with a young child with signs of serious or life-threatening head injury and a history of a fall of less than ten feet should first exclude epidural hematoma.

years of age may well be substantially contaminated by cases of inflicted injuries presented as falls. This effect is probably diminishing as improved diagnosis of inflicted injury joins improved prevention and care in reducing the number of children who die from falls.

Practice Guideline

The physician faced with a young child with signs of serious or life-threatening head injury and a history of a fall of less than ten feet should first exclude epidural hematoma. CT scanning is an efficient method for the diagnosis of epidural hematoma. In some cases, it may also be desirable to exclude non-traumatic causes of intracranial bleeding such as arteriovenous malformation. The case should be reported promptly to a child protective agency and a law enforcement agency. Investigators should be advised that a careful scene description and careful and sensitive interviews with potential witnesses are likely to be needed. Investigators should proceed promptly in such cases, using the most skillful interviewers available, and collecting information from a wide range of persons who may have been near the place of the injury event.

The initial history provided by the caretaker and the injury pathology in the head and elsewhere should be thoroughly documented. The circumstances of later history changes should also be described. In many cases a syndrome of inflicted injury may be recognized on the basis of typical findings for shaken infant syndrome or from injuries at other sites or from other dates. Coagulation tests should be performed if the case is seen early, but they are almost always abnormal in children dying of head injuries once infarction of brain tissue is present.

Whenever possible, consultation should be obtained from a physician experienced in syndromes of inflicted injury. In fatal cases, autopsies

are mandatory, and pathologists who are not experienced with childhood injuries should seek additional consultation.

When epidural hematoma has been excluded, and in the absence of a long fall or some other (usually obvious) event such as a motor vehicle accident, the vast majority of young children with life-threatening head injuries have inflicted injuries. The physician should provide this conclusion in written documentation.

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THE ROLE OF LAW ENFORCE- MENT IN FATAL CHILD ABUSE CASES

—by Bill Walsh

The Role of Law Enforcement

A child's death places unique demands on law enforcement. The investigator's role is to investigate the death thoroughly and determine how it happened, if a crime occurred, and if so, who is responsible. Investigations of child abuse deaths are demanding, difficult, and stressful. They present the investigator with problems on both technical and emotional levels. In addition to the obstacles found in nonfatal forms of abuse (no witnesses, child's developmental level, etc.), they have issues associated with homicide cases (autopsies, cause and manner of death, etc.). Emotionally, the death of a child from abuse can affect even the most seasoned investigator. This combination of factors results in complex investigations with their own unique set of problems and solutions.

Since fatal child abuse cases are a combination of issues found in both child abuse and homicide cases, the question is often asked, Who is best to do the investigation—child abuse or homicide detectives? It has been the author's experience that these investigations require more training and expertise related to children and child abuse than they do to homicide. Detectives who work on child abuse cases know more about children. They know about Battered Child Syndrome, Shaken Baby Syndrome, head trauma, scald burns, child development, neglect, and Sudden Infant Death Syndrome (SIDS). They know how children are injured and the excuses people will offer for their injuries, and how to work jointly with CPS, a necessity the importance of which cannot be underestimated.

continued on next page

The Role of Law Enforcement

continued from page 25

Fatal Child Abuse vs. Adult Homicide

Though fatal child abuse and adult homicide share some common ground, the investigator must understand some important differences.

Fatal child abuse occurs in one of two ways. The first involves repeated abuse and/or neglect over a period of time. One or more persons may be involved or at least aware of the abuse. Examples are cases involving the Battered Child Syndrome or neglect. The second category involves a single incident of assault on the child. This would include cases of Shaken Baby Syndrome, drowning, and suffocation. The offender usually acts impulsively and alone in these cases.

The majority of fatal injuries occur in the privacy of the home at the hands of parents or caretakers. Usually there are no witnesses. As a rule, these cases are highly circumstantial in nature. Prosecution may depend on complex medical and forensic evidence, or on the suspect's confession.

Fatal child abuse does not involve traditional weapons. Hands, feet, violent shaking, slamming, scalding water, and neglect are commonly the cause of fatal injuries. There is no ballistic, DNA, or fingerprint evidence to identify the suspect. Crime scene processing must focus on less obvious items of physical evidence. This may include medicine not given, proof of missed doctor appointments, soiled diapers, or a lack of baby formula. These findings may indicate the child was ill, neglected, had a toilet training problem, or was not properly fed.

The injuries that cause children to die are different from those found in most homicide cases. The majority of fatalities are the result of severe head trauma (Levitt, Smith, and Alexander, 1994). These often involve closed head injuries that are not readily apparent upon external examination.

Doctors may treat the child for hours or even days before the injuries are determined to be nonaccidental. Sometimes abuse may not be confirmed until an autopsy is performed.

Children can also die of neglect. A caretaker's failure to provide adequate nourishment, medical care and supervision can result in death. In some cases, even though the death may be ruled an accident by the medical examiner, the caretakers may still be subject to criminal prosecution. An example of this would be a case of negligent supervision. If a child, too young to be reasonably left alone, dies as a result of injuries sustained in a house fire, the parent may be culpable for failing to properly supervise that child and be charged with injury by omission. In cases such as these, the investigator

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is faced with the challenge of determining if the death resulted from an accident, an accident that involved negligence, or an accident that involved criminal negligence.

An Approach to Fatal Child Abuse

Faced with these complex factors, how should law enforcement investigate fatal child abuse? When a child dies of abuse, it is law enforcement's responsibility to determine what happened and who is responsible. Investigators are first and foremost fact finders. They must use all of their training, skills and resources to obtain the answers to the questions who, what, where, when, how and why? That is the objective. Standard investigative techniques (i.e., witness interviews, search warrants, crime scene processing, background checks, interrogation) must all be utilized in these cases.

As most children die from causes not related to maltreatment (illness, disease, or accidents), investigators must balance thoroughness with sensitivity when investigating a child's death. It is important that investigators maintain the proper balance of an open mind, healthy skepticism, and a resistance to jumping to conclusions. As important to identifying those who may have caused the death of a child is ensuring that charges are not brought against people when no crime has occurred. People have been wrongly accused, and even convicted, of fatal child abuse. Recently in Texas, two parents were released from prison when it was proven that their child died of injuries sustained in a dog attack and not from child abuse (Parks, 1994).

Need for Coordination

The investigator must coordinate his approach with other professionals and other agencies. Interagency cooperation and coordination are imperative for success. In addition to law enforcement, other professionals who play critical roles in the investigation include the child protection worker, physician, medical examiner, paramedic, and prosecutor. Each professional must understand how his or her respective role contributes to the team approach. Early case staffing by the professionals involved is advisable to insure coordination and the necessary exchange of information.

It is important that the medical professionals promptly notify law enforcement when they suspect a child may have been abused. An investigator's early entry into the case is best. Unnecessary delays allow the suspect time to create an alibi, pressure witnesses, or hide or destroy evidence—none of which bodes well for the investigation.

While every discipline's role is important, it must be understood by all that the ultimate responsibility for conducting the criminal investigation

continued on next page

The Role of Law Enforcement

continued from page 26

belongs with law enforcement. Unless necessary to obtain information to treat the child, medical personnel should refrain from confronting the caretakers if they offer inconsistent or implausible explanations for the child's injuries. The CPS worker, paramedic, and any other professional involved must also avoid such unnecessary encounters. These confrontations only serve to increase the caretakers' awareness that they are under suspicion, and greatly reduce any chance the investigator may have in obtaining a confession. It is more helpful to the investigator if these professionals make precise notes about anything the caretakers say to them.

Initial Interviews

Often the investigator's first contact with the case comes when the child is taken to the hospital and notification to law enforcement is made. Upon arrival at the hospital, the investigator should make sure that CPS has been contacted and begin to coordinate their response. Repetitive interviews of medical staff and the caretakers are not only inefficient but may prove counterproductive as well. The physician treating the child should be interviewed as to not only the child's injuries and prognosis, but the possibility of abuse as well. The investigator must realize that additional tests, procedures, and ultimately the autopsy will provide far more detailed and accurate information.

If other medical staff, paramedics, or police officers were at the home or involved in transporting or treating the child, they should also be interviewed.

If they are unavailable, plans should be made to interview them as soon as possible. They should be asked about what they heard the caretakers say, what they observed, and any impressions or opinions they have. Caretakers often say things in the presence of paramedics that they would not say in front of police officers.

The investigator should now be ready to turn his attention to the caretakers. If more than one caretaker is present, they should be interviewed separately in a location that affords privacy. The investigator should have them tell their story without challenging any inconsistencies or improbable explanations. It is advisable to have them reduce their account to writing in affidavit form. This locks them into their story and may prove invaluable if they later try to change it. It may also be used to prove that what they said does not correspond with the physical, medical, or forensic evidence. Audio and videotape recordings may be used, but they are likely to cause caretakers to be more circumspect in their responses.

Fact Finding

Fatal child abuse cases require that the inves-

tigator know as much about the child, the caretakers, and the circumstances surrounding the death as possible. A number of resources have been developed to aid the investigation in these inquiries. (National Center for the Prosecution of Child Abuse, 1993; Missouri Department of Social Services, 1994).

An often overlooked source of important information exists if the caretakers called the emergency number 911. A copy of the 911 audiotape should be secured and transcribed; the tape might include statements inconsistent with what the caretakers say later. Exact times when the caretakers called and when the paramedics arrived can also be learned from the 911 tape.

Who Did It?

When a child dies of fatal child abuse or neglect, the first question facing the investigator is, Who caused the injuries? The investigator should view the potential suspects as those people who were present during the time the child could have received the fatal injuries. Consultation with the medical examiner and other medical experts may provide an approximate time as to when the injuries were inflicted, although in some cases, the medical experts may be unable or unwilling to give a time frame that is short enough to narrow the field of suspects.

Another way to help the investigator determine the person responsible is to carefully review the accounts the caretakers give the medical experts. The history may narrow the field of who caused the injuries. In cases of severe head trauma that involve cerebral edema, noticeable symptoms start to manifest themselves immediately or within a short period of time. These symptoms often include the onset of vomiting and a loss of consciousness. It is therefore important to determine the last time the child was observed behaving normally. An example of this would be a caretaker reporting that she observed a child playing and appearing normal when she left for work, but found the child vomiting and sleepy upon her return. A careful several-day time line of the child's activities can be a very powerful tool.

Investigators should also carefully examine the caretakers' explanations for the cause of the child's injuries as a way to determine a possible suspect. Caretakers with something to hide will commonly do one of the following when questioned:

- (1) They may offer a total denial of any knowledge of how the child was injured.
- (2) They may offer a version that is basically truthful but shades or omits certain facts that they feel casts suspicion upon themselves. They hope to provide a version of the facts that

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continued on next page

The Role of Law Enforcement

continued from page 27

coincides with new physical and medical evidence with which they are confronted.

- (3) They will offer improbable or implausible explanations for the child's injuries. This includes variations of the "killer couches" or blaming a three-year-old sibling for shaking the baby.

Interrogation

One of the most powerful and underutilized tools that an investigator has in these cases is the proper interrogation of the suspect. It has been the author's experience that people who are responsible for fatal child abuse often admit their guilt if interrogated by an experienced investigator. Many times these suspects have no serious criminal history; they are not hardened offenders. They have acted impulsively and later regret their actions. Various strategies that highlight the impulsive nature of the incident can be useful in eliciting confessions. While a voluntary statement from the suspect admitting guilt is powerful evidence, investigators should continue to work and thoroughly investigate the case. Confessions, for reasons too

numerous to mention here, may later be excluded in court. It is advisable to apply the strategy of investigate, interrogate, and investigate some more.

Summary

Fatal child abuse cases present unique problems for law enforcement. Expertise in both child abuse and investigation is necessary in these cases. Investigators must be prepared for issues and dynamics not found in typical homicide cases. While law enforcement officers should coordinate their investigation with other disciplines, they must realize that they bear the primary responsibility for the criminal investigation.

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PROSECUTING CHILD FATALITY CASES

—by Ryan H. Rainey and Dyanne C. Greer

Most prosecutors, investigators, and physicians are ill-prepared to recognize or deal with abuse-related fatalities. Among the many obstacles facing prosecutors is the need to prosecute and obtain appropriate sentences for perpetrators within a framework of state statutes that do not always take account of the dynamics of abuse-related deaths. However, the challenge begins long before the court is involved.

Identifying abuse

Proper identification of physical abuse and fatality-related injuries is the first obstacle. Since physicians might not suspect abuse when an injured child presents for treatment, especially if the family

is known to them, investigators must learn the medical and psychological dynamics of abuse in order to effectively conduct a criminal investigation. Prosecutors must work with other disciplines to increase awareness of the problem. No one wants to believe that fatal child abuse occurs. Since society has been conditioned to believe that caretakers are not capable of such brutality, prosecutors must be able to persuade jurors that caretakers can and do physically beat, shake, and starve children to death.

Establishing culpability

One of the prosecutor's major tasks is to establish that the caretaker had the mental state required for criminal culpability, taking into account the caretaker's educational level and mental abilities. For example, did the individual subjectively know this behavior would be harmful to a child? In Shaken Baby Syndrome

cases, the defense often tries to establish that the perpetrator was unaware of the dangerousness of his or her act. The prosecutor must counter this argument by demonstrating the extreme violence necessary to cause the extensive injuries, thus equating this excuse to a defendant's saying, "I did not know a gun could kill."

Recognizing children's rights

Parental rights and family preservation policies can be barriers to establishing that a possible crime has taken place. Children do not have the same rights as adults in our society. When one adult assaults another, the crime is ordinarily investigated regardless of the relationship between the parties. Assaults on children, however, are frequently dismissed as simple discipline. This view of parental rights and family privacy is especially evident in less serious physical abuse cases, but is also present in serious injury or death cases.

Facilitating prompt investigation

The prompt investigation of all child deaths of undetermined cause should be a priority for all jurisdictions. When a child dies suddenly or unexpectedly, authorities are usually hesitant to intrude on the assumed grief of a family. When it is determined that a possible nonaccidental death has occurred, it is often too late for a thorough investigation, as many pieces of evidence may already be lost. Professionals must learn to investigate undetermined deaths with sensitivity and understanding without sacrificing the importance of prompt investigation. A good scene investigation is as useful as an autopsy in determining if a child's death is natural, accidental, or a homicide.

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continued on next page