

Several parents are fighting criminal charges of killing or injuring their infants by shaking them with claims that the baby's brain damage actually resulted from recent vaccination.

Gannett News Service, in a four-month review of current childhood immunization, has found such legal action includes the following cases:

Ex-Cop Found Not Guilty In Alleged 'Shaken-Baby' Case

Ryan Carey -- Almost 3 now, Ryan is the developmentally disabled son of former Union County, N.J., police officer William Carey and his wife, Helen. Bill Carey, 33, is no longer a cop. He now drives a limousine part-time for a living. He was suspended from his law enforcement job when he was indicted 18 months ago on a felony aggravated assault charge of shaking Ryan until his brain bled.

The charge stems from Ryan's hospitalization for seizures at 5 months of age on the day of his second DTP, HiB, and oral polio vaccinations in March 1996. That was when the Careys lived in White House Station, N.J., just west of Bridgewater. Now they live in Washington Township in Warren County, and Carey is on trial in Flemington, N.J. He could get five to 10 years in prison. Neither parent had ever faced criminal charges for anything before their son's health problems.

But the father was found not guilty Tuesday, Sept. 1, by a 12-person jury after two days of deliberation. The jury heard defense testimony that Ryan's symptoms occurred after a DTP vaccination that may have caused the seizures and brain damage. Neither parent had ever faced criminal charges for anything before their son's health problems.

Ryan had reacted badly to his hepatitis-B and first DTP vaccinations -- the parents remember him crying inconsolably "day and night," arching his back stiffly, projectile vomiting, showing little appetite, sleeping most of the time, flushing hot and cold. The medical records back them up. Symptoms were severe enough that Ryan was hospitalized twice shortly before Christmas 1995. The diagnosis came back "milk intolerance" and "colic."

In the meantime, his head ballooned from 35 1/2 centimeters to 46 1/2 centimeters -- so noticeable that visiting relatives worried aloud; so large that instead of infant headgear, Ryan had to wear the hats of his older brother William, now 5, and so fast the pediatrician at one point worried about "water on the brain" but changed her recommendation for a CT scan after telling the parents the baby "had a big head because his father had a big head."

About four hours after his second DTP shot on March 22, 1996, Ryan -- recalled the father who was watching him -- "started screaming like he had never screamed before," rolled back his eyes, went stiff, then limp, then started gurgling. The paramedics gave oxygen and took Ryan to Hunterdon Medical Center, where the convulsion was noted as "most likely" an adverse reaction to DTP.

Transferred to Robert Woods Johnson Hospital the next day, Ryan continued to have uncontrollable seizures. Full skeletal X-rays revealed no broken bones, bruises or any sign of physical trauma. An MRI, a form of X-ray, however, showed three subdural hematomas "consistent with shaken baby syndrome." Child abuse authorities were called by the hospital. The next day, Ryan was taken from his parents and placed with an aunt.

In February 1997, he was indicted on the criminal charges, which just came to trial in August. Carey's attorney, Joseph E. Krakora of Morristown, based his defense on "the pretty compelling case that the intracranial bleeding was connected to administration of a vaccine."

Defense witness Dr. Mark Geier, a Maryland pediatric geneticist, testified that the batch of DTP Ryans's shot came from was included in 17 other seizure cases that were reported to the Food and Drug Administration by parents and physicians. Dr. Jan Leisma, a Chicago pediatric pathologist, testified Ryan's interior brain bleeding was parallel with known reactions to the DTP vaccine which mimic symptoms of child abuse.

The lawyer told GNS, "There is no dispute Ryan had a neurological condition in March that contraindicated the second DTP vaccine. ... If the pediatrician had picked up on the initial contraindications, my man would never be in the courtroom."

`COMPENSATION PROGRAM DRAGS THEIR FEET'

Christopher Gray -- When Christopher Gray, now 9, was born in Covina, Calif., his father, Larry, was 21, and his mother, Debby, was 18. The day after his first DTP shot at six weeks of age, the previously healthy baby went into a seizure in his father's arms and stopped breathing. His father gave him mouth-to-mouth resuscitation, and the infant spent the next four months in hospitals. Queens Valley Hospital documented an acute encephalopathy (acquired brain damage) and took note that the seizure followed the vaccine, but at the second one, UCLA Medical Center, someone changed the diagnosis to "infant shaking syndrome."

Gray and his wife were told by social workers if they tried to visit the child again, they would be arrested. The social workers sent the baby to live with his paternal grandmother, where the parents were allowed to visit their baby one hour a week. "The social worker interrogated my mom as if she were a criminal, too," remembers the father.

Finally, in September 1989, remembers Larry Gray's current lawyer Curtis Webb of Idaho, "One of the doctors involved quietly told the detective that the DTP vaccine could do this damage, too, so the police didn't pursue it." The baby was returned to the parents, but they broke up. Larry Gray became his son's care-giver. Lawyer Webb filed a claim with the National Vaccine Injury Compensation Program. It went to hearing in 1993.

"The Justice Department fought this with absolutely no holds barred," recalled Webb. "They insisted the kid had been shaken. The mother came back to testify along with the father. They were both treated by the federal government as if they were child abusers." The U.S. Court of Claims special master in charge of the hearing did not agree. On Aug. 4, 1993, he ruled for Christopher Gray, finding the brain damage was clearly connected to the DTP shot. In 1996, Larry Gray moved to Harrah, Okla., where he has a cousin who could help take care of Christopher. Now, five years after the compensation ruling, he still hasn't seen a penny. Only in August did Gray, his lawyer, and the Justice Department reach final agreement on a life-care plan. The first payment is expected in autumn.

"The compensation program drags their feet," the father said. "It is not their life they are putting on hold, it is ours." California doctors told Larry Gray his son would not live past 1998. "As soon as we won," recalled Webb, "the Justice Department lawyers called me saying they still believed this child was shaken and the only way they'd agree to a settlement is if the money was put into a reversionary trust, meaning the money would revert back to the government if the child dies."

Webb, who has handled more than 100 cases before the vaccine compensation board, asked, "Do I think they're waiting for the kid to die? I think there's something to that. That surely is what Larry Gray believes. In some cases, the delay on settlement is legitimate, but the Justice Department has contributed to the delay in this case." The Justice Department denies this, blaming Gray's move to Oklahoma for the delay -- contending it meant starting all over on a life-care program for the child.

"Now, whenever I see a shaken baby prosecution, I wonder," Webb told GNS. "It's usually exactly the same setting as this case. The kid gets the DTP shot at 2 months or 4. The kid goes into an epileptic state. The kid is diagnosed with some sort of brain hemorrhage. The kid is taken away from the parents after the hospital says it was

shaken. It makes me think this happens more often than you might think it does."
Seemingly healthy infants left debilitated

Devin Johnson -- Court records show Devin, born in the second week of 1993, appeared a healthy boy until May 19, when he was given his second set of DTP shots in a suburb of St. Paul, Minn. For the next four days he was cranky, started frequent projectile vomiting, and kept spiking fevers. At a St. Paul urgent care center, he was diagnosed with an ear infection. On the evening of May 24, in the care of his father while his mother was at work, Devin went into convulsions while being changed and had trouble breathing.

Devin's father began mouth-to-mouth resuscitation. Devin was rushed to a hospital where CT scans and MRIs showed retinal hemorrhages and serious brain injury: an accumulation of trapped blood under the skull in the spaces adjacent to the brain, caused by bleeding from nearby blood vessels -- subdural hematoma. Devin continued to have seizures in the hospital. The vertebrae in Devin's neck were normal, there were no fractures, no skin bruising, and there were no external signs of trauma. The hospital, however, decided Devin's injury "very clearly fits" shaken baby syndrome and notified police. The father, Jeffrey, having been the last one with the baby, was charged by the state of Minnesota with first-degree assault and malicious punishment.

The case came to trial in April 1995. Defense lawyers Barbara Z. Ashley and Louis Tourinus argued that Devin suffered from a reaction to the DTP, which they said exacerbated a prior subdural hematoma incurred during a difficult birth. Jeffrey Johnson -- who had lost his car salesman job in the meantime -- was found not guilty on both counts by state Judge Gary R. Schurrer.

The judge ruled "the court cannot find that Devin suffered from shaken baby syndrome" and that prosecutors had offered "no evidence to establish beyond a reasonable doubt that defendant was any more likely than any other individual to shake or otherwise assault Devin."

From his brain injuries, according to court records, Devin suffered "significant difficulties in mental and behavioral development" and needs special schooling. After the father's acquittal, lawyer Ashley filed a claim with the National Vaccine Injury Compensation Program in Washington -- the agency set up a decade ago to help compensate families of vaccine-injured children. Special master George Hastings, one of several appointed by the U.S. Court of Claims to hear such matters, threw the Johnson claim out: "Petitioner is not entitled to a program award."

In his written analysis, the special master said the ear infection "is simply a better explanation for the symptoms that Devin did display" after the vaccination. Although Justice Department lawyers defending against the claim brought it up, Hastings insisted he was not influenced by the shaken baby charge on the father's record. He wrote, "I should point out that I would resolve this case in the same fashion, even were there no evidence at all concerning the possibility that Devin was the victim of child abuse."

But then, in his case analysis, the special master meticulously detailed the suspicions of hospital physicians that Devin "very clearly fits the diagnosis of shaken baby syndrome" and concluded "the evidence pointing to trauma as the cause of Devin's injury is simply far superior to the scant evidence pointing to his vaccination."

Dr. Thomas Schweller, a San Diego pediatric neurologist who testified as an expert in both the Johnson and Gray federal claims hearings, contends the DTP vaccine -- while not a cause of original brain bleeding -- "in these cases is consistent with causation in rebleeding" if subdural hematoma has previously occurred.

The current shaken baby diagnostic process is based on conventional wisdom that doesn't hold up, according to Schweller: "You read in a scientific article that you can't develop a head injury unless you have a violent act or a 10-foot fall, and it doesn't fit the spectrum of injury that pediatricians and neurologists routinely see."