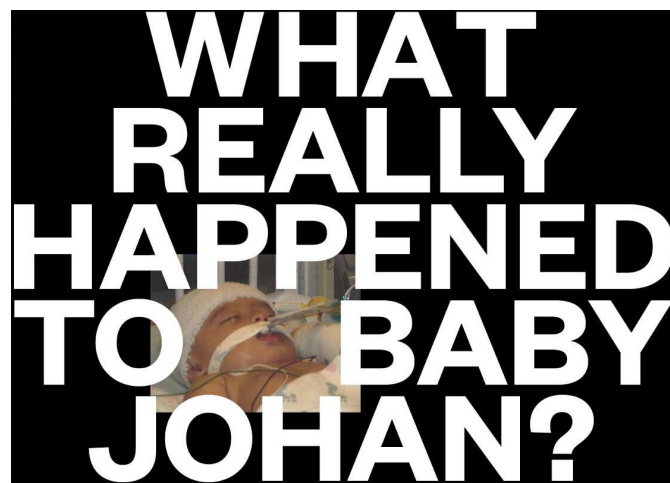


WHAT REALLY HAPPENED TO BABY JOHAN?



The father, mother, police, doctors, and hospital records all tell different stories about that night. Does anyone know the truth?

By Elizabeth Weil

Photographs by Talia Herman



J

Jennie and Kristian Aspelin

have five sons—Lukas, who is six; Johan, who would be four but is dead; and the triplets, Peter, Rudy, and Tommy, who just turned one. Last spring, when the triplets were nearly 113 days

old, Johan's age when he died, Jennie told me about the letter from the donor agency. It arrived around Christmas 2010. At that time, Jennie's husband, Kristian, wasn't living at home, as he couldn't legally share a residence with Lukas, then their only living son. In the letter, the California Transplant Donor Network thanked Jennie and Kristian for Johan's heart, liver, pancreas, and small bowel and told them the ages of the children whose lives those organs had saved. After reading, Jennie called the California Transplant Donor Network. As she recalled, Johan's lungs were requested soon after she'd signed the donation papers. Why was no small child breathing with them? The donor network promised Jennie they'd look into the matter, and several weeks later they gave her an answer: No child had received Johan's lungs because Johan's lungs were unusable.

Jennie set to work trying to collect all of Johan's medical records because, on November 10, 2010, the State of California charged Kristian with penal code section 273a(a), willful cruelty to a child, a complaint amended three days later to include homicide for the death of their son. Kristian always maintained his innocence, and Jennie always believed him. Born in New York to Filipino parents, raised in Saudi Arabia, Jennie described herself as being "from tough stock"—here she was, caring alone for infant triplets, inviting me into her home. Over the course of the prior three and a half years she'd lost a baby, her house, her job, all of her money, and, very nearly, her husband. Her face had transformed. In pictures taken before Johan died and Kristian was charged with his murder, Jennie looks full of élan and glamour—a smart, sexy, worldly Asian beauty, long dark tresses falling over her shoulders, indomitably optimistic look in her eyes. Around her home hang portraits, in various family configurations: Jennie and Kristian; Jennie, Kristian, and Lukas; Jennie, Kristian, Lukas, and Johan; and then just Jennie, Kristian, and Lukas again.



Jennie and the triplets

After learning from the donor network that Johan's lungs had not been transplanted due to "a matter of function," Jennie redoubled her efforts, camping out at San Francisco General and UCSF hospitals, trying to gather every shard of evidence about Johan's final days—all the nurses' notes, every test result. By that point, the Aspelins' lawyer had subpoenaed the medical records, but the files came back incomplete. So Jennie made the rounds, showing up at each department that touched her son—emergency, radiology, anesthesiology, pediatrics, intensive care. "If I had to, I'd play the grieving mother card," she told me. "If they were Filipino, I'd play that up. I'd talk to them in my broken Tagalog." At the end of the day she returned to her house. She collected thousands of pages of records which she kept in

binders. Anything to piece together a story that made sense of her life and Johan's death.



A

A month before the donor letter arrived, on Monday, November 8, 2010, at 5:55 p.m., Kristian picked up Johan and Lukas, then ages three months and two and a half years, from Wonderful World of Learning, a Russian home daycare in San Francisco's

Sunset District. Kristian was born and raised in Sweden and is leading-man material: blond, square-jawed, six-foot-two and over 200 pounds. Daylight savings had just ended, making it too dark at 6 p.m. for Kristian to take the boys to the park. He drove home. Johan was cranky. Jennie, an accountant and human resources manager, had finished her work at the office but was lingering, enjoying a rare moment of baby-free calm, "just looking at Amazon," she says. Before Johan's birth she'd commuted nearly an hour each way to Palo Alto. But shortly before Johan was born, a former boss offered her a job with flexible hours and one quarter the commute. Thrilled and relieved, she agreed to start when Johan was five weeks old. Jennie's income provided the Aspelins stability. Kristian had started a tech company with a friend, but it was far from the glinting, golden dream of billion dollar IPOs; instead it was filled with stress, risk, and weird hours, building supply-chain planning software. On Monday, Tuesday, and Thursday evenings, Kristian picked up Johan and Lukas just before the daycare closed at 6 p.m. Jennie usually arrived home by 6:30 or 7 p.m. Together Jennie and Kristian bathed the boys, put them to bed, then ate dinner. After Jennie went to sleep, Kristian worked late and gave Johan his 2 a.m. bottle.



Kristian and the triplets

On the evening of November 8, back home with the boys, Kristian tried to feed Johan. When the baby refused the bottle, Kristian set Lukas up in the living room with a *Little Einstein* video and gave Johan a bath. Johan remained fussy—sometimes it's hard to catch a break in a family with an infant, a toddler, and two jobs. As Kristian tells the story, while he was in the nursery, dressing Johan after the not-so-calming bath, he heard a crash. Kristian picked up Johan and ran to the kitchen, where he found that Lukas had pulled lots of food out of the refrigerator—yogurt, leftover pizza, strawberries. Gus, the family golden retriever, was licking it up. Kristian squatted down to clean the mess, cradling Johan in one arm, but he slipped on the dog-saliva-wet floor and fell backward. Johan's head hit the terra cotta tiles and he passed out. When the baby opened his eyes, his body remained limp.

Three or four minutes later, at 6:57 p.m., Kristian called 911. 🗣️ English is not Kristian's first language, but he speaks fluently, albeit with a thick accent. Yes, he's still breathing, Kristian told the dispatcher, almost snoring, not making eye contact, body and limbs are limp. The dispatcher instructed Kristian to put a hand under Johan's chin and tilt the baby's head back to keep the airway clear. The dispatcher then remained on the line until 7:02 p.m., when the first EMTs arrived at the house. Reports from the first-responders state that Johan was lying on the master bed. His heart rate was alarmingly low, and his eyes couldn't focus. He had no bruising, no

abrasions, no hematomas, no blood in his mouth, no blood in the ears, which, given Johan's minimal consciousness and the account of how he fell, was strange. Still, when a paramedic flicked Johan's feet, to try to stimulate a response, Johan moved and let out a vigorous cry for the first time since the accident—a huge relief.

Meanwhile, Kristian repeatedly tried to call Jennie, who by this point was on a Muni and not answering her phone. A firefighter helped Lukas put on his shoes and buckled the toddler into his carseat in Kristian's car. An ambulance then drove Johan, code 3—lights and sirens, ignoring traffic laws—to San Francisco General Hospital. Kristian and Lukas, escorted by a firefighter, drove to the West Portal train station to pick up Jennie.

During the ambulance ride across town, Johan's alertness varied from nine to 11 on the Glasgow's Coma Scale. (Fifteen on that scale indicates fully alert; three is deeply comatose. Severe injuries are eight and lower.) The baby's legs stiffened and his arms turned inward, a position known as "decorticate posturing," which often indicates brain damage. Paramedics roused Johan into consciousness for the last time on the walk into the emergency room, at 7:23 p.m. Doctors quickly intubated the baby, shoving a plastic airway past his vocal chords and into his tiny trachea. They also sedated Johan with two paralytic drugs, Versed and rocuronium, after which radiologists performed a CT scan, which revealed a moderate brain bleed and swelling on the left top of Johan's head. Just before 9 p.m. a nurse noticed that Johan's blood oxygen levels were low and retracted the plastic intubation airway by one centimeter. At 10:43 p.m., a nurse observed Johan's chest rising and falling asymmetrically and heard diminished breathing sounds on Johan's left side. She readjusted the tube.

This was every parent's nightmare: Three-month-old baby in the hospital, tubes taped to his face. Around midnight, Kristian returned to the Aspelins' house, to relieve the family friend who'd picked up Lukas earlier that evening and brought him home to sleep. The Aspelins had no sense that Johan's injuries might be fatal, though shortly before midnight Dr. Amy Beck, one of the chief pediatrics residents at San Francisco General, called Child Protective Services. Beck recalls feeling that something about this case just didn't add up. By 2 a.m., a doctor noted that Johan's right pupil was dilated and sluggish and that his left pupil was fixed. A second CT scan, performed at 3 a.m., revealed more brain bleeding, clotting in Johan's superior sagittal sinus (a cavity that drains blood from cerebral veins), and a diffuse brain injury that appeared to be from lack of oxygen.



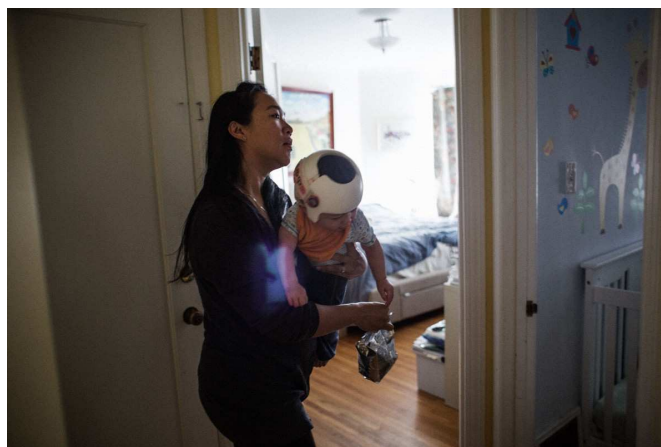
On the morning of November 9, Kristian dropped Lukas at daycare, crying as he explained to the staff why Johan was not there. He then drove to the hospital and Jennie returned home to shower and change.

While she was gone, Dr. Chris

Stewart, a professor of pediatrics and the doctor responsible for San Francisco General's suspected child abuse and neglect reviews, asked to speak to Kristian. Stewart informed Kristian that Johan was doing badly. The baby's Glasgow Coma Score was now seven, his brain continued to swell and bleed, and blood had hemorrhaged in his eyes.

Stewart also serves as director of the Children's Advocacy Center of San Francisco. He asked Kristian to retell the story of the accident, so Kristian did—cranky baby, didn't eat, fussy after bath, crashing sounds, run to kitchen, slip and fall, drop baby on tile floor. Stewart then informed Kristian that this plot sequence was unsatisfactory; it failed to explain Johan's injuries. Kristian said he really couldn't think of anything else, but he tried to be accommodating. When Stewart asked if perhaps Kristian might have shaken the baby, Kristian paused. Then he said, "Yes, there may have been some times. I may have shaken him before."

According to the official "child maltreatment consultation" report Stewart composed several weeks later, he handed Kristian a pillow to demonstrate. (Stewart declined to provide details about the case out of respect for the privacy of the Aspelin family. Many details in this story are taken from official investigation transcripts.) Kristian "showed a fairly gentle side to side motion holding the pillow in front of him with both hands." Stewart asked Kristian if he may have shaken Johan anytime previous to this. "Father said maybe 4 or 5 times," Stewart noted, "maybe before the weekend." To confirm, Stewart asked Kristian again what he meant by shaking. Kristian gently rocked the pillow side to side.



In the context of a brain-injured infant, the word “shake” has totemic meaning. To many parents and caregivers, it evokes a modern-day version of the Salem witch trials, a trumped-up charge, a specious crime. As Deborah Tuerkheimer, a Northwestern University law professor, writes in *Flawed Convictions: Shaken Baby Syndrome and the Inertia of Injustice*, we can’t tolerate just sitting with “the sudden, seeming inexplicable collapse of an infant.” So we created a narrative and a class of villains to meet our moral and emotional needs.

The American Academy of Pediatrics acknowledges that the label itself—“shaken baby syndrome”—has become contentious and distracting, so doctors now use “abusive head trauma.” But the change, in part, is PR. Many pediatricians continue to see a story with a villain. Subdural hematomas and other severe injuries rarely result from short falls with multiple adult witnesses. They are also vanishingly uncommon in places that require careful record-keeping, like hospitals and schools. As a result, children continue showing up at emergency rooms with brain bleeding, brain swelling, and retinal hemorrhaging, and doctors continue to believe that those injuries result from shearing forces caused by adults who lose it on crying babies and shake them too hard.

This mess stems, in some ways, from what’s possible in journalism. As Brown University public policy and political science professor Ross Cheit notes, it makes good copy to argue that a convicted mother or father or babysitter is innocent, whereas it makes libelous copy to insist that a legally innocent caretaker is guilty.

Everybody loves a good wrongful conviction tale.



J

Johan continued to deteriorate.

By noon on November 9, doctors transferred him across town, from San Francisco General to the UCSF Children's Hospital, which has more expert pediatric intensive care. Kristian rode with Johan in the ambulance to the

Parnassus Avenue campus, just up the hill from Golden Gate Park. Once Jennie arrived, too, she and Kristian shared a cigarette—unusual for them—to try to cope with the stress. Kristian, by his own definition, is “a stoic Scandinavian person,” by which he means, “in general, when you feel depressed or sad, you deal with it by yourself. That’s Viking men—you don’t complain.” That afternoon, Alexis Goldner, an inspector from the San Francisco Police Department Juvenile Division, called Stewart, who told her that he found Johan’s case “extremely concerning” as he didn’t see any way the accident Kristian described could have produced the baby’s injuries. Goldner arrived at the hospital with two social workers from the San Francisco Human Services Agency: Mary Alice Means and Eric Morgan, who Jennie described as a “big guy [who] bothered me.”

Goldner, Means, and Morgan invited Kristian, without Jennie, to join them in a conference room. Goldner led the interview. After a few niceties she asked Kristian how he calmed Johan when Johan was fussy. Kristian laid out the standard parenting arsenal—feed, change, bathe. Goldner then handed Kristian a teddy bear and asked him to demonstrate how he shook Johan. Kristian rocked the teddy bear back and forth.

“And then what do you do when you’re frustrated and he keeps crying?” Goldner asked.

Kristian said, “Normally, I just put him down.”

Goldner pivoted back. “How about before you gave the baby a bath? Weren’t you feeling—I think you said you were feeling pretty frustrated....”

In the transcript, the officials sound full of BS, manipulating Kristian’s

paternal love to try to compel him to confess. “I see that you are someone who is trying to be very forthcoming and I see that you love your children,” Means said. “But two little children really close in a row like this is, is a lot of parenting. It’s four times the work as one little child two years old. And, you know, we get that....”

Kristian, in good Viking style, remained impassive and tried to take responsibility, owning that Johan was indeed injured while in his care. But he rejected the insinuation that he abused Johan, causing Goldner to try a new angle. She asked Kristian if he had seen his infant son that day. Kristian said, “Yeah, of course.”

“And how’s he doing today?” Goldner asked.

“He’s not doing well,” Kristian said, explaining Johan looked dazed, “like a vegetable, almost....”

Then, tag-teaming, Means, the social worker, stepped in. “It is really serious, I’m so sorry to tell you. The more information they have, the better chance that they can....”

Kristian, ever composed, told the same story of the accident yet again. Eventually Means dropped all pretense and called Kristian a liar outright. “Whatever happened to him that caused the injury wasn’t that little fall out of your arms. It wasn’t.” Means said. “It’s like saying my baby, my baby has a burn mark right here and it happened because I put my baby down on the bed and the sun was on him.”



That night Kristian slept at a friend's house, at the request of the social workers who had begun their investigation that day. (The social services agency later filed a petition with the court under the California Welfare and Institutions Code, Section 300—intended to protect children from their parent's abuse and neglect—barring him from unsupervised contact with Lukas.) In the morning he drove with Jennie to the hospital, where a doctor told the Aseplins that Johan's condition had grown worse. Kristian felt overwhelmed—"almost like a zombie, you don't feel anything," he says. Meanwhile, Stewart and Goldner spoke again, confirming each other's impression that Kristian's explanation of the accident, in Stewart's words, was "not the correct story."

In a Delivered Services Log from that day, November 10, Means notes that Goldner was "hoping to avoid arrest at this time, as she knew Johan was dying." But that evening, a friend of a friend, a lawyer, arrived at UCSF and noticed a group of police officers entering the hospital. He found Jennie and Kristian crying in a private room on the pediatric floor. He counseled Kristian that if those officers came to arrest him, he should exercise his Miranda rights and remain silent.

Soon after, at 8:45 p.m., Goldner entered the room and charged Kristian with child endangerment, including inflicting "unjustifiable physical pain." Kristian remained silent, gave Jennie his keys, wallet, and wedding ring, and extended his arms to be handcuffed. "Can I say goodbye to my son?"

Kristian asked. In Johan's room, wrists shackled, Kristian started to lean over the crib to kiss Johan for what everybody knew would be the last time. "Sir, step away from the baby," one of the officers said. Means describes the scene in her log as "a heartbreaking visual."

Jennie called after Kristian as he was led away: "You did nothing wrong—you're a good dad! I will get you out as soon as I can! Be strong and careful."



J

Jennie and Kristian met at Matrix, a bar on Fillmore Street, Jennie says, "'02 or '03—I can't remember, my life was wonderful." Jennie was 29 years old and not working, just volunteering at the Asian Art Museum and with the Junior

League, and tutoring math to kids in Hunters Point, one of San Francisco's few rough neighborhoods. She'd grown up privileged—her father worked as an accountant for a large oil concern; she'd gone to boarding school at Kent, in Connecticut—but she was indeed from tough stock. When Jennie's grandmother, who played on a Filipino national-level softball team, was in her 30s, Jennie's grandfather was killed in a political murder. She never remarried. "She just put her needs on the back burner," Jennie told me, and raised her four children on her own.

When he met Jennie, Kristian was 31 years old and just back in the States after a yearlong software consulting gig in London. He'd grown up in Sweden, an athletic kid with a prominent father, a radiologist who served as the vice president of the Karolinska Institute, the medical university responsible for selecting Nobel Prize winners in medicine. In junior high, Kristian spent a summer in Kansas with family friends. He returned to the States for college, earned a master's degree in management information

systems at the University of Arizona, and started working in tech. Jennie described Kristian as “like a male version of me.”



Jennie and Kristian decided that they wanted to have four children even before they married in 2005. Jennie did not get pregnant easily. She took the fertility drug Clomid; they considered adoption. “We didn’t care how we got our children,” Jennie says. “We just wanted to be parents.” In those years theirs was the fantasy San Francisco life: They skied 20 days a year in Tahoe, walked their dog along the beach to the Golden Gate Bridge, shared buckets of golf balls and pitchers of beer at the Mission Bay driving range. IVF worked after a couple of rounds. When Lukas was born, on May 11, 2008, Jennie and Kristian were living in their dream house, the one with the terra cotta tiles on Vicente Street.

Johan was born a little over two years later, on July 23, 2010. Jennie and Kristian found being second-time parents so much less stressful. As Jennie later wrote to the parents of the girl who received Johan’s donated heart, Johan was “just so smiley, mellow and easygoing.”



On November 11, 2010, at 1:30 a.m. the police locked Kristian in a holding cell at the Mission station with, as he recalls, “one drunk, high Latino gay guy screaming and showing his tongue to everyone, saying he wants to F everyone; drug

dealers.” Kristian’s handcuffs felt tight. Later that evening, at San Francisco’s main jail, on Bryant Street, a guard advised Kristian to keep quiet about the charges against him because criminals hate child abusers.

Jennie, on the outside, snapped into practical overdrive—asking her Harvard- and Stanford-educated friends for defense attorney referrals, coordinating rides from the airport for her parents and in-laws, arranging playdates for Lukas, and raising bail, which the judge initially set at \$2 million. After interviewing 14 lawyers, Jennie hired Stuart Hanlon, a prominent San Francisco attorney who defended some members of the Black Panthers and the Symbionese Liberation Army in the ’70s. Jennie liked Hanlon immediately. He decorated his office, she says, with “50 pictures of his two sons and a golden retriever—that was like us.”



Kristian, Jennie, and Lukas

Meanwhile, guards stripped Kristian and placed him solitary confinement. After a few hours, naked, in a bare safety cell, Kristian asked when he might get out. The guard replied, “When you start behaving.” Kristian broke down for the first time since his arrest. He told me he felt, “very raw, like Middle Ages. Maybe a little bit like what the Holocaust people felt—helpless.” Coming from a large, white, blond man, this sounds off-putting and cold, but he meant something vulnerable. “Relatives are dying, and you can’t help it, and you have no idea what is going on in the outside world.”

After Kristian had spent 24 hours in isolation, guards gave him an orange jumpsuit and moved him to the locked psychiatric ward at UCSF, where he had a bed and books, including one called *Indian Givers*, that Kristian’s mind locked onto to keep him sane. Kristian’s new keepers explained that he’d been sent to solitary because San Francisco jail protocol demands that an inmate spend a day in isolation before being admitted to the psych unit. Kristian’s arrest had been featured in *The San Francisco Examiner* and on local TV news. Guards told him that they feared they couldn’t keep Kristian safe in the general population.

The litany of horrors involved when one member of a family is accused of killing another is impossible to process. On November 11, Kristian’s parents flew in from Sweden. His mother, Linda, spent the entire Frankfurt to San Francisco leg crying; Kristian’s father, Peter, the eminent radiologist, kept

wondering if anybody could prove that his son had done anything wrong. The next day, Jennie launched into the ghastly bureaucracy required to donate Johan's organs.

The following day, the 13th, Johan was declared brain-dead. And the State of California issued a four-count felony complaint against Kristian, alleging "assault by force that a reasonable person would know would likely cause great bodily injury resulting in pain and death." No one took time to grieve.



The actual organ harvesting took place on November 15, in the afternoon, in a UCSF operating room. Surgeons aborted retrieving Johan's kidneys due to difficulty of separating his tiny renal arteries from other vessels. By 4:30 p.m. the other organs were carefully packed in ice coolers. Soon after they were in an ambulance speeding to San Francisco International Airport for shipping.

Kristian arrived at his bail hearing and arraignment in shackles, his face pale and blank. A crowd of friends showed up to support him—dozens had written to the judge on his behalf—but he didn't make eye contact with anybody besides his family. The judge ordered Kristian released on bail, which Hanlon had successfully lowered from \$2 million to \$750,000. The guards led Kristian away. Upon his release, the first thing he requested was decent food; in the past seven days he'd lost 15 pounds. That evening he didn't want to be around people, but he also didn't want to be alone, so Jennie invited their closest friends and family to gather at a neighbor's. There she served traditional Swedish princess cake and the lasagna that kind people had dropped at her house. The mood at the gathering bounced between tears and laughter, which Jennie suspects her neighbors thought was crazy because Johan had just died. But as she recalls, "There was so much tension. No one knew what to do or ask."

Trust and security drained out of Jennie and Kristian's lives. Even gestures of generosity aroused doubt. For instance, many people offered to loan money for Kristian's bail. The first to do so were a couple who babysat for Johan the day before the accident. They'd dropped by Aspelins' house to pick up Lukas to go to the playground with their son and offered to bring Johan along so Jennie and Kristian could nap. It was a thoughtful favor—not a big deal. That week they wired \$230,000 to the bail trust set up by Hanlon, Kristian's lawyer. Jennie and Kristian weren't close enough to couple to know they had that kind of capital. Did something happen to Johan on their watch? Was this guilt money?

The night of Kristian's release, he and Jennie slept on air mattresses at

their neighbor's. Lukas slept at home with his grandparents. The family shattered, by Johan's death, was fractured again by the legal system. Kristian was now legally barred from living at their house and spending time unsupervised around Lukas, now his only son.



F

For six months Kristian bounced between friends' places before settling in Redwood City, south of San Francisco, with a friend who'd just gone through a divorce. During the day Kristian tried to work and at night he obsessively researched his own

case, or really, cases. The State of California was charging him with homicide and the Human Services Agency had made Lukas a dependent of the court. Jennie was also being scrutinized. Did she know that Kristian had killed her baby but was protecting her husband?

Twice a week, one hour each time, Kristian was allowed to see Lukas at the Juvenile Division of the Mission police station. The Department of Social Services takes a healthy skepticism toward parents when one is accused of killing a child. The juvenile court assigned Lukas his own attorney, separate from Jennie and Kristian. On some official documents Kristian is referred to as "Father (Alleged)." For each meeting between Kristian and Lukas, Jennie needed to take half a day off work and pull Lukas out of preschool—all so Social Services employees, usually graduate students, could scrutinize her small, sad family. While reading books and playing games with Lukas, Kristian constantly worried that his son would flinch or pull away—or, Kristian says, that he'd be "playing dinosaurs and the daddy dino stomps on the mommy." If that happened the social services staff or Lukas's lawyer might decide to take a more forceful position in the case.



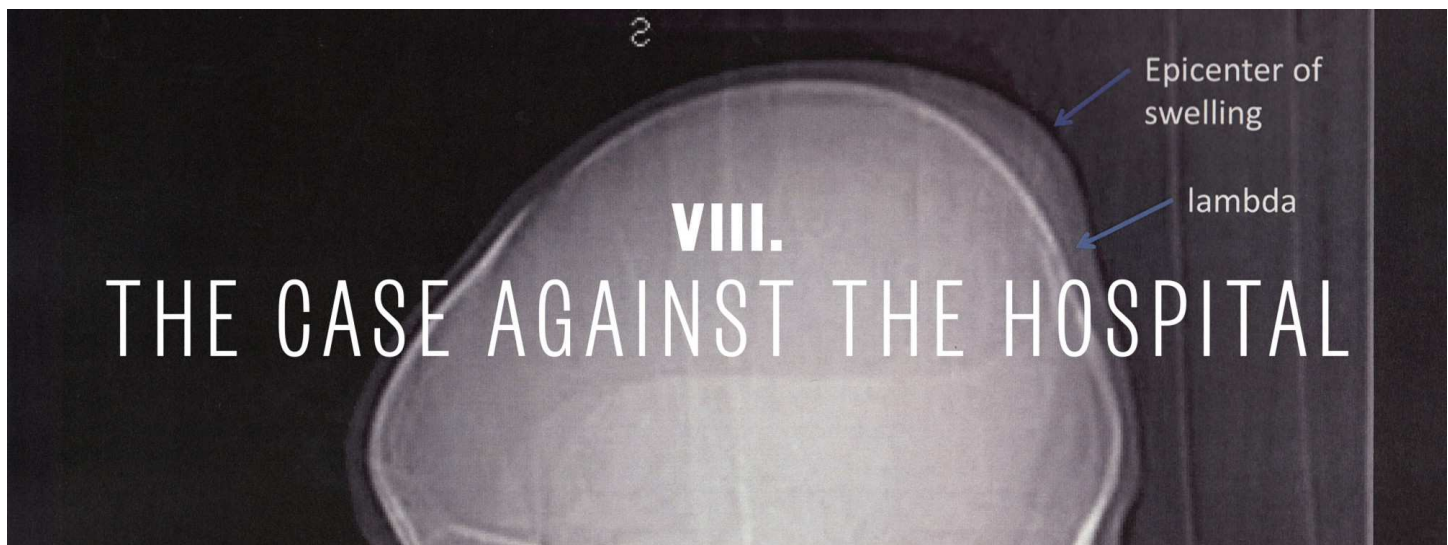
Kristian kept up his stoic demeanor, but he was cracking. Along with reading scientific papers about retinal hemorrhaging and subdural hematomas, and reviewing them on the phone with his father, Kristian spent nights torturing himself by digging up nightmare stories of people wrongly accused of child abuse. Among the worst was the story of the O'Shell family in Henderson, Colorado. The father, Dave, a police officer, was suspected of cruelty to a child after he and his wife brought their three-month-old daughter, Alyssa, to the hospital in 2008, with 11 broken bones. Dave became the prime suspect in the case after Alyssa looked away from him several times during a supervised visit. Expecting to be arrested, and apparently unable to stand the idea of his wife raising his daughter alone, Dave shot his wife at point blank range while she was sleeping in their bed. Then he put two guns in his mouth, pulled both triggers, and killed himself. The same day a doctor noticed that Alyssa could not lift her head—unusual at her age—and that her thumbs turned inward strangely and her legs wouldn't straighten. A genetic test showed that Alyssa had a rare disease, spinal muscular atrophy, responsible for her symptoms. She was adopted by her grandparents and died of spinal muscular atrophy at age seven months.

Meanwhile, police investigator Kevin Jones was gathering material for the homicide case, interviewing first responders, doctors, and daycare employees. Under the force of his questioning, damning details surfaced in

people's minds. Firefighters recalled that when they arrived at the Aspelin home, Lukas was "a handful" and had bad manners. The Lego table was too close to the heating vent—a fire hazard. Kristian was too stoic, "not bothered by the fact that the baby was very sick," or conversely, he was "extremely distressed" and "overwhelmed with two small children." The dog had "some bizarre head injury. It looked like he had been run over because half its head was like smashed and his tongue was hanging out." Kristian and Jennie took too long to show up at ICU at San Francisco General. Jennie returned to work too soon after Johan was born.

As is commonly the case, witnesses offered conflicting accounts of concrete details. Some first responders remembered Kristian telling them that he dropped Johan in the nursery while lifting him from the crib; others, that he dropped Johan in the kitchen while trying to clean up Lukas's mess. Still, individual conviction in one's own ability to assess guilt and character remained strong. "The only thing I know is that those injuries aren't caused by just a fall," Jones said to a rescue captain.

Kristian "didn't seem as if he was, I don't know, he seemed very not all there," said Michael Carion, a 20-year SFFD veteran and a former military medic. "I used the analogy when we got back to the firehouse—we were sitting at the table. I said, 'You know, this guy reminds me of a book I read, *Of Mice and Men*.' And [he] reminded me of Lenny."



A

A couple of months after the California Transplant Donor Network sent the Aspelins their initial thank-you letter, the agency forwarded the family a letter written on February 1, 2011, from the mother of the girl in Tacoma, Washington, who

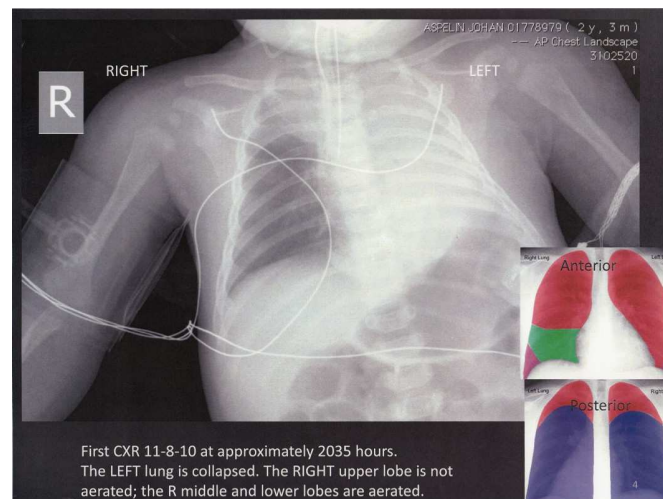
received Johan's heart. The mother expressed her family's tremendous gratitude, and Jennie wrote back the following month, telling her that she had been keeping "the letter with me at all times so I can read it whenever I am sad." Jennie also detailed the child abuse charges pending against Kristian, figuring that the recipient's family might Google them and find out on their own. Shaken baby syndrome "is a very polarizing topic and if you/your family have strong opinions about it, it's best you know about our situation now," Jennie wrote. "I would not be able to handle it if you were to find out about us later and abruptly cut ties...."

The mother took a long time to write back—nine months. By this point Jennie had a much more detailed and infuriating story to tell about her family. Johan's complete medical files revealed two major, plot-scrambling incidents.

First, minutes after Johan was admitted to San Francisco General, doctors botched the intubation, causing a complete collapse of one lung and severely compromising the other.

Second, the hospital botched his sedation, *twice* overdosing Johan with the anesthetic drugs—he received as much as eight times the appropriate dosage of Versed both times he was injected, and he was administered as much as 2.3 times the correct amount of rocuronium each time. This left him essentially paralyzed and unable to communicate distress as air was pumped into his compromised lungs. On the second CT scan, taken at 3 a.m., about seven hours after the first, Johan's brain looked different. Now instead of moderate bleeding and swelling at the top left of his head, he now had a diffuse brain injury, suggesting insufficient oxygen. He also had a blood clot in his superior sagittal sinus.

Doctors at San Francisco General are known for their speed and skill in treating trauma victims, but relatively few of those patients are babies. So perhaps one reason why, the next morning, Dr. Stewart believed that abusive shaking had caused Johan's symptoms is that no one seems to have told him that the hospital had massively fucked up. A chest X-ray taken on November 8 at 8:37 p.m. showed Johan's collapsed lungs, but it's unclear when this information was relayed to the ICU. Nowhere in the police investigation transcripts does it suggest that doctors considered Johan had a brain injury and retinal hemorrhaging due to low blood-oxygen levels and high carbon dioxide pressure, problems that may result from faulty intubation.

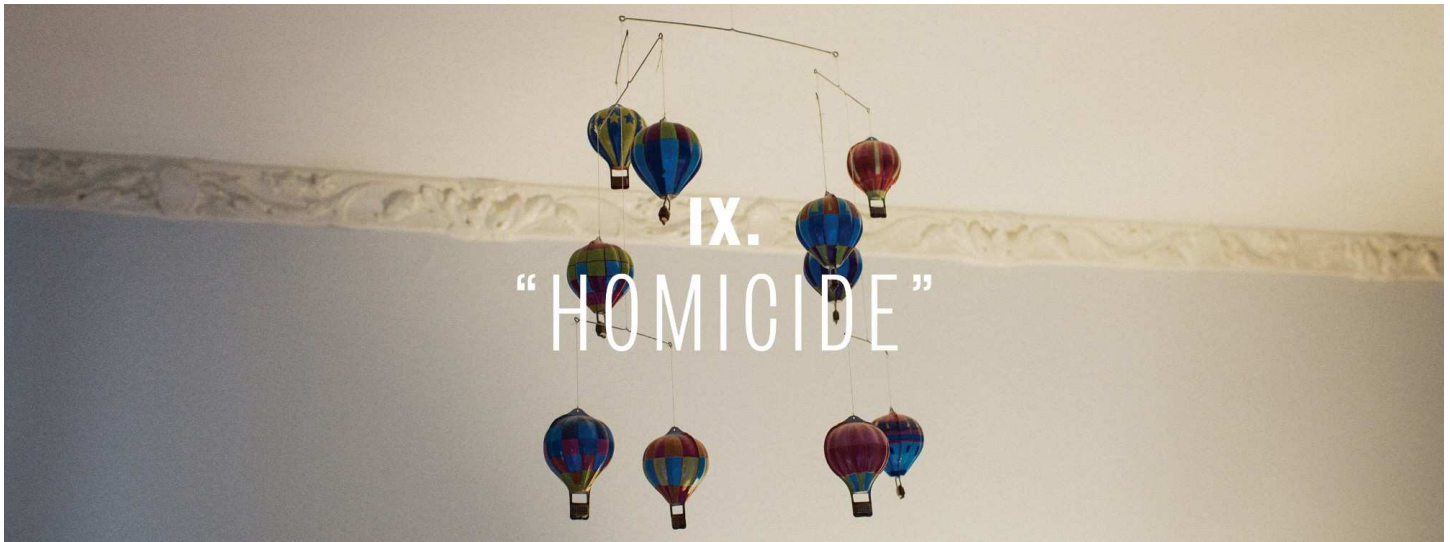


Kristian spent many nights awake, fantasizing about his upcoming trial, as he says, “playing out scenarios in court to call out the fraud.” Maybe he’d show photographs of various pairs of eyes with retinal hemorrhages and ask doctors to identify which hemorrhages resulted from altitude and which from shaken baby—and, of course, they’d fail. Or he’d pose a hypothetical question: *Tell me what would happen if you removed 75 percent of the lung capacity on a baby who has overdosed and also had a blood clot. How would that baby fare?*

Kristian found the juvenile case against him “almost more insulting and harder to deal with, because to be accused of shaken baby—anyone can lose their temper at any point in time.” Kristian not only resented civil servants watching him play with Lukas, he found Social Services’ assessment techniques perverse. For instance, the agency wanted to do an anger management study on Kristian but, as he asked me, who in his position would not be terrifically pissed off? He also resented being given a Rorschach test. “I was looking at pictures, abstract art, and telling them what I was seeing? Do I see a butterfly here? Does that mean I’m aggressive and abusive? It’s insane.” Kristian believed the agency possessed an essentially female worldview, whereas he had an essentially male one. They privileged relationships and feelings; he put stock in science. What’s more, Social Services created a logic that put Kristian in a double bind. For a hearing at the Superior Court of California, on February 16, 2011, the department argued that Kristian’s insistence that he was innocent was meaningless. The charges he faced carried a potential life sentence so “if he did inflict Johan’s injuries, he could never admit it—at least not now.”

Worse, the agency brought up what they considered a “concerning” event in Kristian’s history: He had been arrested for sexual assault in 1998.

According to police documents, on the night in question, in Tucson, Arizona, Kristian shared a cab from a party to his apartment building with a University of Arizona student. She didn’t live in that building but she intended to visit a friend. Instead, by choice, she entered Kristian’s apartment. There she fell asleep and, she told the police, woke up to Kristian having sex with her. Kristian, when questioned, said the sex was consensual; she was awake, she helped take off her own clothes. Both agree that, after sex, the young woman freaked out, ran away, hopped a fence, and asked a stranger for a ride to the police station. The case was dismissed, but it lingered prejudicially in Kristian’s files.



J

Jennie maintained her sanity by watching Lukas sleep—his beautiful brown curls unfurled across the pillow, his body blissfully relaxed. Despite what she called “this shit tornado storm,” he was, miraculously, still a healthy, well-adjusted kid.

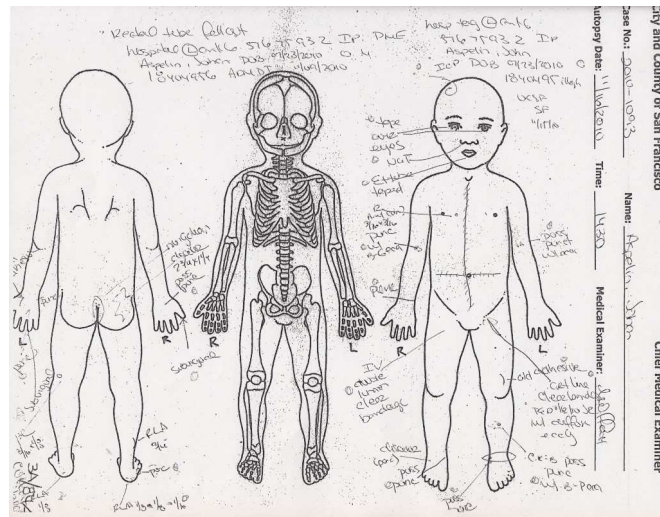
She stayed strong for him and for Johan—or at least for Johan’s memory; Jennie grew up Catholic but wasn’t sure she had faith in God anymore. She held her family together because love and her character demanded it.



Almost a year after Johan died, while running errands, Jennie received an email that made her knees weak: the coroner's report. Already she understood that everybody had a different version of what happened to her baby—doctors believed that Kristian shook him intentionally, Kristian believed that he fell. This version, of course, was particularly important, not just legally but emotionally. For nearly a year Jennie had been waiting for the medical examiner to look at the physical evidence, complete the autopsy, and clear Kristian's name. She drove home to read the report that Hanlon's assistant had scanned. Kristian headed to Hanlon's office.

Medical Examiner/Investigator's Report, Case 2010-1093 is dutiful, bureaucratic, and poignant. Even the stock line drawings of an infant's body—large head, cute butt cheeks—will break your heart. The report begins, "This unfortunate 3 and a half month old baby ..." then goes on to note: "The body is received in a plastic pouch and is identified by an appropriately labeled Medical Examiner's tag on the left ankle." The litany of body parts that the medical examiner describes as unremarkable is an ode to grief, a meticulously detailed list of all the normal perfections, the feet that are so beautiful because they are just like all other feet, the skin that is magical because it is plain and unblemished. "The face is symmetric, intact, and unremarkable with no dysmorphic features." "The mouth and lips are normally positioned and unremarkable." "The nose is symmetric and unremarkable. The nasal septum is intact." "The forearms and upper arms are normally formed, symmetrical and intact. The hands, fingers, fingernails,

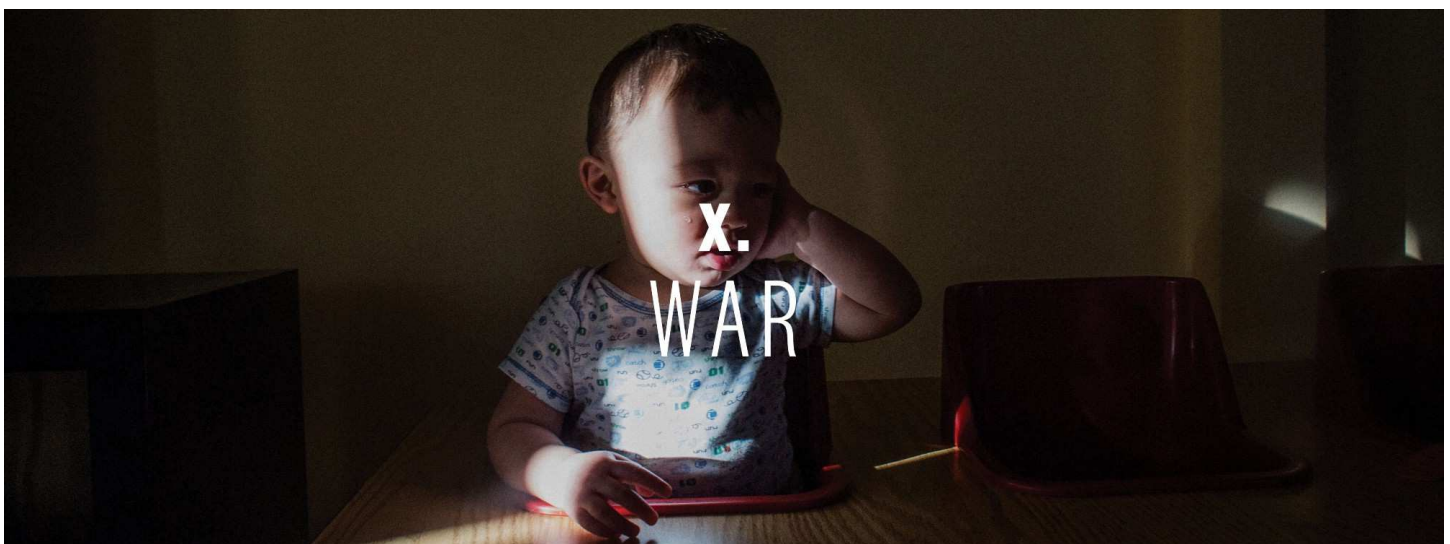
feet, toes and toenails are well-formed, intact, and unremarkable.” “There are no readily apparent scars. There are no readily identifiable tattoos.” “The visceral and parietal pleurae are intact and unremarkable with a smooth glistening serosa.” Glistening.



Then, after the examiner accounts for the “microscopic diagnoses,” she writes:

CAUSE OF DEATH: CLOSED HEAD/NECK INJURY
MANNER: HOMICIDE

“I was crushed,” Jennie told me. She’d been assuming the medical examiner would exonerate her husband. In her one acknowledged moment of doubt, she confronted Kristian one afternoon while walking Gus, their dog. “Is there anything you didn’t tell me about that night? Are you sure?”



S

Stuart Hanlon amassed testimony from seven medical experts demonstrating how Johan's injuries could have happened by accident, the abuse diagnosis was flawed, and medical malpractice contributed to Johan's death. Jennie,

infuriated by the medical examiner's report, told him, "This is war now."

These were the established facts: Johan arrived at the hospital with a head injury. Upon his arrival, doctors screwed up the intubation, resulting in 70 percent loss of lung capacity, a problem not corrected for at least 90 minutes. During that time hospital staff lost control of Johan's ventilation system; as can be seen in hospital notes, Johan's oxygen pressure drops and his carbon dioxide pressure jumps. A lack of oxygen can lead to brain death and excessive carbon dioxide can increase pressure in the brain and cause blown blood vessels.

The endgame was bizarrely anticlimactic. The case had lingered so long that the prosecuting assistant district attorney changed three times, and the third, a former nurse, seemed more receptive to their arguments. Jennie and Kristian had adapted, almost, to their supervised lives. "It did start to feel normal," Jennie says, coordinating schedules with friends about who could watch over their family meals on which nights, as required by the court. "It's just like what I do now—like we have soccer and tennis." Jennie had told Lukas that his father didn't sleep at home because Kristian worked nights, and Lukas was young enough to believe that.



On September 5, 2012, Hanlon sent the assistant district attorney a mountain of discovery materials—medical timelines, annotated slides of Johan's brain. (Meanwhile, the medical examiner apparently lost confidence in the autopsy conclusions, amending the manner of death from "Homicide" to "Undetermined.") On December 4, in the evening, Hanlon emailed the Aspelins to tell them that the following morning a judge would dismiss their case. Jennie and Kristian put on their court suits—by that point, they each always had two in rotation. At the courthouse, on December 5, the Aspelins' case was one of 30 on the docket. "It was like, 'Dismissed, go on with your lives,'" Jennie told me. "After screwing us for two and a half years."

Wrapping up the juvenile case proved more complicated. More than 18 months had passed since social workers opened their investigation, and the

judge refused to grant another continuance, so the Aspelins and their lawyers decided Kristian's best option was to plead out. Kristian acknowledged that he was in possession of the child when he became injured and those injuries may have led to his death. He was registered in California's Child Abuse Central Index.



Kristian finally allowed himself to grieve Johan's death, looking at the small shrine Jennie had created in their bedroom, complete with a Lego angel. He focused on his supply-chain planning software business. He wanted to put his legal problems behind him. But Jennie felt furious and needed absolution. By this point she was pregnant again—with triplets. She'd started trying to conceive just four months after Johan died, a bulwark against the floodgates of loss, but until now she'd been too stressed to produce viable eggs. She still had social workers coming to her house, which she hated. "I was like, 'I'm having more children with this man—he's not beating me! Go away!'"

It took three months, a 300-page motion, a two-day trial, and a cost of \$9,000 to the family to get Kristian's name expunged from the abuse registry. The Aspelins needed to wipe the slate clean.



J

Jennie carried the triplets to 35 weeks. When she gave birth, on January 29, 2014, Peter and Rudy, who are identical, weighed 3 pounds 11 ounces and 5 pounds 14 ounces, respectively. Tommy, their fraternal triplet, weighed 5 pounds 9 ounces. From the

postpartum room at California Pacific Medical Center, Jennie and Kristian watched on TV a news story about their family and the faulty science of shaken baby syndrome.

It had been three years since the first responders had entered the Aspelins' home, noticing their ill-placed Lego table, their disfigured dog, their poorly behaved son. Three years since the on-call pediatric resident felt that something about Kristian's story just didn't add up. Three years since the doctors decided that Johan's brain injuries and bleeding eyes looked like parental malice.

Those stories had decimated Jennie's family, and now that she was out from under them, she was determined to burn into the public record her own version of the nightmare. She called the media—NPR, CBS. She gave footage to a documentary filmmaker. She made endless time for me. Tragedy, for each of us, requires a tolerable narrative. "We look for the sermon in the suicide, for the social or moral lesson in the murder of five," Joan Didion wrote in her essay collection "We Tell Ourselves Stories in Order to Live." "We interpret what we see, select the most workable of the multiple choices."

The versions we choose often remain irreconcilable. In Jennie's, her husband picked up the kids from daycare; he slipped in the kitchen; Johan hit his head, but the baby would have been home from the hospital the next day if doctors hadn't killed him. As a means of enduring the unendurable, Jennie's cinematic tidying up makes sense. She refused to let the arrest of her husband for the death of her son destroy her marriage. So she took a terrible story doctors, police, and social workers told about her husband and turned it into a terrible story about social workers, police, and doctors. But

Kristian tells a different story, a messier one, one that seems to be struggling to contain the range of available facts. In his, he's legally innocent but not blameless. He had an accident in which he gravely wounded his son; Johan, in his vulnerable state, was too weak to survive the hospital's mistakes, and he died. Kristian is careful not to misrepresent this. Every day he wears a Donate Life bracelet, a reminder of Johan and the girl who's growing up with his son's heart.



*This story was written by **Elizabeth Weil**. It was edited by **Mark Lotto**, fact-checked by **Timothy Lesle**, and copy-edited by **Lawrence Levi**. Photographs by **Talia Herman** for Matter.*

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