

# SANTA BARBARA NEWS-PRESS



## Attorneys want state to investigate boy's drowning

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The attorneys for the family of a 4-year-old boy who drowned last year at a Goleta athletic club are urging the state attorney general to launch a criminal investigation, saying earlier probes by the Santa Barbara Sheriff's Department and District Attorney's Office, finding no criminal wrongdoing, were deeply flawed.

Also, in a report released Monday, attorney Barry Cappello disclosed new details that he believes show the negligence of the lifeguards and camp counselor in the pool with the children at the Cathedral Oaks Athletic Club.

It has long been known that the horrific events during the summer program's pool activities on Aug. 15, 2005, were captured on video, which showed young Jonathan Gottesman floating face down in the pool for eight minutes before anyone took notice in the roomful of 13 children and at least five adults.

But the attorneys' report said closer inspection of the video shows a counselor "dunking" kids and "roughhousing" with them in the pool, one of whom was apparently the boy, nicknamed "Yoni," just before he died.

"He raised them well up out of the water into the air, and would dunk them back head first, face first, into the water," said Mr. Cappello's partner, Leila Noel. "It never should have been happening. The DA (Tom Sneddon) not only took no notice, he actually said dunking is no big deal and that he even dunks his own kids.' "

Mr. Sneddon could not be reached for comment Monday because he was out of town, a secretary at the District Attorney's Office said.

As a group of children swam away following a round of dunking, one "form" -- apparently Yoni -- flailed in the water for a while before going prone, the report said. The report also disclosed new details about the on-duty lifeguards, both college-aged, whom the Gottesman family hope will be charged with criminal negligence alongside the club.

The report said that one lifeguard sat motionless as the child died a few feet away, and that a second guard from the far end of the pool did nothing to save Yoni for the first six minutes, and then walked past the child to get a soda.

"It is only after a (child) notices Yoni floating in the pool and calls for help that anything happens," the report said. The owner of the club, Richard Berti, said he feels terrible about the incident, but said he believes it was an accident that does not warrant criminal prosecution, as the District Attorney's Office and Sheriff's Department have concluded.

"It was a horrible accident," he said Monday. "I feel great pain from it. I do pray quite a bit about it."

Yoni's father, 44-year-old Oded Gottesman, said he has been living a nightmare since the incident at the club on Cathedral Oaks Road.

"He was dying and the counselor (kept) dunking other children, and the lifeguard was not doing anything," said Mr. Gottesman, who, with his wife, Anat, has one other child. "They are still inviting families and children to their activities like nothing happened."

The family's attorneys are asking that the Attorney General's Office convene a grand jury for the purpose of "issuing indictments for child endangerment and involuntary manslaughter against those persons and entities found to be responsible for Yoni's death."

The family's attorneys are arguing that the incident rises to the level of criminal negligence, in part because the club was operating without the required license. Also, they say, the lifeguards were not adequately trained.

"Lifeguards are supposed to scan the pool every 10 seconds and at a minimum every 15 seconds," Mrs. Noel said. "For lifeguards not to be scanning their zone of responsibility . . . that's negligence on its face."

Mr. Berti has said his staff was adequately trained.

The family's attorneys accuse the Sheriff's Department -- which conducted the initial investigation -- of having a conflict of interest because Mr. Berti was a prominent financial donor to the Sheriff's Department. Since 2004, he had given at least \$50,000 to charities raising money for safety equipment for the law enforcement agency.

Responding Monday, Sheriff's Department spokesman Sgt. Erik Raney said the department stands by the findings of its investigation.

"We welcome any other investigations, and plan to cooperate fully with any investigations the attorney general may bring into this matter," said Sgt. Raney, adding that he doesn't remember hearing anything about dunking.

The attorneys also accuse Mr. Sneddon of "whitewashing" the sheriff's investigation. The report called the district attorney's investigation "sloppy, inadequate and incomplete." Although he couldn't be reached Monday, Mr. Sneddon has said his investigation was extensive and included more than 56 interviews. He said his team also reviewed the videotape of the drowning, coroner's and law enforcement reports, and documents submitted by the boy's family and Mr. Cappello.

The attorneys also say that similar drowning cases have resulted in charges being filed in Riverside, Sonoma and San Jose counties.

The Attorney General's Office typically gets involved in local law enforcement matters only when there is a disabling conflict-of-interest concern or, much more rarely, an abuse of discretion of authority, said attorney general spokesman Nathan Barankin, who hadn't yet seen the attorneys' request.

He gave a couple of examples of viable conflict-of-interest issues.

"Sometimes the alleged perpetrator is a relative of the sheriff or an employee of the DA's office," he said.

He declined to comment on the likelihood that the Santa Barbara case would qualify.

He added: "Many more things flunk the smell test more quickly than they ripen into a legal problem."

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