***PA CORNER: June 25, 2012***

When mercy seasons justice

Levi Haggard was only two-months old when he died while in the care of his babysitter. He suffocated while sleeping on his stomach in her queen-size bed.

Neither Levi’s parents nor I believe the actions of babysitter, Cheri Kohenskey, were malicious, the results remain the same. Levi died. I cannot speculate as to what happened in Kohenskey’s home that day that led to the accidental suffocation of two-month old Levi. What I do know is that she was running an unlicensed daycare. Had she been licensed she would have been limited to the number of children she could care for at a given time. Her lack of licensing allowed her to keep 10 children on that fateful day in November, six under the age of 2, including two infants under 4-months old.

Arguably, her choices that day killed a child and shattered dreams.

Kohenskey was charged by our office with involuntary manslaughter, a class D felony, in December. Recently, she pled guilty to first-degree child endangerment, a class C felony, and, as part of a plea agreement, was given a four-year prison sentence. The execution of that sentence was suspended provided that Kohenskey complete a number of requirements during her five years of probation.

If that sounds like she isn’t paying a price for her crime, I say, consider the options.

Unfortunately, I can’t bring Levi back. As the prosecuting attorney, I need to find the most appropriate sentence for the crime and measure what best serves society. Sometimes, in cases like these, it isn’t easy. I have the victims on one hand, grieving parents, family…and Levi. On the other hand, I have someone who made a terrible choice through neglect but not intentional malice.

What is the best result for Lincoln County? As it is, Kohenskey cannot babysit again. She can’t be around children under 3 without being supervised. Sending Kohenskey to prison for four years isn’t going to make Kohenskey a better caregiver or parent nor is it going to reduce any risk to our community. However, taking parenting classes and participating in child abuse awareness month each year will be a constant reminder and her experience may help others comprehend that our choices have outcomes – sometimes not the ones we desire.

There are many cases like this one. While my gut reaction is to extract a pound of flesh, it isn’t necessarily fitting to the crime. Ultimately, it may destroy more lives in its wake. These are the cases that keep me awake at night. What is fair and just?

The reality is that we live in the gray area. Despite the plethora of laws, evidence, judges and sentencing guidelines, there are few cases that are simply black and white. There is that vast array of gray between opposing ends of the spectrum that make it important to ask, at the end of the day, what is the right punishment for the crime and how will that best serve the defendant, the victim and the community?

The answer isn’t always popular. It may not capture the public’s sentiment. It isn’t always politically sensible. In the end, I want both families to heal. This can be achieved by seeking justice for Levi, tempered by mercy.