



## Brandy Briggs

On May 5, 1999, Brandy Briggs found her 2-month-old baby Daniel Lemons limp, barely breathing and unconscious at her home in Highlands, Texas. She called 911 and the baby was rushed to the hospital, where doctors inserted a breathing tube. On May 9, the baby died at the hospital, in his mother's arms.

The autopsy was performed by Harris County forensic pathologist Dr. Patricia Moore, who determined the cause of death to be "craniocerebral trauma with complications." According to Dr. Moore, this was a clear case of Shaken Baby Syndrome (SBS), a term said to describe a situation in which an infant is violently shaken, causing severe and potentially deadly brain injury. SBS supposedly involves a tell-tale "triad" of symptoms – brain swelling, brain hemorrhaging and retinal hemorrhaging – and until recently, it was believed that no other injuries or pathologies could cause these three symptoms to occur at the same time. It was also believed that a victim of SBS became unresponsive immediately, meaning that the last person to have physical care of the baby was very likely to have caused the injuries.

Based on Dr. Moore's autopsy report, Briggs was arrested and charged with first-degree felony injury to a child. Briggs always maintained her innocence, but her attorney said Briggs couldn't afford the cost of experts who could refute the medical examiner's testimony. At her attorney's urging, on the eve of her trial, Briggs pled guilty to a lesser charge of child endangerment. Briggs said her attorney had told her that she would get probation if she accepted this plea bargain. Instead, she was sentenced to 17 years in prison.

In February 2002, Briggs's motion for a new trial was denied by the Texas Court of Appeals, 1st District.

Briggs's appellate lawyers then asked two pediatricians to examine the cause of the baby's death, and both concluded that he had died from complications related to a urinary tract infection contracted shortly after birth. Meanwhile, Harris County's chief medical examiner criticized Dr. Moore's "defective and improper work" and her bias towards police and prosecutors in infant death cases. Dr. Moore left Harris County to work in Florida. In July 2004, the new medical examiner, Dr. Louis Sanchez, reviewed Dr. Moore's work in the Briggs case and found no evidence of SBS or any other form of abuse. Dr. Sanchez also learned that when Briggs's baby was brought to the hospital, medical personnel had mistakenly inserted the breathing tube into his stomach instead of his lung, leaving him without oxygen for 40 minutes. Dr. Sanchez changed the cause of death to asphyxia.

Briggs's attorneys filed a motion for a writ of habeas corpus, and on December 14, 2005, the Texas Court of Criminal Appeals granted the motion, finding that Briggs had received ineffective representation by her trial lawyer. Briggs's conviction was vacated. She was released on December 24 on \$20,000 bail while the state decided whether or

**State:** Texas

**County:** Harris

**Most Serious Crime:** Child Abuse

**Additional Convictions:**

**Reported Crime Date:** 1999

**Convicted:** 2000

**Exonerated:** 2006

**Sentence:** 17 years

**Race:** Caucasian

**Sex:** Female

**Age:** 19

**Contributing Factors:** False or Misleading Forensic Evidence, Perjury or False Accusation, Inadequate Legal Defense

**Did DNA evidence contribute to the exoneration?:** No

not to retry the case. All charges against Briggs were finally dropped in September 2006.

Briggs is one of a growing number of people who have been exonerated in cases where prosecutors claimed an infant was shaken to death. Briggs's case is unique in that it involves egregious errors and misconduct on the part of the medical examiner and hospital staff, but recent medical research has cast serious doubt on the legitimacy of Shaken Baby Syndrome as a cause of death. Many experts have argued that it is physically impossible for such severe brain damage to be caused by shaking alone, without visible injuries to the skull or spine. There is also increasing evidence that other injuries can produce the diagnostic "triad" of symptoms that is said to prove SBS, and mounting evidence that an infant who is suffering from these symptoms would not necessarily become unresponsive right away.

- *Alexandra Gross*

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**Report an error or add more information about this case.**

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## CONTACT US

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The National Registry of Exonerations is a joint project of the University of Michigan Law School and the Center on Wrongful Convictions at Northwestern University School of Law.

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# THE TEXAS PROSECUTOR

The Official Journal of the

Texas District & County Attorneys Association

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“It shall be the primary duty of all prosecuting attorneys ... not to convict, but to see that justice is done.”  
Art. 2.01 Texas Code of Criminal Procedure

## Making the charge fit the crime

Much has been made of Texas prosecutors’ recent charges of felony murder in cases where repeat DWI offenders have killed someone while driving drunk. Here is an in-depth look at how and why prosecutors have charged DWI recidivists with felony murder instead of intoxication manslaughter—and had the convictions upheld.

By *Tanya S. Dohoney*

Assistant Criminal District Attorney in Tarrant County

Prosecutors across the state are employing a new theory in the fight to stop the carnage caused by drunk drivers: felony murder. In at least five cases, prosecutors have successfully obtained felony murder convictions out of facts previously filed as intoxication manslaughter. Two cases have now been affirmed on appeal, giving the rest of you out there the green light to rely on this theory, which provides a punishment range up to life in prison instead of the 20-year maximum for intoxication manslaughter.<sup>1</sup>



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This article details considerations

in the trial and appeal of one of the first felony murder prosecutions of a recidivist DWI offender in Texas. It compares our case’s facts to those from a May 2006 trial in Williamson County. The recurrence of these egregious fact-patterns highlights the need for prosecutors to rely on Texas’ murder statutes when faced with repeat DWI offenders who kill. While several articles have already been written on these felony murder prosecutions, this one comes on the heels of our finally having appellate decisions upholding two of the cases so, of course, the legal issues are discussed as well.<sup>2</sup>

### A tale of two trials

None of us are strangers to the sad slaughter of innocents routinely committed by drunk drivers. Two of the intoxication-related felony murders—our Tarrant County case and a very recent Williamson County trial—have eerily similar facts.

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yes \_\_\_\_\_ no \_\_\_\_\_

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yes \_\_\_\_\_ no \_\_\_\_\_

5 After the State wrapped up its aggravated assault with a deadly weapon evidence, Roger Thieleman's attorney asked for a mistrial, contending that a juror had been continuously sleeping through the trial. After a brief discussion, the trial judge denied the request. Will this bare statement, uncontested by the prosecution, be accepted as fact on appeal?

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6 Born to 17-year-old Brandy Briggs, Daniel Lemon died during his fifth trip to the hospital in his short two-month life. Daniel suffered a congenitally defective ureter that was never diagnosed while he was alive; within a week of his first breath, he contracted a raging urinary tract infection. Upon release from this first 10-day hospital stay, Daniel was involved in a car wreck and apparently injured because his car seat faced the wrong way. He also suffered respiratory problems.

Daniel's final medical emergency began when Briggs found him blue and limp; she contacted EMS and attempted resuscitation. He was intubated on the way to the ER where his initial diagnosis was hypoxia. ER personnel reintubated the child, erroneously placing the tube in his esophagus. The error was not noticed for 30 minutes and, by that time, he was cyanotic and brain dead. The original pathologist ruled the death a homicide. Eighth-grade-educated Brandy Briggs failed a polygraph, pled guilty to injury to a child, and was sentenced to 17 years' confinement. Medical records showing Daniel's birth defect and the hospital's

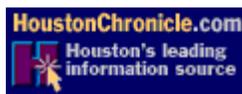
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Briggs' post-conviction writ contended, *inter alia*, that she received ineffective assistance of counsel. Habeas evidence disclosed that Briggs' retained attorney received over \$10,000 as part of his agreed fee. Counsel initially notified her that he would need to withdraw because she had not paid the entire \$15,000 fee. He also told her he could not hire experts unless he received additional money to cover their fees and estimated the need for another \$10,000. Briggs' counsel did not withdraw. Counsel's habeas testimony suggested that he reviewed Daniel's medical records and discussed them with Briggs and her family, telling them that he needed additional payment to hire experts to review the records more thoroughly. No further fees were paid, though.

A wealth of medical testimony at the hearing, including that of the Harris County Chief Medical Examiner, indicated that Daniel suffered no blunt trauma, had no signs of child abuse or shaken baby syndrome, and that any bruising came from medical procedures, not abuse. Other esteemed physicians concurred, stating that the circumstances generated by the birth defect were worsened by the faulty intubation leading to brain death. Did Brandy Briggs receive ineffective assistance of counsel?

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*Dec. 14, 2005, 1:45PM*

## **Mom's conviction thrown out on baby death**

### **Brandy Briggs remains in prison on a 17-year sentence**

**By DALE LEZON**

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Texas' highest criminal court has thrown out today the conviction of a Harris County woman who was sentenced to 17 years in prison after pleading guilty in connection with her infant son's death.

Citing "deficient performance" by the defense attorney, the state Court of Criminal Appeals ordered Brandy Briggs' case returned to Harris County, where prosecutors must decide whether to try her again or drop the charges.

District Attorney Chuck Rosenthal said today that his office will have to review the evidence before making a decision. No timetable has been set yet for her return to Houston.

Briggs, who remains in prison, was 19 when she was charged with murder in the death of her 2-month-old son, Daniel Lemons. She ultimately agreed to plead guilty to injury to a child.

Briggs later said that defense attorney Richard Anderson had been ineffective and had told her a guilty plea would result in probation. State District Judge Mary Lou Keel concluded that Anderson had represented his client effectively, however, and that Briggs had entered her plea voluntarily.

But in its ruling today, the appeals court said Anderson "did not reflect reasonable professional judgment" in failing – for financial reasons – to develop evidence concerning the baby's medical history.

Anderson could not be reached for comment this morning.

The appellate judges concluded that Anderson's performance affected Briggs' decision to accept a plea agreement. They added that, if the evidence had been developed and Briggs had gone to trial, "it is highly likely that a jury would have returned with a 'not guilty' verdict . . . "

The baby, who had a birth defect, died at Texas Children's Hospital in Briggs' arms on Mother's Day, May 9, 1999, as family members listened to his final heartbeats on a monitor. He was 60 days old.

It later was revealed that, after Briggs had called 911 and the baby was taken to Lyndon B. Johnson General Hospital, a breathing tube was incorrectly inserted into his stomach rather than his lungs. The lack of oxygen caused brain death, according to county Medical Examiner Dr. Luis Sanchez.

The death originally was listed as a homicide, however, after an autopsy by Dr. Patricia Moore.

Briggs' appeal hinged partly on the fact that Moore, who later left the Medical Examiner's Office, had been admonished by supervisors who thought she showed a bias in favor of prosecutors in an unrelated case.

Sanchez changed the "homicide" ruling to "undetermined" after reviewing the autopsy.

Briggs' case was one of at least two in which Sanchez revised autopsies conducted by Moore. In March this year, prosecutors dropped a case against Ruth Ann Gilliam, who had been accused of causing her child's death.

While overturning Briggs' conviction, the Court of Criminal Appeals added, "We cannot ignore (her) guilty plea in 2000 . . . "

Briggs told Judge Keel in 2000 that she had found her baby limp and barely breathing in his crib. She said she panicked and shook him.

Sanchez later testified, however, that Daniel had not suffered blunt trauma and had no signs of abuse or shaken baby syndrome.

Harris County District Attorney Chuck Rosenthal said today that his office will have to review the evidence before deciding whether to prosecute Briggs again. No timetable has been set for returning her to Houston and she remains in prison.

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**[Dr. Patricia Moore](#)**

**[False Child Abuse Allegations](#)**

**[Junk Science](#)**





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# Mothers and Fathers in jail



<http://www.dnronline.com/story3.asp>

## Man To Serve Two Years For Assaulting Child

By WILL MORRIS  
Daily News-Record

A man will serve two years in prison for assaulting his infant son.

Christopher Huffman, 25, of Harrisonburg, entered an Alford plea in February for one count of unlawful wounding. He was originally indicted on a charge of malicious wounding. On Friday, Rockingham County Circuit Judge John Lane sentenced Huffman to five years in the penitentiary, but suspended three years of the sentence. Huffman will serve three years of supervised probation upon release from prison.

### The Crime

Prosecutors allege that on the afternoon of June 15, 2004, Huffman picked up his infant son, then 4-months-old, and shook him violently. According to a doctor from the University of Virginia Medical Center, where the child was taken for emergency medical attention, the baby suffered severe brain hemorrhaging and spinal injuries. The baby is in a persistent vegetative state. Rockingham County Commonwealth's Attorney Marsha Garst, who sought a five-year prison sentence for Huffman, declined to say if she was disappointed with the sentence. "It was the judge's decision based on what he deemed appropriate," she said adding, "The Huffman case was the most aggravated local shaken baby case I've seen short of a fatality."

### Maintaining His Innocence

Shannon Huffman, 21, Christopher Huffman's wife, has asserted from the beginning, that her son's injuries were the result of an interaction with vaccinations he received before the incident happened. "My son is not a victim of child abuse," she said in September. "If anything, my son is a victim of medical negligence and ignorance." Huffman's attorney, Gene Hart, said his client entered the plea to avoid the possibility of a lengthy prison sentence. Christopher Huffman, 25, was originally charged with malicious wounding, which carries a minimum 20-year sentence.

An Alford plea is not an admission of guilt; rather, it is an acknowledgement that the state has enough evidence for a conviction. "Chris Huffman has maintained through out this proceeding that he didn't hurt his son. He was originally charged with aggravated malicious wounding, a charge that carried a minimum of 20 years in prison. He chose to plea because of the risk," he said, adding that the prison term for unlawful wounding is zero to 5 years. "There's no question that whatever happened to this child resulted in severe permanent damage, the only question is what caused it."

Garst said the medical evidence against Huffman was "overwhelming." But it was Garst's office that accepted the plea deal. The Commonwealth pushed for everything it could, considering the victim couldn't speak for itself," she explained.

SOUTHGATE, Mich. – A couple committed suicide after a 6-month-old boy in their care was shaken to death, police said. The infant, Tyler Vanpopering, died Wednesday at the University of Michigan Hospital in Ann Arbor (search), about 40 miles from this Detroit suburb.

His baby sitters were Carissa Columbus, 25, and Leonard Columbus, 35, who disappeared after Tyler's death. Police broke into their home Saturday and found them in the garage dead of carbon monoxide poisoning.

A suicide note signed by Carissa Columbus denied she or her husband hurt the boy. The couple took care of Tyler and his 18-month-old sister, McKenzie, over the Easter holiday, said police Chief Larry Hall. McKenzie was not hurt.

They brought Tyler to a local hospital on Easter evening, saying he had had a seizure. He was airlifted to the University of Michigan Hospital. Sara Vanpopering, 19, told the Detroit Free Press on Monday that she had been planning to let the couple adopt her children.

Leonard Columbus worked for Ford Motor Co. Police said his wife was on disability from the automaker.

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[http://abcnews.go.com/sections/GMA/US/imprisoned\\_mother\\_040720-1.html](http://abcnews.go.com/sections/GMA/US/imprisoned_mother_040720-1.html)

Young Mother Hopes New Medical Evidence Will Clear Her in Baby's Death

By Mike von Fremd and Gina Treadgold

July 20, 2004 – Brandy Briggs sits in a Texas prison, serving a 17-year sentence for shaking her 2-month-old son so severely that he later died. But now, a medical examiner says the baby was never shaken at all. Briggs, from a small town outside Houston, was just 17 years old when her son, Daniel Lemmons, was born. During his short life, Daniel was in and out of hospitals, suffering from kidney problems and urinary tract infections.

On May 2, 1999, Briggs called 911, saying she had gotten up to feed her baby and found him barely breathing in his crib. Daniel was taken to the emergency room at one hospital, where the medical staff made a horrible mistake. They put a breathing tube in his stomach, not his lungs, and pumped air into his stomach for 42 minutes. Daniel was transferred to another hospital, where the breathing tube mistake was corrected, and he was put on life support. He died in his mother's arms on May 9, 1999 – Mother's Day.

Briggs' nightmare only got worse. A Harris County assistant medical examiner ruled Daniel had died from "shaken baby syndrome," and his young mother was charged with murder. Four years later, tears come to Briggs' eyes as she remembers what it was like to have her child die in her arms, and then be accused of killing him. "It is hard, very hard, there are so many nights, I lay in bed and cry," Briggs, now 23, said from the women's prison at Gatesville, Texas. "It is something that will never leave me."

'He Told Me to Take the Plea'

When Briggs was charged with murder, her family went into debt to pay her attorney's fee, \$10,000. Briggs' mother, Shelbia Goss, says she has always known her daughter was innocent. But money was a

problem. "We had no more money, we was losing everything we actually had, we didn't have anything left, all our money was going to fighting for her innocence, and so here she is, in prison, because we don't have any money," Goss said.

Instead of questioning the medical evidence and fighting the case, the attorney told Briggs she should plead guilty to a reduced charge and spend some time on probation. "He said there was no way we could win because he didn't have the money for the medical people he needed to testify for me," Briggs said. "He told me to take the plea that would be the only chance, that there wasn't no way the judge would give me prison time."

In October 2000, Briggs pleaded guilty to second-degree felony charges of injury to a child. Two months later, a judge sentenced her to 17 years behind bars.

### New Medical Opinions

Briggs' family was in despair. The restaurant they ran was in dire straits. Then, a cook at the eatery put Goss in touch with attorney Charles Portz. Portz had medical examiners in three other states look at Daniel's autopsy, and all three came back with the same finding: Daniel died of natural causes. The medical examiner who performed the original autopsy has said she stands by her findings. But in December 2003, the Harris County chief medical examiner, Dr. Luis Sanchez, amended the autopsy report, listing the cause of Daniel's death as "undetermined."

Sanchez testified in a hearing Friday that "there was no clear evidence" Daniel was shaken or suffered any other trauma. He also said that Daniel received very little oxygen to the brain for a considerable period of time because the breathing tube was in the wrong place. The matter is now in the hands of a Harris County district judge, who can decide if Briggs' conviction should be immediately overturned, or if the matter should be sent to the Texas Court of Criminal Appeals.

Briggs hopes the judge will rule in her favor and that she will soon be back home with her family. She says she wants to be vindicated, but she isn't looking for an apology. "For a part of me, it doesn't matter, as long as God knows and I have my family," she said. There is an especially pressing reason for her to get home: Briggs has another son, Joseph, who she had to give up when she went to prison. Now 4 years old, Joseph lives with his godparents. It has been almost four years since his mother has been allowed to hold him.

Every day Briggs sits in prison is a day too long, says Portz. "I would like to see her released so she can be reunited with her other child and get on with her life," he said. "She has been punished by being sent to prison for doing absolutely nothing wrong."

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<http://www.chron.com/cs/CDA/ssistory.mpl/front/2694908>  
July 22, 2004, 7:53AM

Autopsies by former examiner reviewed

Several cases got a second look after questions about neutrality

By ANDREW TILGHMAN

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A former Harris County associate medical examiner accused of botching an autopsy that led to a young mother's imprisonment has come under scrutiny in several other cases in which her conclusions were

later contested or revised.

The work of Dr. Patricia Moore, who now performs autopsies in Montgomery County, is the focus of renewed debate since officials recently reclassified one of her 1999 autopsies from "homicide" to "undetermined." The cause of 2-month-old Daniel Lemons' death is at the center of an appeal by his mother, Brandy Briggs, who is serving a 17-year prison sentence and has asked a judge to recommend her release.

A Houston Chronicle review of county records reveals at least two other cases in which Moore's supervisors revised her findings in autopsies on children. She was admonished once for appearing to show a bias in favor of prosecutors, and criticized for "not understanding the objectives of neutral medical-legal investigation."

In a sworn affidavit last week, Moore acknowledged concerns about her autopsy report in the Lemons case.

"I still believe that my initial opinion as to the cause of death and the manner of death of this 2-month-old boy are most likely correct," she wrote. "But since there have been other views on this matter ... I feel that another opinion from an outside expert would be of utmost importance."

Her finding of "shaken baby syndrome" reinforced the case against Briggs, who pleaded guilty to child endangerment in 2000. But the county's chief medical examiner, Dr. Luis Sanchez, testified July 9 that there is no evidence of shaken baby syndrome. He recently changed the official manner of death.

Briggs' attorney, Charlie Portz, has asked state District Judge Mary Lou Keel to recommend reversing the conviction, saying there is no longer evidence that the death resulted from a crime. Keel has not made a ruling.

Doesn't add up

During her time in Harris County, Moore attributed infant deaths to shaken baby syndrome at a rate considerably higher than the rate at which it happens in the general population, according to a study by a doctor and defense attorney who worked on a case involving one of her autopsies.

"She may be biased toward the district attorneys instead of playing it straight," said Portz. "And that means the defense doesn't have an even playing field."

#### DR. PATRICIA JEANNE MOORE

- Age – 42
- 1984 – Received a bachelor's degree from the University of West Florida in Pensacola
- 1989 – Received a doctorate in osteopathy from Southeastern University of the Health Sciences in Miami
- 1990-92 – Resident in pathology at Baptist Medical Center, Birmingham, Ala.
- 1994-96 – Fellow of pediatric pathology at Baylor College of Medicine
- 1996-2002 – Associate medical examiner in the Harris County medical examiner's office
- 2002-03 – Associate medical examiner with the District 5 Medical Examiner Department in Leesburg, Fla.
- 2004-present – Medical examiner with the Southeast Texas Forensic Center in Conroe

Source: Harris County medical examiner's office

Moore has declined to comment to the Chronicle since Sanchez's testimony. She resigned her Harris County job in July 2002, citing a need to spend more time with her child. In nearly six years with that office, Moore was widely respected by the legal and law enforcement communities. Records show she conducted up to 500 autopsies a year and had special expertise in pediatric pathology.

Moore received a doctorate in osteopathic medicine from Southeastern University of the Health Sciences in Miami. She currently works in Conroe for the Southeast Texas Forensic Center, which contracts with Montgomery County to provide autopsy services. Sanchez, who became chief medical examiner after Moore left her Harris County post, said he has little reason to doubt her competence and could not recall any instance other than the Lemons case in which her findings were revised.

### Similar case

But a claim similar to Briggs' was made by another woman earlier this year, after the medical examiner's office changed the cause of death of 7-month-old Trevor Seber from "homicide" to "undetermined." In October 2002, prosecutors charged the infant's mother, Ruth Ann Gilliam, 22, of Pasadena with reckless injury to a child, punishable by up to 20 years in prison.

"I was thinking, 'Oh, my gosh, I've lost my son and now they are charging me with my son's death?' All I ever did was love my kids," Gilliam said recently. She spent nine months in jail before posting bail. During that time, her parental rights were terminated and her other child was adopted. In preparation for trial, another medical examiner, Dr. Dwayne Wolf, reviewed Moore's autopsy and disagreed with her homicide ruling. Sanchez concurred and the ruling was changed, county records show.

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The case was dismissed in March.

"That's not to say we don't believe a crime was committed," said Assistant District Attorney Charles Thompson. "It just becomes more difficult to prove." Gilliam's attorney, Ernest "Bo" Hopmann, contends that Moore tried to match her findings to law enforcement investigations.

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### Butting heads

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Moore was criticized for handing in paperwork contaminated with blood and making written requests for X-rays on paper towels. One employee review calls her "headstrong." Carter reprimanded Moore in 1999, saying she seemed biased in favor of the prosecution.

"Dr. Carter reminded Dr. Moore that our office is neutral and that we are not doing cases for the DA's

office. We need to be open to both the prosecution and the defense," states a July 19, 1999, memo by Alex Conforti, the chief administrative officer at the medical examiner's office.

The remark stems from the death of 10-month-old Christina Dew. Doctors suspected shaken baby syndrome, but the precise time of the fatal injuries was unclear. That left prosecutors unsure whether to pursue charges against the mother or the baby sitter, who said she found the child semiconscious shortly after the mother left for work. Moore's initial report indicated that the baby must have become unconscious right after the injury, a finding that would point to the baby sitter as a suspect.

But after police said the mother had failed a lie-detector test that the baby sitter had passed, authorities focused on the mother, county records show. Shortly afterward, Moore met with a prosecutor and other doctors. The autopsy report was then changed. After learning of this, Carter confronted Moore. "You stated your opinion of who the guilty party was. I responded to you at that point to say you were overstepping your boundaries," she later told Moore in a memo. "We as medical examiners should not opine as to who did what, if we are to remain neutral."

Carter followed up with a note in the case file.

"It remains impossible to gauge a thirty minute time frame as to precisely when the fatal injuries occurred to this young and unfortunate victim," Carter wrote. "So as not to impede the legal process, the new version is now signed after careful review. The prosecutor was reprimanded as to the serious risk of collusion when changes are made to a public document."

The baby sitter, Trenda Kemmerer, was tried in 2000 on a charge of injury to a child.

The jury deadlocked, but in 2001, Kemmerer was convicted and sentenced to 55 years in prison. Assistant District Attorney Kelly Siegler, who prosecuted Kemmerer's second trial, said autopsies usually are contested in this type of case because defense attorneys often claim the child died of natural causes. "It's always the main thing in a shaken baby case," she said.

Siegler said she had no concerns about Moore's work.

## Second-guessing

Questions about Moore's autopsy on a Fort Bend County child led prosecutors there to drop capital murder charges and give a man probation on a lesser charge.

Frank Chavez was accused of killing his 2-year-old stepdaughter, Hallie Lohner, after Moore concluded the child was beaten to death in 2000. The Harris County medical examiner's office was providing autopsy services to Fort Bend County at the time. After Moore testified about the autopsy at a civil court hearing on custody of another child, prosecutors decided to have an expert review the case before taking Chavez to trial in criminal court. That expert suggested the death had resulted not from blunt force, but from illness. Prosecutors later had the capital murder charge dismissed.

The case ended in 2003 when Chavez agreed to plead guilty to failure to seek medical attention. He faced up to 10 years in prison, but got probation. A statistical examination of Moore's work suggests a trend of finding shaken baby syndrome as a cause of death, said Dr. Jim Bromberg, a physician and defense attorney who worked on a shaken-baby case in which Moore performed an autopsy.

Based on numbers from the U.S. Department of Health and Human Services, Bromberg estimated that Houston's metropolitan area should see one or two fatal cases of shaken baby syndrome each year.

Moore, however, cited it as a cause of seven deaths in one 18-month period. "The numbers suggest one should look into whether this is being overdiagnosed," Bromberg said. District Attorney Chuck Rosenthal said he has worked with Moore on many cases and sees no reason to question her work. "She acted pretty middle-of-the-road," Rosenthal said. "I thought she did them pretty much as she saw them. She didn't come across as a biased state witness on any of the trials I had."

Child fatalities that raise suspicions of abuse or neglect have received more scrutiny in recent years, said Assistant District Attorney Denise Oncken, longtime head of the district attorney's child-abuse division. "Years and years ago, people felt so bad when somebody's kid died that nobody wanted to look for any foul play," Oncken said. But Bromberg said the pendulum has swung too far in the opposite direction.

"This is a politically sensitive area of medicine. They all want to protect children, but they are using incomplete science," he said. "I don't think there is malice. I don't think there is collusion. But I do think there were scientific errors that have created legal errors."

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ps. Get your state medical examiner examined!

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<http://www.wate.com/Global/story.asp?S=2180468>

and newer <http://www.monroe.xtn.net/index.php?table=news&template=news.view.subscriber&newsid=113882>

Autopsy to determine whether Monroe Co. infant was abused

August 16, 2004

By YVONNE NAVA  
6 News Anchor/Reporter

MONROE COUNTY (WATE) -- Monroe County investigators are waiting for the results of an autopsy on a three-month-old girl to determine if she died from shaken baby syndrome. The investigation started last week. The girl's parents took her to Children's Hospital in Knoxville on August 10th. The girl died there on August 12th. Doctors say they're nearly certain she was a victim of shaken baby syndrome.

According to the offense report, the infant's mother, Cynthia Fortener, said her husband, Jonathan, called her at work the night of the 10th saying, "The baby had fallen off the couch and was acting funny." Monroe County Sheriff Doug Watson says the baby was breathing but unresponsive. Doctors ran tests, concluding her injuries were consistent with shaken baby syndrome. The baby was put on life support. 6 News went to the parents' house Monday to ask them about what happened. No one was home.

"I think they knew the child was in bad shape. The reason they took the child to the hospital was she was unresponsive. They knew something was going on with the child," Watson said. The report by the state Department of Children's Services states that investigators interviewed both parents several times. Their

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Autopsies by former examiner reviewed----Several cases got a second look after questions about neutrality

A former Harris County associate medical examiner accused of botching an autopsy that led to a young mother's imprisonment has come under scrutiny in several other cases in which her conclusions were later contested or revised.

The work of Dr. Patricia Moore, who now performs autopsies in Montgomery County, is the focus of renewed debate since officials recently reclassified one of her 1999 autopsies from "homicide" to "undetermined."

The cause of 2-month-old Daniel Lemons' death is at the center of an appeal by his mother, Brandy Briggs, who is serving a 17-year prison sentence and has asked a judge to recommend her release.

A Houston Chronicle review of county records reveals at least 2 other cases in which Moore's supervisors revised her findings in autopsies on children. She was admonished once for appearing to show a bias in favor of prosecutors, and criticized for "not understanding the objectives of neutral medical-legal investigation."

In a sworn affidavit last week, Moore acknowledged concerns about her autopsy report in the Lemons case.

"I still believe that my initial opinion as to the cause of death and the manner of death of this 2-month-old boy are most likely correct," she wrote. "But since there have been other views on this matter ... I feel that another opinion from an outside expert would be of utmost importance."

Her finding of "shaken baby syndrome" reinforced the case against Briggs, who pleaded guilty to child endangerment in 2000.

But the county's chief medical examiner, Dr. Luis Sanchez, testified July 9 that there is no evidence of shaken baby syndrome. He recently changed the official manner of death.

Briggs' attorney, Charlie Portz, has asked state District Judge Mary Lou Keel to recommend reversing the conviction, saying there is no longer evidence that the death resulted from a crime. Keel has not made a ruling.

Doesn't add up

During her time in Harris County, Moore attributed infant deaths to shaken baby syndrome at a rate considerably higher than the rate at which it happens in the general population, according to a study by a doctor and defense attorney who worked on a case involving one of her autopsies.

"She may be biased toward the district attorneys instead of playing it straight," said Portz. "And that means the defense doesn't have an even playing field."

Moore has declined to comment to the Chronicle since Sanchez's testimony. She resigned her Harris County job in July 2002, citing a need to spend more time with her child.

In nearly 6 years with that office, Moore was widely respected by the legal and law enforcement communities. Records show she conducted up to 500 autopsies a year and had special expertise in pediatric pathology.

Moore received a doctorate in osteopathic medicine from Southeastern University of the Health Sciences in Miami. She currently works in Conroe for the Southeast Texas Forensic Center, which contracts with Montgomery County to provide autopsy services.

Sanchez, who became chief medical examiner after Moore left her Harris County post, said he has little reason to doubt her competence and could not recall any instance other than the Lemons case in which her findings were revised.

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