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‘I’ll never get to take him to the first grade’

By Clif LeBlanc

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This story was originally published in The State on January 21, 1996.

Missy and Davis Daniel moved from their home because they could not stand to live just down the street from the in-home day care where their baby girl was murdered.

Lindy and Gary Colson visit a small church cemetery near their home whenever they need to talk to their baby boy, Parker. The Colsons find it hard to trust people since Parker died while at day care. They have a new baby, but won't leave her with anyone.

Catherine Maier entrusted her son to the same day care where the Daniel and Colson babies would die. When her son suffered brain damage from being violently shaken, child-protection workers focused suspicion on her and took her child away.

Eventually, the day-care operator would be charged with injuring Maier's son, Asher, six months after the Colson baby died. Maier is still fighting to regain custody of her toddler.

This is the private pain that endures for three families a year after the woman they trusted with their children was convicted of murder. Gail Cutro is serving life for killing Ashlan Daniel. After proving that, prosecutors decided against trying Cutro for Parker's death or for Asher's brain injury from shaken-baby syndrome.

“I don't think I'm ever going to get my soul back.”

-- Gary Colson

Ceramic angels stand guard around Parker Colson's grave where the tombstone and flowers share space with his red wagon and baseball bat.

Lindy Colson struggles with the pain of not being able to watch her son grow up: “I'll never get to take him to the first grade. I'll never get to watch my son graduate from high school and go on to college, give me grandchildren. She took that from us.”

The Colsons find some comfort in Cutro's prison term and in the belief that they might have saved other children.

“In my opinion, she's a serial killer,” said Lindy Colson, 30. “The three infants she kept from the time Parker died, all of them are dead or hurt. She had already agreed to keep another infant after Ashlan's death. I'm sure that would have been her next victim.”

It's no coincidence, Colson said, that Asher and Ashlan were exactly 4 months, 18 days old when they were hurt.

Parker would have died at that exact age had he not been with his parents for the Christmas holidays, his mother says. Parker returned to the Cutro home on Monday, Jan. 4, 1993 -- the day he died, 4 months, 29 days old.

Gary Colson, 40, plays with his daughter on their living-room carpet and fights back tears for his son. Parker's photograph hangs on a wall only feet away. In it, the little boy is wearing a University of Miami baseball cap like the one his dad wore when he played for the Hurricanes. That tiny cap is now with Parker in his casket.

Parker's death means 20-month-old Kasey won't have a typical childhood, and the Colsons won't have the lifestyle they planned.

“She will never see a day care,” Gary Colson said.

The Colsons gave up an income so that Lindy could stay home with Kasey. “The weekend stays with friends? We've already said, they'll come here or she won't enjoy it,” Gary Colson said. “I feel bad for Kasey.”

He also feels bad for his wife, who has been employed and independent-minded since she was 16. Lindy Colson is now a stay-home mom.

Going out in public is hard. They're suspicious when someone approaches Kasey. “You just tense up because you fear they're going to touch your child,” Lindy Colson said. “It destroyed the basic trust of the human race.”

She trusted Gail Cutro until June 30, 1994, when prosecutors had to tell the Colsons and the Daniels that they suspected Cutro of murder and had to exhume their babies for evidence.

It had been 1 1/2 years since Parker's death and the grieving mother was just coming to terms with it. Local doctors had told the Colsons his death was natural but unexplained.

“I just wanted to hold him again,” Lindy Colson said. “He was still my son.”

That discovery rocked her. Until that wrenching day in the 5th Circuit solicitor's office, Cutro had mourned with Lindy Colson over Parker's death from sudden infant death

syndrome. The women attended SIDS support groups together, organized a SIDS fundraiser and appeared on local television to help other parents survive SIDS.

The Colsons knew an investigation was under way. "I remember saying to Gail, 'Just hang in there. The truth will come out and it'll all be over with,'" Lindy Colson said. "Every time I had a suspicion, it was put to rest."

Colson was pregnant with Kasey when Cutro became a suspect in Parker's death. But authorities and her husband didn't tell her for fear the shock might cause a miscarriage.

Gary Colson said he didn't believe from the outset that his son died of SIDS, but confided only in his sister. "I was hoping for (Lindy) that it would have been SIDS . . . so she could go on and still trust people."

"Why? We ask God that question an awful lot."

-- Missy Daniel

In the year since the trial, Missy and Davis Daniel have had a son and are trying to rebuild a family life.

The only explanation they've come up with for the loss of their daughter is that she fell victim to a woman with a dark heart. "She's not sick," Missy Daniel said of Cutro, "she's evil."

The couple always doubted Cutro's account of how she put a sleepy Ashlan down for an afternoon nap only to find she wasn't breathing a short while later. Missy Daniel testified that Ashlan always fought sleep. The baby never would have dozed off just by being laid down.

"There was a lot of anger there, along with a lot of suspicion," said Davis Daniel. "There's a lot of anger there still."

"The only relief there is," added his 28-year-old wife, "is that she can no longer hurt another child. There had to be a stop to this. We did it for our daughter and other children."

They did more than take the stand against Cutro. The Daniels helped build the criminal case.

Missy Daniel played along when Cutro asked for some of Ashlan's clothing as a remembrance. She substituted someone else's yellow gown, though Cutro would tell her it smelled like Ashlan. Once, Daniel wore a hidden tape recorder so police could listen to a conversation with Cutro.

Missy Daniel told investigators that Cutro went to Ashlan's grave almost daily and talked. Prosecutors, thinking she might be confessing, seriously considered hiring a lip reader who would stand nearby and relay her words to police. Deputy Solicitor Johnny Gasser said he even consulted with the U.S. attorney's office about the legality of bugging a grave.

The Daniels say they won't put their son in the care of a stranger at least until he can talk. They support tighter regulations, including fingerprint checks of employees, mandatory CPR and first-aid training and unannounced inspections.

``I'm not here to slam all home day cares," Missy Daniel said. ``I'm sure there are some good ones. We just happen to pick one in a million."

``They need to be protected. They can't cry out."

-- Catherine Maier

Catherine Maier is happy that her son is alive and healing. He is a healthy, active child, that his mother describes as ``mildly developmentally delayed" as a result of his injury. His speech is slightly impaired, but his vocabulary has grown rapidly in recent months, Maier said.

Despite Cutro's conviction, Maier, 26, can't get her son back. She's mad at the Department of Social Services, the state's child-protection agency, and about the state's lax day-care regulations.

Maier is fighting the agency that restricts her to twice-a-month supervised visits with her son, who will celebrate his third birthday in February.

Asher Maier was shaken violently in Cutro's day care, experts in shaken-baby syndrome testified during the trial. Until criminal investigators talked to shaken-baby experts and interviewed parents who saw Asher that Wednesday, June 23, 1993, child-protection workers blamed Catherine Maier for hurting her son.

During the criminal probe, the agency looked into the matter again and decided Cutro was the culprit.

A Family Court judge will have to untangle the conflicting findings by different child-protection officials and determine whether Asher Maier will return to live with his mother.

Meanwhile, Asher is in the temporary custody of his paternal grandparents. His parents, Catherine and Chad Maier, have divorced.

Social-services officials won't discuss the case because state law bars disclosure of child-abuse investigations.

Maier, however, is bare-knuckled about her criticisms. She says that caseworkers are ignorant, incompetent and illiterate, and that the agency is arrogant and destructive.

``They say that their position is to reunite families," she said. ``DSS, if anything, has . . . torn this family apart."

Maier also accuses the agency of playing with her emotions.

``They say, `When you do this, we'll give you more visitation.' I do the things, then they move the line," Maier said. ``In other words, if you kiss our butt, we'll let you see your son a little bit more. Actually, Gail Cutro can see her children more than I can."

Though sworn testimony indicates Cutro shook Asher, Maier was a logical suspect for social services to focus on.

She's a recovering cocaine addict whose first husband divorced her alleging that she physically abused him. She met Chad Maier at an Narcotics Anonymous meeting. In the weeks before Asher was hurt, her second marriage was falling apart and she admitted to ``rage attacks."

In court, she said she didn't fight her first husband's allegations because she just wanted to end the marriage. Maier also said the rage attacks were reactions to birth-control pills that she quickly discontinued.

She's trying to straighten out her life and has hired an attorney to help her persuade social services that she's a fit mother.

Besides fighting her own battle, Maier has become a day-care regulation advocate.

She has written letters to the child-protection agency, to the former and current governors and to the Joint Legislative Committee on Children and Families.

She hopes to spare other parents from the grief the Colsons, the Daniels and the Maiers have endured. ``Parker Colson and Ashlan Daniel didn't have a chance to say, `Help me, please,' " Maier said. ``My son didn't have a chance to say, `Mom, help me.' "

Maier circulated a petition in support of legislation requiring fingerprinting all child-care employees. That bill became law last year.

“How many signatures does it take to protect our children?” Maier asked. “How many signatures do we have to have before somebody . . . opens their eyes to the fact that our children are in danger in day care?”

Blanket snatched off day care risks; Cutro probe exposed cracks in regulation

By **Clif LeBlanc**

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This story was originally published in The State on January 21, 1996.

Alarms that should have sounded were silent when two babies died and a third was severely injured in Gail Cutro's Irmo day care in 1993.

The case was more than a tragedy for the families of the three 4-month-old infants.

Cutro's case produced an agonizing murder trial that's still being debated. It also exposed serious flaws in the state's system for protecting children in day care.

From basic day-care regulation to child-abuse investigations, nothing worked as it should.

That includes parents who were troubled enough to take their children out of Cutro's day care, but didn't take their worries to regulators.

Eventually, Cutro was tried and sentenced to life in prison for causing brain injury so severe that Ashlan Daniel's vital systems shut down. The solicitor decided not to put the children's families through more agony and dropped charges that Cutro also killed Parker Colson and shook Asher Maier so hard he suffered brain injury.

Cutro might never have been caught had it not been for the creation about the time of Ashlan's death of a special child-death investigation squad at the State Law Enforcement Division. The squad was able to pull together information from numerous agencies that had only parts of the full picture and didn't tell one another what they knew.

From those pieces emerged a frightening picture of what Cutro did.

The picture also exposed a Department of Social Services that was so hamstrung by red tape, ill-written laws, lack of staff and training that it was incapable of doing what it was supposed to do: oversee day-care safety.

Chuck Daly, a deputy director in charge of the social services divisions involved in the case, said he would grade the agency's performance at ``no better than C work."

The department has made significant changes, many because of the Cutro case.

However, a year after the trial, the Cutro case still offers sobering lessons about protecting children in day care.

Worry sooner, not later

It took police and regulators eight crucial months in 1993 to figure out what was going on at Cutro's day care. By that time, two children had died and a third was seriously hurt.

Later, authorities would learn the day care had been investigated for child abuse almost two years earlier on a complaint that a 7-month-old baby had been struck so hard that he had a welt on his back in the shape of a large handprint.

However, because investigators couldn't prove the abuse occurred in Cutro's day care, state privacy laws required the agency to remove any reference to Cutro from the files.

Without a paper trail, the agency could not put together any pattern of abuse when Parker Colson died on Jan. 4, 1993. If available, that information might have raised a red flag before Asher was injured from shaking six months after Parker's death.

``You don't want to throw away any information that would ever be a clue that a child is in danger," said Wilbert Lewis, chief of the department's child-abuse division. ``But on the other hand, you have to balance how much information a state agency should maintain on a family."

There's not much information the state can gather on in-home day cares such as Cutro's.

They are nearly unregulated. The vast majority don't even register with the state. Those that do aren't required to have child-care or first-aid training. They don't have to submit to fire and health inspections. And their operating rules fill seven pages, compared with 31 and 32 pages, respectively, for more regulated group facilities and centers.

Time, as well as the law, helped Cutro hide her crime.

In the winter of 1993, the child-protection agency did not investigate child deaths or injuries in day care unless there was suspicion of abuse. No one complained to the department, and doctors said Parker died of sudden infant death syndrome (SIDS), which is a natural though unexplained cause of death.

By late summer of that year, the agency changed the way it did things so that at least a regulatory probe occurs when children die in day care.

Abuse caseworkers do not investigate SIDS even now, Lewis said.

SIDS is the No. 3 killer of South Carolina's infants. Only congenital problems and premature births claim more newborns, a review of health records shows.

In cases of suspected abuse, caseworkers or regulators cannot gain access without the operator's permission or a warrant.

The agency has little experience with investigating day cares because most child abuse occurs within families. During the three years between 1992-94, 421 complaints in day cares were investigated. That compares with 23,642 complaints of all sorts of child abuse just during the calendar year 1994.

On the rare occasion that caseworkers conduct abuse investigations in day cares, they can't tell anyone but the people immediately involved about it. That means parents of other children at the day care have no idea that abuse is suspected or the results of the investigation.

Privacy laws prohibit the agency from saying anything about abuse cases, said department lawyer Ginny Williamson. State and federal confidentiality provisions are so strict that violating them could jeopardize about \$20 million in federal money, the agency said.

Last year for the first time, the department began placing a notice in some public files when it determines abuse has occurred in child-care centers. It won't identify the abuser because the law says that's not public information.

Even that limited disclosure doesn't apply to in-home day cares, where there's usually only one worker.

Parents ought to be told when an investigation is under way, said David Harvin, a child advocate and former senior staffer at the child-protection agency. "Things can occur in day cares and the parents are shielded from knowing," he said. "I think that's legally and morally reprehensible. My God, this is a business relationship."

Bureaucratic bungling

When Parker died, day-care providers were not required to report deaths or injuries. But Cutro's husband reported it anyway.

That didn't trigger even a cursory investigation, a failing that showed a seriously flawed bureaucracy.

That was not the only time in the Cutro case when the agency didn't do anything with information it had.

For example, day-care regulators didn't learn of the Maier baby's injuries that were being investigated by abuse caseworkers until late September -- after Ashlan died. That poor handoff happened about the time the agency was switching the control of regulatory enforcement from county offices to state headquarters.

And the Lexington County office did not coordinate with the Richland County office during that investigation, said Johnny Gasser, the deputy 5th Circuit solicitor who prosecuted Cutro.

Though the day care was in Richland County, the Lexington office investigated Asher's brain injury because his mother, a suspect, lived in that county. That caseworker decided that Catherine Maier had hurt her own child.

After SLED's Child Fatalities Department began investigating, the Richland County office was called in and determined that Cutro was the one who violently shook the baby. Those conflicting findings have yet to be settled and are helping to keep Maier from regaining custody of her now nearly 3-year-old son.

Maier's past was checkered compared to Cutro's, who was active in her church and popular with most parents who had children in her care.

Caseworkers weren't up to this challenge, Gasser said.

``They never interviewed the doctors and the (shaken-baby) experts. And they still haven't," the prosecutor said. ``That's what's shocking. How can they defend that?"

The child-protection agency says its caseworkers consulted with a doctor who specializes in child abuse, but Gasser said they didn't go far enough.

``What they did not do is take the time to investigate the matter," Gasser said, referring to a 60-day deadline the law imposes on caseworkers to name culprits.

Lewis, director of abuse caseworkers, says the law should allow more time for day-care investigations. So many people have access to children in day cares that caseworkers need extra time to sort through witnesses and evidence.

But only the Legislature can make that change, Lewis said.

Having enough people to ensure safety is another issue for the General Assembly. There are few enforcers and so many facilities.

Eighteen full-time regulators process applications and monitor 4,000 day cares that keep 123,000 children. That's about 200 facilities per regulator, says Sherry Driggers, director of day-care supervision.

The caseload is worse for abuse investigators. About 400 caseworkers investigated nearly 24,000 complaints in 1994, Lewis said. That averages out to a daily caseload that's 50 percent heavier than professional guidelines suggest, Lewis said. In general, caseworkers handle 18 cases a day. The preferred national standard is 12, he said.

One thing the agency could do on its own but hasn't is to provide caseworkers better training in day-care investigations.

During five weeks of basic training, caseworkers spend one day on police investigative techniques, Lewis said. Certification standards were toughened last year, but no more time is allotted to evidence gathering and interviewing techniques. "I believe our expertise is in social work," Lewis said.

Last month, Department of Social Services Director Jim Clark asked the Legislature to transfer most child abuse investigations to police.

Meanwhile, cross training has begun for the first time between day-care regulators and abuse caseworkers.

Coordination a challenge

Getting those two divisions together was one of the chief obstacles to stopping Cutro.

Harvin called it "a miracle" that five branches of the agency were able to pull together and work with police on the case. Harvin was a top aide to former DSS Director Sam Griswold during the investigation and worked on the case.

"There are enormous problems in coordinating the child protection system with the regulatory system," Harvin said. "We need to . . . wire the system so it's self-starting."

Harvin credits Child Fatalities and its chief, Lt. Patsy Habben, for making a case out of a mix of social service workers, police and medical authorities.

"There was a lot of confusion," Habben recalls of the first joint meeting six days after Ashlan's death. "No one was sure who was in control of what information."

What the prosecution determined as the case unfolded was:

No police agency investigated Parker's death.

No one from either the Lexington or Richland counties coroners' offices went to see the circumstances of the deaths for themselves. The American Academy of Pediatrics and child-death experts say thorough scene investigations are crucial in determining SIDS.

Out-of-state pathologists disagreed with SIDS findings by two local pathologists. Experts from Minnesota, Florida and England testified the babies either were shaken to death or suffocated, but did not die naturally. They also took issue with how the local autopsies were performed. That battle of experts still rages as Cutro seeks a new trial.

Few infant deaths had been prosecuted in South Carolina, so Gasser had to consult with a national district attorney's organization as well as with out-of-state prosecutors and medical experts to know how to proceed with the case.

The case also turned into on-the-job-training for Child Fatalities agents who had no real experience in child-death investigations before the Legislature created the department.

Parental involvement

Parents bear some of the blame for problems in the day-care industry, critics say.

“Parents have to be involved,” Harvin said. “The public has got to be aware and has to be concerned about what's going on in child day care.”

The Colsons are concerned and thought they were aware, but they did not know until after the trial that the state cannot investigate in-home day cares unless someone files a complaint. No one did.

Too many parents choose a facility for the wrong reasons: if the price is right and there's an opening. That's not good enough, warn day-care operators and state regulators.

But it's so difficult to find a good day care that many parents hesitate to move their children even when they're unhappy. Quality day cares often have waiting lists of a year or more.

Parents also can be fooled by appearances. Cutro's day care looked ideal.

The aroma of hot meals filled the well-kept home in middle-class Irmo. She was experienced and particular about caring for children. Her daily report cards detailed meals, moods and even the number of diaper changes.

She decorated for holidays and celebrated each child's birthday. Cutro and her husband were trained in CPR.

The Colsons feel betrayed by Cutro and the state's child-protection system.

Gary Colson, Parker's father, is angry with the agency. "Where the hell were they?" he asks. "If they would have been there, if they would have gotten into Parker's case . . . maybe, just maybe . . . Asher wouldn't be going through what he's going through now and Ashlan would still be here."

Child-protection answers within grasp; training and changes reforming S.C.

By Clif LeBlanc

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This story was originally published in The State on January 22, 1996.

The Gail Cutro child-murder case carried a message for parents:

This state is unprepared to monitor violence against children in day care, especially in the fastest-growing type, in-home day care.

In its examination of the case, The State interviewed day-care owners, day-care regulators, child advocates, police, prosecutors, coroners, child-care experts, doctors and emergency medical technicians.

A year after her trial, here are some of the problems the Cutro investigation exposed and what, if anything, has been done about them.

Problem: No investigator went to Cutro's Irmo day care when Parker Colson died Jan. 4, 1993. Ambulance medics rushed the boy to the hospital, but no one called the police or the coroner to her home.

When Ashlan Daniel died eight months later, the police showed up, but a coroner allowed her body to be taken away without inspecting the scene.

Scene investigations are especially critical in child deaths because clues often are much more subtle, say experts in child-death investigations.

Solution: South Carolina now has uniform guidelines for gathering evidence at child-death scenes, but they are not always followed.

The guidelines were issued by the Child Fatalities Department of the State Law Enforcement Division on the day Ashlan died.

Before the Child Fatalities Department was established July 1, 1993, police and coroners dealt with child deaths in whatever ways they determined to be proper.

The Lexington and Richland coroner's offices acknowledge they made mistakes by not going to the scenes. Both say they've redoubled their efforts to follow SLED guidelines, including going to the scene whenever a child dies outside of a hospital.

Training for emergency medical technicians was upgraded last summer to teach them more about child anatomy and injuries.

Problem: South Carolina's child-protection agency, the Department of Social Services, does not have a fail-safe system to ensure that child abuse in day care is not overlooked.

The Department of Social Services did not look into Parker's death because it initially was judged to be sudden infant death syndrome, or SIDS.

The department did neither an abuse nor a regulatory investigation. Furthermore, daycare regulators didn't know that Cutro's facility was operating illegally. She had been keeping more than the limit of six children almost since she opened in June 1989.

Even the department's record-keeping policies hamstrung them. In fact, Cutro had a clean day-care file even though her home had been investigated for possible abuse nearly two years before the first death.

Solution: The child-protection agency has made many improvements since the Cutro case. Authorities now investigate most day-care deaths with a team that unites regulators who know day-care rules and caseworkers who deal with child abuse. A watchdog position also has been created to help the new system work.

However, SIDS deaths still trigger only regulatory, not abuse, reviews.

The agency has gotten more aggressive about investigating day-care complaints, including using surveillance. It also has begun cross-training caseworkers and regulators so they know more about one another's jobs.

Most day-care owners now are required to report serious injuries or deaths to the department. But 300 church-run facilities are exempt.

Problem: South Carolina does not have a uniform way of doing child autopsies, leaving procedures to individual pathologists, many of whom are not trained in criminal death investigation.

The state also does not have a pediatric pathologist who specializes in child and infant anatomy, diseases and deaths.

Initial autopsies found that Parker and Ashlan died of SIDS. The prosecution brought in out-of-state experts who testified that the children died of abuse. The experts also took issue with medical procedures used by local pathologists.

Solution: The medical-evidence debate still rages in professional circles, including in Cutro's legal appeal. But SLED's Child Fatalities Department is about to issue an autopsy protocol for all cases that come to its agents. Pathologists will have a year to try it and suggest changes.

Pediatric pathologists are highly paid specialists who usually work at teaching facilities such as Richland Memorial Hospital in Columbia or the hospital at the Medical University of South Carolina in Charleston. The pathologists can then combine incomes as instructors with laboratory work assisting forensic pathologists and coroners on selected cases.

Problem: Confusion over which agencies had jurisdiction in the Cutro case caused investigators not to realize that something was amiss, delaying an effective investigation for eight months.

While infants were dying or being hurt at the day care, the wrong law-enforcement agencies, the wrong coroner's offices and the wrong child-protection offices were investigating aspects of the case.

For about half the time she was in business, Cutro herself was registered in the wrong county. The error was discovered by an abuse caseworker who missed that her business was overcrowded, therefore operating illegally.

Solution: Jurisdictional confusion has largely been fixed by the Child Fatalities Department that has authority to investigate any suspicious child death.

Problem: Child-abuse investigators are not trained in day-care regulations, and regulators are not familiar with child-abuse investigations.

Solution: Cross-training began late last year, and abuse caseworkers now have a simplified step-by-step investigations manual to keep cases on track.

Problem: Child-protection records were kept separate in different divisions of the social-services agency, making it difficult to cross-check.

Solution: Regulators now have more extensive information about abuse complaints and have a wider computer database that backs up written files on regulatory infractions.

Before 1994, regulatory infractions were handwritten and kept in county offices until enforcement was transferred to state headquarters.

Until 1993, the agency's central database did not show whether child abusers worked at day cares.

Records of regulatory complaints and infractions are now updated daily.

Furthermore, the state office is designing systems for tracking deaths in day care and for keeping up with chronic rule-breaking and violation of abuse laws.

Problem: In-home day cares are underregulated, and children are dying or being hurt there more often than at other types of day care.

Solution: Upgrade the training of operators or tighten regulations.

Some critics say the answer lies in tougher government regulation that sets higher standards for operators and allows unannounced inspections.

Gov. David Beasley and child-protection chief Jim Clark say that self-help is the best solution. They advocate networks of trainers who hold training sessions near the day cares.

Both say more government regulation would drive up the cost to parents and even force some legitimate operators to stop registering with the state at all.

Some in-home operators say they're already overregulated, especially because of a newly approved requirement that all child-care workers submit to national criminal background checks.

Pauline LaPlant, a 35-year veteran of the day care business, says that rule may force as many as half the state's providers to bypass any government monitoring. Many say they will keep children no more than four hours per day, which exempts them from any regulation, LaPlant said.

On the other hand, a committee that oversees child-death investigations supports uniform health and safety standards for all day cares, inspections before they can accept children

and giving police the power to close facilities even before a criminal charge is filed if evidence indicates danger for children.

Cutro faces charges of shoplifting

By Clif LeBlanc

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This story was originally published in The State on September 26, 1997.

Josh Cutro, already under investigation for possibly threatening a public official, was charged on Wednesday with shoplifting \$300 in over-the-counter pain pills.

Cutro, 38, is the husband of Gail Cutro, who is serving a 20-year prison sentence in the death of an infant in a day care the Cutros once ran in their Irmo home.

Chapin police officer Scott Smith arrested Josh Cutro and Betty Louise Keefe, 61, of West Columbia, at a Winn Dixie on Chapin Road about 6:30 p.m.

Witnesses at the store said Cutro and Keefe were filling a large purse with medication and other items. Keefe went into a bathroom and a witness followed her while others watched Cutro go sit in a car in the parking lot.

Keefe began dumping the pills into a trash can, Smith said. Police found 10 bottles of Advil, five bottles of Motrin, 19 bottles of Tylenol, eight bottles of eye drops and a bottle of vitamins. The items are valued at \$365.

Authorities said Cutro had \$708 in cash in his pocket.

Reached at his home Thursday night, Cutro denied he shoplifted. "When I go to trial, it'll be straightened out," he said.

This is the second time in the past week that Cutro has had trouble with the law.

He was questioned by SLED agents in connection with a remark he made Sept. 18 to 5th Circuit Deputy Solicitor Johnny Gasser after the prosecutor tried to convince the state Supreme Court to uphold Gail Cutro's 1994 murder conviction.

"Hey Johnny," Cutro shouted as Gasser left the courthouse, "I'll be around downtown, OK. Keep an eye out for me, and you better have at least 10 people with you."

He said the agents told him they were convinced he didn't intend bodily harm and "everything was cleared up."

Guilty verdict was 1 vote away; prosecutors mull third Cutro trial

By Clif LeBlanc

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This story was originally published in The State on June 15, 1999.

It was Sunday morning and jurors in the Gail Cutro murder trial were tired and overwhelmed by medical testimony, but felt close to a unanimous guilty verdict as they returned to deliberate.

A night's rest at home had allowed two undecided jurors to switch their votes to guilty in the death of 4-month-old Ashlan Daniel, juror Charlotte B. Barker said Monday. That brought the tally to 11-1 for conviction.

But one steadfast holdout couldn't shake his reasonable doubt even after searching his conscience yet again, Barker said.

The vote by the holdout, whom Barker would not name, resulted in a mistrial.

It was the second trial of Cutro, a mother of three, on charges that she killed two babies and hurt a third in her former Irmo home day care. A different jury convicted her in December 1994 in Ashlan's death, but last August the state Supreme Court threw out the verdict because of legal errors.

Fifth Circuit Solicitor Barney Giese wouldn't say Monday whether he plans a third trial. But comments by Giese and lead Cutro prosecutor Johnny Gasser show they are leaning that way.

"There's no statute of limitations for seeking justice for murder, especially for young children," Giese said. He pointed out that he is about to start a fourth murder trial of Warren Manning, who is charged with killing a Highway Patrol trooper about 10 years ago.

Gasser, who is highly invested in the Cutro case and has been accused of being on a "witch hunt" for Cutro, said: "From those of us who worked on this case, there is no sense that we are defeated."

Inside the jury room at the Richland County courthouse Sunday, prosecutors were about to suffer their latest setback.

The six-man, six-woman jury was more divided on the death of Parker Colson and the severe shaking of Asher Maier in Cutro's Irmo day care.

The vote tallies listed in columns with the babies' names at the top showed that jurors had to focus on the case most likely to bring a conviction, Ashlan Daniel's, said Barker, who favored three guilty verdicts.

Five hours later, around 2:15 p.m. Sunday, the holdout reached his final decision.

"Send a note to the judge because I can't change my mind," Barker recalls him saying.

"We had to accept that," Barker said. "The judge said you can't violate your conscience.

"I just wanted to evaporate when I heard the judge say those words," she said of trial Judge James Williams Jr.'s declaration of a mistrial.

"I feel that we just failed them," Barker said of the babies' parents.

The holdout, "would have had to see a video to believe she had done it," Barker said. Despite 76 witnesses and 13 days of testimony, there was no direct evidence of homicide.

Other jurors contacted Monday either declined to be interviewed or did not return phone calls.

Barker, a grandmother with a degree in biology and a comparative anatomy teacher, was surprised by how the conflicting medical testimony confused other jurors. She believed the prosecution experts.

The group decided to put aside the medical evidence, including testimony about an unusual condition known as Munchausen Syndrome by Proxy. Generally in that form of child abuse, mothers hurt their children to get sympathy from doctors.

Instead of all that, the jury focused on "the facts," Barker said. "They were looking at, Did this really happen and who did it?" That included studying timelines and witness credibility.

Some jurors suspected that Cutro's husband, Josh, could have been responsible because he had as much access as his wife to the infants. Others wondered if mothers who allowed the infants to sleep on their stomachs could have inadvertently contributed to Sudden Infant Death Syndrome.

SIDS is the unexplained death of a child younger than 1. Studies have shown SIDS is less likely when babies sleep on their backs or sides. Cutro's attorneys said that Parker and Ashlan slept on their stomachs. Cutro's defense was based on SIDS.

Cutro took the stand this time as she did in 1994. But her testimony hurt her, Barker said. "She was the least credible of the whole shebang. She was evasive."

Cutro took cues from her husband during her testimony, Barker said.

Still, it was the sheer weight of the evidence that bogged down jurors.

When it became clear they could not settle on Parker's death and Asher's violent shaking, jurors looked at each other and said, "We've got to do something," Barker said. "We've got to stop this. We felt that she was capable of doing it again in another place, another time."

And that is what prosecutors are still weighing.

Giese and Gasser are to meet today with two jurors who asked to speak with them. They wouldn't name the jurors.

"We want to know our weaknesses more than our strengths," Gasser said about preparations for a possible third trial.

But Cutro lawyer Lee Caggiola said the trials have exacted heavy tolls emotionally and financially. She estimates Cutro's defense this time could cost as much as \$75,000. Prosecutors spent about \$60,000 in the 1994 trial and are still tallying this one.

"It's time to stop," Caggiola said. "The state has certainly used ample resources. How many times do you do this?"

Cutro says he was hoping to commit 'suicide by cop'

By Rick Brundrett

Staff Writer

This story was originally published in The State on July 4, 2003.

Josh Cutro said Thursday he wanted police to kill him after leading them Wednesday on a chase in which he was shot twice.

"I was hoping they would shoot me in the head," Cutro told The State newspaper while waiting for a bond hearing at Richland County jail.

Cutro, in a blue jail jumpsuit, wore a bloody gauze bandage over a gunshot wound on his upper left arm.

Cutro, 44, is married to Gail Cutro, who is serving a life prison sentence after she was convicted in 2000 of killing two babies in 1993 at the Cutros' Irmo day care. Josh Cutro testified for his wife and was a constant presence at her three Richland County trials.

Cutro said he hasn't spoken to his wife or children since his arrest last year in Lexington County on drug and weapons charges in two separate incidents.

Cutro told investigators he was hoping to "commit suicide by cop" by brandishing a large bowie-type knife at deputies at the end of Wednesday's chase, Sheriff Leon Lott said Thursday.

"I felt it was time for me to move on," Cutro told The State.

Deputy Jeffrey Smith, 38, shot Cutro in the upper left arm, after Cutro raised the knife "in a threatening manner," Lott said.

At the start of the chase, Deputy Kevin Isenhoward, 26, shot through the door of Cutro's Nissan Altima, grazing him in the left leg, Lott said.

Cutro hit Isenhoward and Deputy Trey Laffin, 28, with his car as he drove from the Western Inn and Suites on Bush River Road. Deputies were doing an undercover prostitution sting at the hotel, Lott said.

"We feel very confident the officers were justified in what they did," Lott said at a press conference Wednesday.

Lott said Cutro is a "dangerous individual," noting he had threatened a prosecutor.

Cutro was accused of threatening former Richland County prosecutor Johnny Gasser in 1997 on the steps of the S.C. Supreme Court during Gail Cutro's appeal; Gasser declined to press charges.

Josh Cutro fled about 6:15 p.m. Wednesday from the motel after trying to get a woman to sell cocaine for him, Lott said. The woman he tried to recruit was an undercover officer.

The chase ended about eight miles from the motel after Cutro's car went off Broad River Road near Kennerly Road, he said.

Speeds during the chase topped 100 mph, deputies said.

Deputies seized about 30 grams of crack cocaine, 30 Ecstasy pills and the suspected "date rape" drug GHB, Lott said.

Cutro, in interviews with The State, disagreed with some of what police have said.

"That was no crack; that was just the best cocaine around," he said.

He denied planning to have prostitutes sell drugs for him. He said he was at the motel visiting his brother.

Cutro, who weighs about 350 pounds, also denied he was trying to solicit prostitutes, saying, "I've got plenty of girlfriends."

The State Law Enforcement Division is investigating. Fifth Circuit Solicitor Barney Giese in a prepared statement Thursday said his office will review the SLED report.

Richland County Magistrate Clevette Hudnell on Thursday denied bail for Cutro. Assistant Solicitor Vince Smith recommended no bail, saying Cutro was a flight risk and a "danger to the community."

Cutro's lawyer, Josh Kendrick, disputed Smith's statements and asked Hudnell to set a reasonable bail. "There's always two sides to a story," he said, although he declined afterward to elaborate.

Cutro, of 329 Broadleaf Drive, in the Oak Grove area east of Lexington, is charged with two counts of assault and battery with intent to kill, trafficking 28-100 grams of crack cocaine, possession with intent to distribute Ecstasy, and failure to stop for police blue lights.

He faces a maximum 73 years in prison if convicted of all the charges.

In a related matter, 11th Circuit Deputy Solicitor Dayton Riddle said Thursday his office will ask a judge to revoke bond for Cutro on drug and weapons charges in Lexington County.

Cutro was free on \$70,000 bail on charges of selling Ecstasy to Lexington County narcotics officers in September.

In a separate case last August, Cutro was charged with unlawfully carrying a weapon after a man told police Cutro threatened him at a West Columbia bar.

A hearing on those cases is scheduled for later this month, Riddle said. He declined further comment.

Cutro has convictions for simple assault and malicious destruction of private property in 1976, and shoplifting in 1997 and 1998, SLED records show.

Cutro's husband sentenced to 12 years

By Clif LeBlanc

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This story was originally published in The State on January 17, 2004.

Staunch defender of his wife, a convicted child killer, pleads guilty in drug, kidnapping case

A man who rose to public attention as a stalwart defender of his wife, a convicted child killer, will serve 12 years in prison on drug, kidnapping and assault charges.

Josh Cutro, 55, pleaded guilty and was sentenced Friday on 16 charges filed in Richland and Lexington counties in 2002 and 2003, prosecutors said.

Judge G. Thomas Cooper handed down sentences ranging from five years to 12 years, the prosecutors said.

Because the sentences are concurrent and some offenses are considered violent, Cutro will serve 85 percent of 12 years - the harshest sentence, said Richland County prosecutor Don Sorenson.

No relatives or friends spoke on Cutro's behalf during the hearing at the Richland County courthouse, Sorenson said. None of his three children was in court, and Cutro has said he has had little contact with them since his August 2002 arrest in Lexington County.

Efforts to reach Cutro's Richland County public defender on Friday were unsuccessful.

Cutro's wife, Gail Cutro, is serving a life sentence for the 1993 deaths of two infants in the Irmo day care the Cutros operated.

Josh Cutro was at his wife's side for each of her three trials.

Josh Cutro's own legal troubles began two summers ago and snowballed.

He was charged with dragging a man at gunpoint from his car at a West Columbia bar during a confrontation, Lexington prosecutor Tav Swarat said.

That led to cocaine and Ecstasy charges. Cutro was arrested on more drug charges while he was free on bail, Swarat said.

Last summer, Richland County deputies charged Cutro with trying to run over two deputies, trafficking in crack cocaine, possession with intent to distribute Ecstasy and failure to stop for a blue light.

Cutro was arrested after he fled during an undercover prostitution investigation at the Western Inn and Suites on Broad River Road.

Cutro was trying to get a woman to sell cocaine for him, Sheriff Leon Lott said at the time. The woman was an undercover officer.

Deputies shot Cutro in the upper left arm when he crashed after an eight-mile chase. Cutro emerged from the car with a large knife and raised it in a threatening manner. An earlier shot grazed Cutro's leg.

Cutro later told The State he wanted deputies to shoot him in what is commonly called "suicide by cop."