


A COACH'S TOUGH LOVE | FURNITURE WITH A MISSION

Chicago Tribune Magazine

JUNE 12, 2003 • SECTION 19



Is it time to reexamine shaken baby syndrome?

Some experts challenge the idea that an infant can be shaken to death. Does their claim have merit? Or are they giving child abusers an out?

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Shaken baby syndrome: a search for truth

For two decades, people like Pamela Jacobazzi have been going to prison for killing infants like Matthew Czapski. But new findings say many of them shouldn't be there.

By Lee Scheier. Scheier writes often for the Magazine on medicine and the law

June 12, 2005

Pamela Jacobazzi once ran a day care program out of her home in suburban Bartlett. Today she is in the sixth year of a 32-year prison sentence, convicted of murdering a child in her care by shaking him to death—a form of homicide that has come to be known as shaken baby syndrome.

She shares the fate of thousands of Americans who have been sent to prison over the past two decades on shaken baby charges. While some are clearly guilty of child abuse, many may be serving time for a crime they did not commit, say a growing number of physicians, pathologists and brain-injury specialists.

In fact, there may have been no crime at all, they argue, challenging the assumptions upon which the diagnosis is based. Although one might intuitively think that violently shaking an infant would cause brain damage, these critics contend that scientific analysis fails to support shaken baby syndrome and that other causes, such as an accidental fall or a pre-existing medical condition, could be responsible.

The questions raise the possibility that virtually anyone could face years behind bars if, while in his or her care, a small child were to experience a devastating accident or the onset of an undetected illness whose symptoms resemble shaken baby syndrome's.

In May of 1999, a jury found Jacobazzi guilty of first-degree murder in the death of 10-month-old Matthew Czapski. The jurors determined that on Aug. 11, 1994, Jacobazzi violently shook Matthew and caused injuries that led to his death 16 months later.

Jacobazzi, 50, resolutely insists that she never harmed the child. "I was wrongfully convicted," she maintained firmly in a recent interview at the Lincoln Correctional Center near Springfield, the medium-security state prison where she is housed. Prosecutors say she repeatedly turned down plea-bargain offers during the legal proceedings against her.

The term "shaken baby syndrome" burst into the headlines in 1997 in the case of Louise Woodward, the British nanny accused of fatally shaking 9-month-old Matthew Eappen in Newton, Mass. Though the jury found Woodward guilty of second-degree murder, the judge reduced the verdict to involuntary manslaughter and sentenced her to time served.

The judge's action was a rare public repudiation of the shaken baby syndrome concept, which has become so widely accepted as a justification for murder charges that to question it is seen by many as tantamount to advocating child abuse.

Recently, however, efforts to discredit SBS as a legal theory have multiplied, sparking a passionate and often hostile debate among medical and legal experts.

The American Academy of Pediatrics calls shaken baby syndrome "a serious and clearly definable form of child abuse."

In a report prepared by its Committee on Child Abuse and Neglect and printed in the July 2001 issue of the journal *Pediatrics*, the academy said that when a child is violently shaken, the motion causes the blood vessels around the brain to stretch and rupture. While there may be no external signs of trauma, there is a telltale "constellation" of internal injuries: bleeding between the membranes covering the brain, known as a subdural hematoma; hemorrhaging in the retina of the eye; and a swelling of brain tissues.

Noting that these conditions were present in Matthew Czapski, the DuPage County State's Attorney's Office strongly opposes a motion by Jacobazzi's lawyers for a new trial.

"The medical evidence was overwhelming," explains Jane Radostitis, the lead prosecutor in the case. "The mother brought a healthy baby to the day care center and six hours later picked up a child who was in a coma." Radostitis says that the swelling in Matthew's brain "was so severe that the skull began to shift."

After two surgeries at Lutheran General Hospital, the boy was transferred to a nursing facility where he lay in a vegetative state for more than a year before he died.

Matthew's mother, Cindy Czapski, contends that when she arrived at Jacobazzi's home to pick up her son that day, he was in a deep sleep. "I put him in the car seat and drove to his father's house," she recalled in a recent interview. "When I got there it was apparent that something was wrong, and we went to the emergency room right away."

Czapski says a physician at Lutheran General Hospital told her the injuries were so severe they could only have been caused by a three-story fall, impact with the windshield of a car traveling at 30 m.p.h.-or by shaking.

"He [Matthew] had fallen three days earlier on the kitchen floor of the day care center and had a bump on his head," says Czapski. "There's no way he could have gotten those injuries from that fall. Jacobazzi is not innocent. Even though she may not have planned to kill him, she obviously lost control and shook him to death."

At Jacobazzi's trial, however, the defense's medical expert, Dr. Jan Leestma, a neuropathologist at Children's Memorial Hospital, testified that Matthew had suffered an earlier trauma that may have caused his coma. The injury could have occurred in the kitchen fall-or even as many as 12 days before the alleged shaking incident, Leestma told the court-timing that Jacobazzi's lawyers consider critical since Matthew did not enter her care until Aug. 1.

Radostitis replies that experts for the prosecution denied this could happen. "That a couple of experts say an old injury just spontaneously combusted while the baby was in the company of the baby sitter is ridiculous," she asserts.

In its effort to reopen the case, the defense contends that Leestma was never given the opportunity before Jacobazzi's trial to review Matthew's pediatric records, which show he suffered from a blood disorder that may have predisposed him to such injuries.

"When these records were later examined I discovered that the baby had sickle-cell trait, an inherited condition that could cause or contribute to the bleeding over the brain that the baby had," Leestma explained in an interview. "This condition and its significance were not presented at the trial, thus the jury did not have an opportunity to weigh its importance in coming to its verdict."

Sickle-cell trait is a gene abnormality that affects the red blood cells and is most common in African-Americans (Matthew's mother is Caucasian; his father African-American). When a child inherits the trait-the abnormal gene-from both parents it results in sickle-cell anemia, a life-threatening disease. But a single copy of the gene from one parent rarely causes illness.

Yet a small percentage of people with a lone abnormal gene will exhibit symptoms of full-blown sickle-cell anemia, says Leestma, and Matthew may have been among them. Those affected, he says, can suffer clotting in the veins that feed the membranes covering the brain. "This could cause these vessels to burst and put blood into the subdural space."

That Matthew displayed aspects of sickle-cell disease was demonstrated, the defense argues, by the recurrent bouts of anemia and fever he suffered in May and June of 1994. These bouts were part of the pediatric record that was unavailable during the trial, Jacobazzi's lawyers contend.

Leestma says the kitchen fall could well be linked to Matthew's fatal injuries. "It is certainly possible that what would be an inconsequential fall for a healthy child could give rise to symptoms that mimic those of the shaken baby diagnosis in a child like Matthew, with preexisting blood disorders." He also notes that it might have taken several days for the bleeding to affect the child's function. "It is the nature of a subdural to be cryptic or occult until it reaches a critical size that produces symptoms," he says. "Brain swelling and retinal hemorrhages are secondary symptoms that occur and evolve when symptoms appear."

Radostitis counters that prosecution experts told her "sickle cell trait was insignificant and had nothing to do with the cause or manner of death." She further argues that Leestma knew about the sickle-cell connection at the original trial and dismissed it as a factor-a charge Leestma

denies.

Leestma is one of the experts challenging the rationale behind the shaken baby syndrome diagnosis. He calls SBS an unproven theory that draws power from the emotionality surrounding the universally condemned crime of child abuse, and whose advocates have embraced the diagnosis with a fervor that makes it difficult to question the status quo.

"The vilification of those who challenge SBS is similar to the plight of Galileo, who was thrown in jail for challenging the Church's doctrine that the sun revolved around the Earth," says Leestma, whose own intensity is evident as he speaks. "His ideas were a threat to an entrenched group."

Dr. Deena Weinstein, a sociology professor at De Paul University, agrees, saying the SBS concept has been endorsed so fully because infants are the last bastion of purity and innocence in our society. "Harming little children is one of the last universal taboos," she says. "Because they can't defend themselves verbally or physically, the state overprotects them."

In so doing, she says, the system often jumps to the conclusion that it was the caregiver who caused the harm. "It reflects the need to put a finger on a culprit, even if that culprit is preposterous," says Weinstein.

But there remains a strong consensus among physicians and prosecutors that the shaken-baby diagnosis is based on good science.

Dr. Robert Block, professor of pediatrics at the University of Oklahoma and chair of the American Academy of Pediatrics Committee on Child Abuse and Neglect, says that 30 years of clinical observations, solid scientific studies and thousands of confessions by perpetrators confirm the credibility of the SBS diagnosis. He characterizes critics of the concept as cloistered laboratory researchers who do not see things the way practicing physicians do.

"A pediatrician," says Block, "will see thousands of babies over a career, at various stages of wellness and illness." Noting that it is impossible, for ethical reasons, to perform studies of how mistreatment affects babies, Block argues that "you [therefore] must have clinical perspectives. There's not a practicing clinician among those who are opposed to the SBS diagnosis."

Brian Holmgren, the assistant district attorney in Davidson County, Tenn., has prosecuted 40 SBS cases and has consulted on more than 200 others. "The controversy is something created by litigation, not within the medical community," says Holmgren. "The engine is driven by a handful of people who have a strong agenda. Within the medical field there is little controversy."

Dr. Betty Spivack, an assistant professor of pathology at the University of Louisville who strongly supports the SBS concept, takes hot issue with experts who have challenged it. "Just because somebody with good credentials says it, doesn't make it so," she declares.

One reason shaken baby syndrome is so contentious is that the act it allegedly defines occurs without witnesses, for the most part, and leaves little in the way of evidence. It is difficult to

ascertain who may have done it or whether it even occurred. Motive can be similarly murky. The impulse to shake a baby can result from malice and extreme cruelty or simply impatience or negligence. It can also be the innocent act of a loving but stressed-out caregiver.

The latter situation was alluded to by Dr. A Norman Guthkelch, a British professor of neurosurgery who in 1971 was the first to propose the existence of such a syndrome.

Guthkelch published a groundbreaking paper that year associating shaking with a characteristic set of injuries. Titled "Infantile Subdural Haematoma and its Relationship to Whiplash Injuries," it ran in the British Medical Journal.

Guthkelch theorized that caregivers were using shaking as a form of punishment in preference to hitting or slapping. He wrote: "One has the impression that a good shaking is felt, at least by British parents, to be socially more acceptable and physically less dangerous than a blow on the head or elsewhere."

The paper was followed in 1972 by publication of "On the Theory and Practice of Shaking Infants," in the American Journal of Diseases of Children. Its author, Dr. John Caffey, a Pennsylvania radiologist, had long been interested in how often he encountered babies with both bone fractures and subdural hematomas.

Both studies examined case histories of infants with no marks on them yet bleeding in the brain and eyes and, in some instances, skeletal fractures. Like Guthkelch, Caffey theorized that the cause of the injuries was violent shaking.

Caffey did, however, acknowledge that his analysis of baby-shaking as lethal behavior had its limitations. "The evidence on which our concepts of the pathogenicity of infant-shaking is based does not lend itself to satisfactory statistical analysis," he wrote. "Universal samples of a total population of shaken infants have not been obtained nor have adequate matching controls of unshaken infants from the same socioeconomic milieu."

Yet he entertained little doubt about the validity of the syndrome, writing, "These 27 examples of recorded pathogenic shaking represent only an infinitesimal portion of the uncounted thousands of moderate, unadmitted, undetected and unrecorded whiplash shakings which probably occur every day in the United States."

For nearly three decades, this view has gone virtually unchallenged in the medical and prosecutorial community.

But to Dr. John Plunkett, a Minnesota pathologist, and others, the view invites some central questions, which Plunkett raised in a 1998 letter to the American Journal of Forensic Medicine and Pathology shortly after the Woodward case.

Can shaking a baby, he asked, no matter how roughly, produce brain and retinal injuries in the absence of some kind of impact? If there is impact, can it be determined whether the impact was the result of child abuse or simply an accidental fall-off a couch, for example? Can injuries occur

and be masked for some days by a "lucid interval" before they ultimately produce symptoms? If they can, how can a court be sure that the person caring for the child at the moment the symptoms appeared-"the last person standing when the music stopped"-is the guilty party? Couldn't the injuries have been inflicted days before by someone else?

"At least some children with head injury . . . have a documented lucid interval prior to the development of symptoms," he wrote, "including those who subsequently die."

To Plunkett, the course of action was clear: "We need to differentiate between what we scientifically know to be true, and what we think or hope to be true."

The U.S. Justice Department keeps no statistics on the incidence of SBS, but the National Center for Shaken Baby Syndrome, using data from U.S. children's hospitals, estimates there are between 1,200 and 1,400 cases of the syndrome per year in this country, of which 25 percent are fatal. Virtually all such cases are followed by legal proceedings, most of them in court. Both Holmgren and Toni Blake, a defense attorney considered one of the top legal experts on SBS in the country, estimate that the defense wins only 15 percent of the cases.

Thus, over the 20 years that such cases have been prosecuted, roughly 1,000-1,200 defendants are judged guilty each year and face punishments ranging from the death penalty and life imprisonment to lesser sanctions, such as losing custody of their children. Blake says most who are convicted of SBS fatalities serve life sentences, but three people are now on Death Row.

There are signs that the pace of convictions may be slowing. Since Jacobazzi's trial, three others accused of SBS in DuPage County have been acquitted. Whether that will affect Jacobazzi's chances of winning a new trial is hard to assess; the circumstances of the case are by no means clear-cut.

Jacobazzi says that when Matthew was first brought to her home on Aug. 1, 1994, his mother assured her the boy could crawl, walk and stand by himself. But Jacobazzi disputes this, noting that he could not crawl, but pulled himself along with his arms. Nor could he stand, or even sit particularly well. "He wasn't a normal 10-month-old," she says.

In the next 11 days, Matthew was in her home a total of five days, missing other days due to illness. On Aug. 11, Jacobazzi says, Matthew arrived warm, clammy and drooling and was described by his mother as "clingy." Jacobazzi says she told Czapski that she thought the boy had a fever, but the mother replied he was either teething or had a cold.

According to Jacobazzi, Matthew seemed normal enough throughout the day, eating and playing as usual. She says Czapski picked him up that night and left without saying anything. A few days later, she says, she received a phone call from Matthew's grandmother, who said Matthew wouldn't be coming back and that she should call her insurance company. Shortly thereafter, the police arrived. She was initially indicted on charges of aggravated assault and battery, and then first-degree murder when Matthew died.

"I couldn't believe what was going on," Jacobazzi recalls. "I was shocked and mainly felt

disbelief that this was happening. I assumed that the nightmare would pass because I didn't do what they were accusing me of, and I believed there was justice in America. It was so crazy. I mean it never happened. I never shook anybody."

A diminutive woman with a shy manner, she hardly looks the part of the brutal murderer the state claimed she was—prosecutors originally sought a prison term of 60 years. She passes her days quietly in the correctional center near Springfield, where she shares sleeping quarters with 20 other women in bunk beds. "I keep to myself," she says. "You have acquaintances in prison but not friends. It's very hard being here. There's no place to run. You have to cope."

Even if she wins a new trial and is freed, she could never return to her former life, she says. She is no longer engaged to the father of her son, Stephen, and she is broke. "I had to take out two mortgages on my home to cover the costs of the trial," she says. "I lost all my money to lawyers. I do not have a penny to my name."

If shaking isn't the cause of these tragic deaths, then what is? The answer, according to many who have studied the issue, is that a strong impact must be involved.

One of the most influential of these studies was conducted by Dr. Ann-Christine Duhaime at the University of Pennsylvania in 1987. Her research used three models of a month-old infant. Each was subjected to violent repetitive shaking and then shaking followed by impact. The accelerations of the model's head were measured by an implanted accelerometer.

The average acceleration for shaking alone was a little over 9 Gs, or nine times the force of gravity. The average for shaking and impact together was 428 Gs, nearly 50 times greater. Concluding that the 9 G accelerations from pure shaking didn't come close to the threshold for brain injury, Duhaime and her colleagues wrote: "We believe that shaking alone does not produce the shaken baby syndrome."

Jacobazzi's attorneys make much of the fact that she is a small woman who stands 5 feet tall and weighs about 115 pounds, while Matthew was a 25-pound baby.

"This was a big kid," says Richard Butera, who represented Jacobazzi at her original trial. "It's hard to believe that Pam could shake a 25-pound baby three or four times a second for, say, nine seconds in such a violent manner."

Her current attorney, Anthony Sasson, says, "I ask anyone to try shaking a 25-pound bag of rice, potatoes or cat litter. It will become clear that it's impossible to generate even one shake. It's impossible to do what the state says Pam did."

The feeling among critics of the SBS doctrine is that in shaken-baby cases, an impact must have contributed to the injuries. Impact, of course, can imply that someone purposefully or negligently banged the child's head against an object. But an impact can also come from a fall. Many indicted under the SBS doctrine claim that the child accidentally fell—from a crib, a counter, or the like.

SBS proponents contend that the forces producing the syndrome's characteristic injuries are equivalent to a two-story fall or the impact of an auto crash at 30 m.p.h. But critics say short falls from a height of only three feet can produce the same result.

In a 2001 paper in the American Journal of Forensic Medicine and Pathology, Plunkett wrote of a 23-month-old girl who was playing on a plastic gym set. She climbed to the top of the set's ladder, then lost her balance and fell headfirst 28 inches onto a 1/2-inch-thick piece of carpet covering the concrete floor. She died 36 hours later.

The girl's parents were accused of shaking her by investigators, who insisted that the incident could not have happened as they described it. Fortunately for the parents, the child's grandmother had videotaped the girl's playtime and the fatal fall was on the tape.

"If it hadn't been for [that], one of the parents would have been charged," says Plunkett.

In 2003, Dr. Michael Prange, an expert in injury biomechanics at Penn, reported results of an experiment that measured the acceleration of the head in free falls from 1, 3 and 5 feet onto various surfaces. Using a more sophisticated model than Duhaime's, he compared these accelerations with those sustained during shaking as well as inflicted impact. His data, published in the Journal of Neurosurgery, showed that peak accelerations for a 3-foot fall onto concrete were 40 times greater than for shaking.

That undermines the contention that short falls cannot cause brain injury or death, says Dr. Kirk Thibault, an injury specialist whose firm, Biomechanics, Inc., does research for the auto industry, the U.S. military and the National Football League. Prange's data, he argues, validate Duhaime's study and contradict those who say shaking can cause hematomas, hemorrhages and death but that short falls can't.

"It belies logic," he says, "that the much lower accelerations caused by shaking would cause brain damage, while the much higher accelerations caused by short falls wouldn't."

One study that conflicts with those results looked at a total of 690 cases of 3- to 4-foot falls that took place in the children's wards of hospitals. "There were no serious injuries to all 690 children," says Dr. David Chadwick, former medical director of San Diego Children's Hospital. "That gives a pretty accurate probability of risk."

Not necessarily, says Dr. Faris Bandak, former director of head injury research at the National Highway Traffic Safety Administration. The kind of studies cited by Chadwick fail to specify whether the head takes the brunt of the impact, he asserts. Most children who fall protect themselves by sticking their arms out or falling on parts of the body other than the head. Very small children can't do this.

What should be evaluated, Bandak contends, are cases in which infants fall directly onto their heads from a known height to a known surface. He says it is natural for infants who fall off household furniture or from a caretaker's arms to hit their heads first, because their heads are disproportionately heavy.

Another issue, Bandak says, is that SBS cases are not usually associated with spinal injuries. An infant's neck is so fragile, he says, that forceful shaking would inflict cervical-spine or spinal-cord injuries well before any internal injuries to the brain.

"The infant neck is the weakest link in the shaking chain leaving the infant spinal cord vulnerable," he says. "This is why everyone who handles an infant has been taught to support the head to protect it from potential injury."

Yet cervical-spine injury is a rare clinical finding in SBS cases, Bandak wrote in a forthcoming study, "Shaken Baby Syndrome: A Biomechanics Analysis of Injury Mechanisms" to be published in the journal *Forensic Science International*. He believes a diagnosis of SBS in the absence of neck injury is suspect and that other causes of the head injuries must be considered.

"Forceful shaking can severely injure or kill an infant," says Bandak. "[But] this is because the cervical spine would be severely injured and not because subdural hematomas would be caused by high head rotational accelerations."

A physician who had long resisted reading these and other biomechanical studies is Dr. George Nichols, the former chief medical examiner for the state of Kentucky. Nichols was a fervent supporter of the SBS diagnosis for many years until changing sides recently.

"I finally decided to read the injury biomechanics studies that Plunkett kept referencing in his papers," Nichols explains. "It was a cataclysmic event. I feel that the scientific evidence from these biomechanical studies is irrefutable. I do not believe anymore that shaking causes the damage that they say."

Nichols says that he attended a conference on SBS for the National Association of Medical Examiners 15 years ago on Hilton Head Island. "That's where we all got dogmatized," he says. "I was so far into it after that conference."

Many SBS critics say alternative medical explanations are seldom considered by investigators when a baby shows the classic signs of SBS.

Tracy Emblem, a defense attorney who handles SBS cases, maintains that child-protection personnel are often too quick to bring SBS charges as soon as they see brain bleeds and eye hemorrhages, and they fail to probe more deeply for alternative diagnoses.

But Dr. Carole Jenny, professor of pediatrics at Brown University, disputes Emblem's assertion. "We do complete screenings," she says. "Nobody says that 'if this kid has subdurals it must be abuse.' The public doesn't see all those with subdurals and retinal hemorrhages that don't get reported to the police."

Dr. Emalee Flaherty, medical director of the protective-service and child-abuse teams at Children's Memorial Hospital in Chicago, says she feels an enormous responsibility to make the right decision. "We approach it so carefully," she asserts. "There is no room for error."

She notes that examining physicians are required to report child abuse if there is reasonable cause to suspect it. "If a child comes in with subdural hematomas with no explanation . . . the child-protection team should be called right away. At the first point that we're suspicious of abuse we report it to DCFS and the police are involved. Later we will continue with further studies."

Flaherty says that ultimately most cases are not prosecuted because of insufficient evidence.

But many consider the case of Dr. Adriana Shilling, a veterinarian from Albion, Ill., instructive. She says that when her son, Alex, stopped breathing while being cared for by her baby-sitter in November 2003, he was eventually flown to Children's Hospital in St. Louis for treatment.

"I explained that Alex had suffered birth trauma as a result of being delivered by vacuum extraction and was susceptible to subdural hematomas," says Shilling. "The people from child protection, however, said in no uncertain terms that I had to accept the fact that this baby was violently shaken by my baby-sitter and that there was no other explanation. They wanted me to work with them to charge my baby-sitter. When I wouldn't, they recommended that my children be taken away from me."

The case has been closed and no charges have been pressed. But Shilling is not off the hook. Based on what they had been told by the medical experts, says Shilling, DCFS had no other choice but to conclude that she, her husband or the baby-sitter were the perpetrators and that is stated in the official record.

"To have a severely ill child is enough hardship without the additional suffering inflicted by the child-protection team upon us," says Shilling.

Concerns about the validity of the SBS diagnosis have caught the attention of various innocence projects around the country-teams of lawyers and students that investigate possible miscarriages of justice.

Justin Brooks, a University of Wisconsin Law School professor who heads the Wisconsin Innocence Project, and Keith Findley, professor of law at California Western School of Law and co-director of the California Innocence Project, have both taken on SBS cases.

"We believe there is new science that can show whether a person convicted in an SBS case is guilty or innocent, and we believe that a court would accept it," says Findley. "We feel that physicians are making scientific conclusions in these cases that are outside their area of expertise."

Brooks says that SBS cases are different from other crimes. "In the O.J. case or the Scott Peterson case everybody agrees that a murder was committed. But in an SBS case, the question is was there a murder at all? The entire case is based on medical testimony. The jurors are unable to sort it all out."

Dr. Thomas Bohan, a forensic physicist and attorney and vice president of the American

Academy of Forensic Sciences, believes it is time for an independent panel to resolve the debate. He is trying to get the National Academy of Sciences to evaluate the arguments of medical and legal experts and come to some conclusions.

Such a move is already underway in Britain, where Lord Goldsmith, the attorney general, has ordered a review of 89 SBS cases.

Thibault agrees with Bohan's efforts. "We must fund an objective multidisciplinary team that can analyze all the issues from start to finish," he says. "We need a team that can get in the middle of all the screaming people and look at this objectively."

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VOICE OF THE PEOPLE (LETTER)

Proving abuse

Sue Luttner

June 18, 2005

Palo Alto, Calif. -- Kudos for writer Lee Scheier's thoughtful treatment of a tragic dilemma ("Shaken baby syndrome: a search for truth; For two decades, people like Pamela Jacobazzi have been going to prison for killing infants like Matthew Czapski; But new findings say many of them shouldn't be there," Magazine, June 12). As a veteran of training on both sides of the debate, I can tell you that Dr. George Nichols, the former chief medical examiner for the state of Kentucky, nails the atmosphere of an SBS conference with the line, "That's where we all got dogmatized."

I suspect it's the pressures of the courtroom that have driven the experts into such zealous battle.

Alas infant abuse is a reality, and the triad of cranial symptoms that defines SBS does often represent an assault. Still my files bulge with unlikely convictions and the occasional exoneration: Tammy Fourman and Daniel Crow from Ohio, for example, found painful vindication in the 2003 death of their infant son from a rare genetic disease known as Menkes Syndrome. Blood samples from the son they stood accused of shaking in 1999 revealed that he had also suffered from Menkes, which causes bleeding in the brain.

It's time for the pendulum to swing back, for logic to intervene between suspicion of abuse and proof of abuse. Thank you for doing your part.

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Protecting children from abuse

Emalee G. Flaherty, MD, Medical director Protective Service Team, Children's Memorial Hospital, Assistant professor of Pediatrics, Northwestern University Feinberg School of Medicine

Published June 27, 2005

Chicago -- This is regarding "Shaken baby syndrome: a search for truth; For two decades, people like Pamela Jacobazzi have been going to prison for killing infants like Matthew Czapski; But new findings say many of them shouldn't be there" (Magazine, June 12).

The article does not provide a balanced report of the state of current knowledge and research about abusive head trauma, which is known in the lay press as shaken baby syndrome, or SBS. Abusive head trauma is a well-documented form of child abuse, accounting for two-thirds of infant homicides. Although all children with abusive head trauma are not identified, it occurs at a rate of 25--30 per 100,000 young children per year. Sadly many of the children who are abused in this manner will suffer permanent medical problems and some die as a result of their abuse.

The reporter ignores the fact that perpetrators have admitted to shaking and otherwise abusing children to cause the injuries seen in abusive head trauma. These confessions provide details of a heinous sequence of events. It is unlikely that so many people would have lied and described shaking in a similar, consistent way.

In addition caretakers have been captured on videotape shaking infants.

The article also suggests that there is no discussion or analysis of the current knowledge about abusive head trauma when, in fact, research continues to contribute new information about the causes and mechanisms of these injuries.

The suggestion that an objective, multidisciplinary team should convene and discuss the state of knowledge about abusive head trauma has already come to fruition as I shared with the reporter when I was interviewed for this article. In 2002 the Department of Health and Human Services and the National Institutes of Health, in addition to other government agencies, convened a conference to discuss the current state of knowledge about abusive head trauma.

The vast majority of physicians who treat and care for children every day recognize that, indeed, not only are children mistreated but also abusive head trauma and other forms of child maltreatment continue to occur in epidemic numbers. There has been no decrease in the incidence of child maltreatment during the same period of time that effective treatments and even cures have been found for many childhood diseases.

Rather than denying that child abuse occurs, now is the time for the community to come together to develop strategies to prevent abuse and to effectively protect children from maltreatment.

Shaken-baby syndrome

Published June 28, 2005

I write in response to a posting on the Tribune Web site by Pont, et al., and to a recent published letter by Flaherty, relating to the Tribune Magazine Section, June 12, piece on the "shaken baby" syndrome (SBS).

The pediatrician authors list many points in support of their position, that SBS has merit and attack the article as being nonfactual. I would like to point out that medical and scientific truth is not and cannot be based upon popular or organizational support for a given concept or theory. The validity of a theory must be based on hard evidence and science, which these days determines what is taught in medical schools and what is the standard of clinical practice (so-called evidence-based medicine).

That the American Academy of Pediatrics and other organizations have taken positions on SBS is interesting but hardly probative for their case. Actually the "vast amount of published literature" on the subject has in fact been reviewed methodologically and been found woefully inadequate as probative for shaking as a cause of the pathology often observed in allegedly abused infants (Donohoe M: Evidence-based medicine and shaken baby syndrome. Part I. Literature review 1966-1998. *Amer J Foren Med Pathol* 29:239-242, 2003).

Furthermore, virtually all of the published cases of injured infants with an admission of shaking by someone have been reviewed (Leestma, JE: Case analysis of brain injured, admittedly shaken infants: 54 cases. *Amer J Foren Med Pathol* (in press, 2005). In the 54 published cases with individual case data found between 1969 and 2001, only 11 cases had no sign of impact injury to the head and might conceivably have been victims of shaking; all the rest either had no information on this important point or showed evidence of head impact (skull fracture and/or bruising of scalp or face).

This small number of cases does not permit robust causal analysis. While a caregiver may admit to shaking an infant, often many other things occur that may have been far more injurious but were regularly ignored in favor of shaking. This consistent failing is not only unprofessional, it is bad science, which would not be tolerated if this were a clinical trial for a new drug, a medical device or a grant application to the National Institutes of Health.

There are apparently at least three video-taped "nanny cam" events in which a caregiver robustly shook an infant in her care. One of these was aired this year on the "Dr. Phil" show. No apparent injury to the infant occurred. That is not to say one should shake babies, only that robust shaking can occur with no apparent damage. The issue of neck damage in shaking was mentioned in the Tribune piece and appears to be the most likely form of damage that can occur with shaking, though it appears to be quite rare.

The authors are correct that the SBS problem is a sensitive and complex issue. Certainly no one would ever suggest that babies are not abused, only that there are major issues with shaking as a causal mechanism in abuse. There are also major scientific issues with recent publications that supposedly support the notion and mechanism of SBS and purport to rebut previous literature criticizing SBS or its supposed components. The National Institutes of Health consensus conference on SBS of a few years ago did not have a representative panel. No critics of SBS were in attendance, and virtually all the participants regularly testify for the prosecution in SBS cases. Professor Geddes, perhaps the only critic and a neuropathologist from the UK, could not attend because of a death in her family. This was hardly a balanced forum.

Let's recognize what science exists on the subject, most of which points out huge difficulties with this supposed syndrome. We must stop the dogma and the politics that deprive individuals of their rights under the law, demonizes those who dare to question and stifles a sincere search for the truth.

If SBS is not supported by scientific data, so be it. Rather than bemoan a failed theory, let's support

research into understanding all the complex medical processes that might be involved and get it right!

Jan E. Leestma, MD

Chicago

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<http://www.chicagotribune.com/news/local/west/chi-0506280147jun28,1,2885779.story>

Day-care worker won't get new trial in slaying

Ineffectual-counsel argument is rejected

By Angela Rozas
Tribune staff reporter

June 28, 2005

A day-care worker convicted in 1999 of murdering a 10-month-old boy in her care by shaking him to death was denied a motion for a new trial by a DuPage County judge Monday.

Judge Robert Anderson denied defense attorneys' motion for a new trial based on ineffectual counsel for Pamela Jacobazzi, who was convicted of first-degree murder in the death of Matthew Czapski.

Attorneys for Jacobazzi contended that the child did not die from shaken baby syndrome but that his death may have been caused by previous accidental injuries that were exacerbated by a pre-existing blood disorder that was not brought up in trial.

Matthew's mother picked him up from Jacobazzi on Aug. 11, 1994, and, seeing the child was unresponsive, drove him to the hospital where doctors determined he suffered a brain injury that was causing bleeding in his eyes and brain. He lived in a coma until Dec. 19, 1995.

Jacobazzi is serving a 32-year sentence.

Attorney Anthony Sassan sought a new trial, saying Jacobazzi's previous attorney did not share Matthew's pediatric records with a neuropathologist, Dr. Jan Leestma, that would have shown that the child had sickle-cell trait, a gene abnormality that affects the red blood cells.

But DuPage County Assistant State's Atty. Jane Radostits argued that defense attorneys and Leestma did review the pediatric records, but chose not to use them in the trial. Radostits also contended that experts told her the child's blood condition would not have contributed to his death.

Anderson on Monday said that he believed the doctor had access to the pediatric records and ruled Jacobazzi's attorneys were not ineffective. Whether the child's death could have been caused by something other than shaken baby syndrome was not a part of this hearing.

Sassan said he plans to appeal the judge's decision.

"We were very disappointed in this ruling. We felt strongly that it was clear that these guys had not only not considered what was contained in the pediatric records, there was no evidence they ruled it out as a defense strategy," Sassan said. "We'll keep going. None of us involved in this think [Jacobazzi] was at

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all responsible for this."

Some experts contend that shaken baby syndrome is an unproven theory that allows prosecutors to rely on emotion and fervor rather than scientific evidence. Other experts disagree, saying that the credibility of the syndrome has been confirmed.

arozas@tribune.com

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Injury mechanisms

Published June 29, 2005

Dr. Flaherty's comments on June 21 and June 27 regarding Lee Scheier's article ("Shaken baby syndrome: a search for truth," Chicago Tribune magazine, June 12) are dissembly. Flaherty states "perpetrators have admitted to shaking...", "These confessions provide details of a heinous sequence of events.", and that "It is unlikely that so many people would have lied and described shaking in a similar, consistent way."

However, there are no published studies that furnish any details of the mechanism of the purported shaking in confession-related injury retrospectives.

It is ironic that the Tribune published Flaherty's June 21 letter during the same week as the story of Kevin Fox's "confession," and her June 27 letter on the same day as an Editorial cautionary tale regarding "confessions." A recent article in the pediatric "literature" (Starling 2004) bases the criteria for diagnosis on "confession," but the authors state, "An analysis of the investigative techniques involved in eliciting the admissions is beyond the scope of this article."

How is it that a non-validated "confession" becomes a scientifically acceptable proof of mechanism? How is it that an article (Starling 2004) in which four of the 32 "shaking only" infants had scalp swelling or skull fractures is used to support "shaking" as an injury mechanism? How is it that "shaking" causes a skull fracture? This is not a semantic argument: Physicians have testified in criminal and civil courts for many years that "shaking", with all of its emotive connotations, is the mechanism of infant injury.

Query: How does a 110-pound, middle-aged woman "shake" a 25-pound infant and cause brain damage?

Answer: She does not.

Flaherty's assertion that convening an objective multidisciplinary team "has already come to fruition" (Reece 2002) is disingenuous at best. Where were the clinicians, scientists, and engineers from the philosophical "other side"? These people were easily identifiable at the time of the conference. In fact, a suggestion and urgent request from Professor Werner Goldsmith during a presentation that he made to the NIH Center for Research for Mothers and Children in April 2001 was the impetus for the 2002 conference. The conference organizers failed to invite Professor Goldsmith, among others, to the conference that he had proposed.

As I stated in a letter published in the Journal of the American Medical Association in 1999, the danger is for such group think to become a de facto "star chamber," unencumbered by accountability or self-doubt.

Flaherty states "caretakers have been captured on video shaking infants." There has been a single report of a video showing a caretaker shaking an infant (Miami Herald 2003), and in this case, the infant had no injuries. If Flaherty has other examples, as she indicates, she needs to document and publish them.

Flaherty stresses that Scheier ignores "the more recent research by Duhaime, by Cory & Jones, or the results of the elegant studies that Carole Jenny has done using dummies...". Duhaime's 1998 article in the NEJM is a review, not "more recent research". In response to a letter from Dr. Vincent J. M. DiMaio, Editor of the American Journal of Forensic Medicine and Pathology, she replied "The possible causative relation between shaking and findings that include retinal hemorrhages, skeletal injuries, and trauma to the cervical spinal cord resulting in respiratory compromise require further research."

Duhaime's "more recent research" (Prange 2003) does not support "shaking" as an injury mechanism in infants with brain injury. Cory & Jones do not publish a single acceleration tracing that would allow for independent analysis of their data. Further, their highest recorded accelerations, and the only ones that exceed any known injury threshold, were coincident to impact of the model's chin against the chest and

back of the head against the posterior thorax during "gravity-assisted" shaking.

There has never been documentation of this mechanism as a possible contributor to head injury in any of the tens of thousands of autopsies that have been performed on infants and young children. The "elegant studies that Carole Jenny has done..." have not been published in any peer-reviewed journals, despite the fact that they were first reported at a national conference in 2002.

Flaherty implies that those who disagree with her and others are "denying that child abuse occurs." This does not follow from any of the statements that any of us associated with the "other side" has ever made. The issue is not whether child abuse exists. The issue is to understand appropriately injury mechanisms and mimics.

The proper answer, in many cases, to the question of the cause of an apparent head injury may well be "I don't know."

John Plunkett
Welch, Minn.

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Evaluating evidence

Published June 30, 2005

Emalee G. Flaherty MD, in her editorial note of June 21 and her identical letter of June 27 criticizing the "Shaken baby syndrome: a search for truth" (Lee Scheier, Magazine, June 12), dismisses the independent review called for by persons quoted in that article, including myself. She suggests that such a review is unnecessary since it has already been done, citing a "conference to discuss the current state of knowledge about Abusive Head Trauma" convened in 2002 by the Department of Health and Human service and the National Institutes of Health. She thereby misses the point in the same way that those who allege child murder based on one or two clinical findings miss the point. The review that I and others advocate would be for the purpose of examining all of the existing evidence supporting the opinion that certain pathologies standing alone are strong indicators of "abusive head trauma." It would be carried out by the type of multidisciplinary committee assembled from time to time by the National Academies of Science to clarify important forensic issues. Such issues in the past have included the efficacy of polygraph examinations, the dependability of DNA identification, and the validity of batch-identification of bullets based on trace metal analysis. In every case, key members of the assembled committee are scientists and statisticians familiar with the design of experiments and the interpretation of scientific findings. The major criticism of those who would indict and convict based on one or two talismanic findings of "shaken baby syndrome" is that the justification for their opinions is based on nothing but circular reasoning. It therefore seems long past the time that persons capable of scientifically examining such criticism and the response to it be called on to do so as part of an independent broad-based team under the auspices of the National Academies of Science.

In summary, I am not criticizing the conference mentioned by Dr. Flaherty, just the role to which she would retrospectively assign it. It was not a conference convened to evaluate the strength of evidence supporting the diagnoses described in the Scheier article. Just so, the study we are calling for would not be convened to determine, for example, whether retinal hemorrhages per se are diagnostic of child abuse. Rather, its role would be to evaluate the evidence cited in support of that and similar linkages now being used to sentence possibly innocent persons to long prison terms.

Thomas L. Bohan

Portland, Maine

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Mistaken trauma

Published June 30, 2005

This letter is regarding the article in the June 12 edition of your magazine titled "Shaken baby syndrome: a search for truth." My personal search for the truth started 13 months ago, my son, Taron, contracted a salmonella infection. He was in the hospital for five days recovering from this bout of illness. Just when we thought everything was fine, he had a grand mal seizure in the presence of my husband while I was at work.

The doctors at the local community hospital did a CT scan on my son and found that he had a subdural hematoma. He was rushed to a larger facility in Lexington, Kentucky. At the larger facility, my son was loaded up on anti-convulsants and the State police and Social Services were called in. My husband and I were in a both felt a sense of shock and disbelief when our son was taken into protective custody and were accused of abusing our four and a half month old son.

Here my husband and I sit 13 months later with a little more knowledge. We were able to hire an independent doctor who has concluded that my son had thrombosis brought on by his salmonella infection. Where was this differential diagnosis 13 months ago when our son was taken from us? Why were these possibilities not explored? Why do we have to endure this heartache when a simple test could have explained everything?

We feel a great sense of anger and frustration with the system that has torn our family apart. Not once while my son was at the larger facility did the health care professionals involved in his care look for something that other than abuse that could explain my son's injuries. They did not do a CT with contrast or an MRI to delve deeper. They just assumed with the "God complex" that many a doctor carries that this was abuse and no amount of test would prove otherwise. My son was put in foster home and we were left with many unanswered questions.

I feel as a society we have been jaded by the news headlines and sensationalism in the media of shaken baby syndrome. I strongly believe as someone who has been living this nightmare that there needs to be a stronger emphasis on differential diagnosis in the care of children who are suspected to be abused. There are many wrongly accused parents sitting in prison or have had their children ripped from them for good. This atrocity does not need to occur unwarranted and to loving parents who deserve to have their children at home.

Diana Palmer

Cynthia, Ky.

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<http://www.chicagotribune.com/features/magazine/chi-0507100456jul10,1,1249735.story?coll=chi-leisuremagazine-hed>

IN-BOX

The shaken baby debate

July 10, 2005

Your article, "Shaken baby syndrome: a search for truth" (June 12), disregards the fact that the overwhelming majority of the medical literature accepts and supports the existence of SBS . . . and only a handful of hypotheses suggest that it does not exist. Asserting that shaking cannot cause infant brain injury is irresponsible. The responsibility of health-care professionals in evaluating these babies is undertaken with the utmost care. It is disappointing to note the lack of care in presenting this unbalanced view of a sensitive and complex issue.

Jill Glick, MD, CHAIR, Committee On Child Abuse And Neglect,

Illinois Chapter, American Academy of Pediatrics

A DOCTOR WAS quoted in your article as saying, "There's not a practicing clinician among those . . . opposed to the SBS diagnosis."

I am a pediatrician and practicing clinician. I also have an adopted son who allegedly was abused while in foster care. For the first 20 years after his adoption, I did not question the shaken baby syndrome. However, six years ago I served on a jury in a capital murder case of alleged SBS and listened in disbelief as my colleagues and others testified for the prosecution in what was obviously an accidental-death case.

Afterward, I began to educate myself on the issues involving SBS. Based on research published in the journal Pediatrics and elsewhere, I now know that the young man on trial for his life was indeed innocent. I know that the foster mother who cared for our premature infant son was innocent and that, if we had taken possession of our son two months earlier, we would have been the ones prosecuted.

John G. Galaznik, MD,

Northport, Ala.

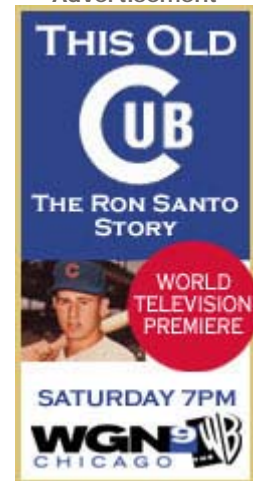
YOUR ARTICLE IS a selective review of existing knowledge. It's omissions are glaring and . . . it emphasizes the positions of a very small group of professionals, most of whom have never seen an injured child and who build theories of injury tolerance without real-world facts to support them.

David L. Chadwick, MD,

La Mesa, Calif.

I BELIEVE THAT my 25 years of practicing emergency medicine and a fair reading of the medical literature is contrary to much of the SBS dogma, which states, in part:

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- That shaking a normal child could generate enough force to cause fatal brain injury, particularly without injuring the cervical spine, which is far more vulnerable.

- That the last caretaker must have abused a child who has a seizure or alteration of consciousness. I have attended children who were initially normal neurologically, but hours later deteriorated and were diagnosed with intracranial bleeding. This "lucid interval" can indicate prior accidental trauma or abuse by someone other than the last caretaker.

- That so many otherwise normal individuals who are not new to child care could, out of nowhere, homicidally "lose it."

Child abuse is heinous. Unfortunately, the goal of protecting children has evolved in certain medical circles into a knee-jerk response that alleges abuse whenever injuries cannot otherwise be readily explained. Scientists who oppose such views face hostility and derision, which is inexcusable in a society that prides itself on the free expression of ideas.

Robert k. Rothfeder, MD, JD, Salt Lake City

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IN-BOX

Published July 24, 2005

Minority report

In your article on shaken baby syndrome (June 12), Dr. Robert Block, chair of the American Academy of Pediatrics Committee on Child Abuse and Neglect, states, "There's not a practicing clinician among those opposed to the SBS diagnosis."

This is false, for I have been a practicing pediatrician and pediatric geneticist in academic medicine for 25 years. My experience and review of the medical literature has made me a non-believer in SBS. Dr. Block should be aware that not all clinicians agree with him, for we have previously challenged his perspective on SBS (*Pediatrics* 114:326, 2004).

While we non-believers may be in a minority, I believe the tide in this important issue is shifting, as there is a groundswell of interest by clinicians, pathologists and biomechanicians to expose the fallacy of SBS. The reopening of SBS cases and the reversal of initial guilty verdicts of SBS cases in England is testimony to this changing attitude.

The single most compelling observation that SBS does not exist is that biomechanical analysis strongly suggests that shaking alone cannot produce the forces needed to cause the triad of symptoms-subdural hematoma, retinal hemorrhages and neurologic dysfunction-that underlie the SBS diagnosis. Impact is needed to cause the triad, such as in short falls or in difficult deliveries that cause a small subdural hematoma that later rebleeds and enlarges.

For the past 30 years, unchallenged dogmas have been the driving force in diagnosing child abuse in some cases of unexplained injury in infants. The SBS diagnosis is one such example, and the emerging scientific evidence is exposing SBS as a hoax.

Protecting children from abuse is a laudable enterprise, and it needs to be done with the same responsibility, scientific foundation, accountability and common sense that we expect from any other medical discipline.

MARVIN MILLER, MD,

Dayton, Ohio

Write us

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Published August 7, 2005

Abusive medicine

It was with much interest that we read your recent article: "Shaken Baby Syndrome: A Search for Truth" (June 12). Based on our experience, the truth is the last thing doctors and prosecutors are seeking.

Medical science has come a long way in the last 30 years; however, doctors continue to use the criteria from a 1972 study-bleeding in the eye and in the brain membrane to diagnose child abuse. The SBS diagnosis has been likened to the children's game of "hot potato": Whoever is with the child when symptoms develop will be accused.

Our granddaughter stopped breathing when she was 3 months old. She had spent the first four days of her life in intensive care with breathing difficulties. At birth she had indications of bleeding below the scalp. She had no marks, bruises or any indications of abuse. Yet she was diagnosed with SBS due to retinal hemorrhages and a subdural hematoma.

Our son, who had been alone with her at the time, was charged with first-degree assault and faced 20 years in prison. He took a plea bargain on the advice of our attorney, and the charges were reduced to a misdemeanor.

We resent the quote in your article by Dr. Emalee Flaherty, who states: "We approach it so carefully [the SBS diagnosis]. There is no room for error." This is incredibly arrogant and part of the problem. Doctors make mistakes.

The truth is simply that retinal hemorrhages and subdural hematomas may have other causes besides child abuse. We must get doctors to be held accountable and stop the misdiagnosis that is sending innocent people to prison.

JEFF AND MARY WARE /

Ashland, Ky.

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