

A. BARRY CAPPELLO

April 6, 2007

File No. 06009.001

Via California Overnight

The Honorable Edmund G. Brown, Jr.
Attorney General of the State of California
1515 Clay Street, 20th Floor
Oakland, California 94612

Re: Yoni Gottesman Drowning

Dear Attorney General Brown:

Thank you for the generous amount of time you gave us in our telephone conversation this week. You requested that we provide you with some examples of other counties in the State that have filed cases for child endangerment or involuntary manslaughter in similar situations. Those are set forth below.

In addition, as we explained in our telephone conversation, Cathedral Oaks Athletic Club's ("COAC") Camp was not a licensed facility. When it was cited by the Department of Social Services for this violation, COAC claimed that it was not required to be licensed. In denying each of COAC's three separate appeals of the citation, the Department of Social Services made it clear that: (1) the Camp was a "day care facility" as defined by Health & Safety Code section 1596.70; (2) that it therefore was required to be licensed; (3) that it was not licensed and therefore COAC violated Health and Security Code sections 1596.80, 1596.805 and California Code of Regulations, Title 22, Division 12, section 101157.¹ Despite this fact, the District Attorney refused to consider COAC's violation of the law and its misrepresentations that it was licensed in his decision not to pursue charges.

A review of the child endangerment and involuntary manslaughter cases prosecuted in California leaves little uncertainty that the death of Yoni Gottesman should have resulted in the

¹ In fact, it is highly questionable whether COAC could have met licensing requirements given the unqualified personnel hired, the inadequate training of personnel, the lack of required certifications, and poor supervision and unsafe pool conditions.

District Attorney filing criminal negligence charges.² A sampling of such cases follows.

In a case with circumstances very similar to those leading up to Yoni's tragic death, the Riverside County District Attorney filed criminal child endangerment charges against the operators of a day care center, when a small child left in their care was not properly supervised and drowned in a hot tub in 2004. While the child care facility was licensed by the state, the facility had been cited in past inspections and ordered to make improvements to the home; these citations included warnings to keep the spa enclosed and covered. The District Attorney filed three counts of child endangerment and one count of child endangerment causing death. The couple pleaded guilty to child endangerment, and were sentenced to six years and two years, respectively, in prison. As a result of this incident, Assemblyman John Benoit, who represents Riverside, introduced AB 633 and AB 617, both of which passed in January 2006. These bills establish a uniform grading system for child care facilities, and require disclosures to parents regarding serious or chronic health and safety violations discovered at child care facilities. (*People v. Gonzales*, Attachment I, pp.1-7.) Given that the COAC never bothered to obtain the required licence, and therefore never submitted to the requisite licensing inspections, it is difficult to say how many unsafe and dangerous conditions existed at the facility. One thing is certain, however: The lifeguards and counselors charged with the care and well-being of innocent children were criminally negligent in the performance of their duties.

Also in 2004, the Sonoma County District Attorney filed charges against a mother who left her children locked in a van; one of the children died. When Rena Corban returned to her home on August 19, 2004, at approximately 10:00 a.m., she left her two young sons locked in a van, with the windows rolled up, on a hot day. While the children were in the closed car, Corban went into the house and passed out drunk. The children's father found the boys in the van when he returned home from work at 6:00 p.m. Corban's two-year-old son, Liam, died from heat exposure in the van, in temperatures estimated in excess of 120 degrees. The District Attorney charged the mother with child endangerment and involuntary manslaughter in the death of her son. Corban pled no contest to involuntary manslaughter and two counts of felony child endangerment; she was sentenced to 7 years, 4 months in prison. The District Attorney had recommended a sentence of 11 years, 4 months. The DA offered no plea to Corban other than allowing her to admit all charges and face the maximum prison time at sentencing. (*People v. Corban*, Attachment I, pp. 8-10.)

² In California criminal negligence is described as "conduct that is such a departure from what would be conduct of an ordinarily prudent or careful person under the same circumstances as to be incompatible with a proper regard for human life or an indifference to consequences." *People v. Valdez* (2002) 27 Cal 4th 778 (mother convicted of child endangerment by leaving child with boyfriend whose abuse caused child's death).

In 2005, the San Jose District Attorney charged a third-party caretaker with child endangerment in the death of a toddler. On November 21, 2005, Katrina Hatton was caring for two brothers, Alexander and Elijah, ages two and four. She was on her way to a restaurant where she wanted to apply for a job. On the way, she led the brothers across railroad tracks, and then returned to bring across a stroller carrying her own infant daughter. When Hatton turned her back on the boys, Alexander followed her and was struck and killed by a speeding Amtrak train. Hatton simply had been asked to take care of the brothers by her roommate, who had been babysitting for Nicole Wilson, the boys' mother. Hatton had never met Wilson. Hatton pled no contest to one count of felony child endangerment, and was sentenced to four years of probation. (*People v. Hatton*, Attachment I, pp. 11-13.)³

³ District Attorneys in other states repeatedly have charged third-party child care providers with child endangerment in the drowning deaths of toddlers or young children left in their care.

- Ohio: A certified child care provider was charged with and found guilty of involuntary manslaughter and child endangerment in the drowning death of a two-year-old boy; she was sentenced to three years in jail, as well as 5 years probation. (*People v. Hillman*, Attachment I, pp. 14-16.)
- Pennsylvania: A woman was charged with and found guilty of child endangerment when her boyfriend's son fell into a creek and drowned. The woman, who previously had taken the boy away from the creek and told her boyfriend that he should not be near the water, did not go into the creek to save him because she could not swim. (*People v. Newkirk*, Attachment I, pp. 17-19.)

Some states also aggressively pursue criminal charges against parents who failed to supervise their own children, allowing them to drown in pools and bathtubs.

- Arizona: The Maricopa County Attorney filed negligent homicide charges against two mothers who allowed their children to drown in two separate incidents in 2000. These cases were the first time in state history that a parent or caretaker had been charged with responsibility for the unintentional drowning death of a child. (*People v. Rico*, Attachment I, pp. 20-32; *People v. Perry*, Attachment I, pp. 28-32.) In 2003, the Maricopa County Attorney filed charges against a mother in the drowning death of her son. (*People v. Dauberman*, Attachment I, pp. 33-40.) The Maricopa County Attorney has been quoted as saying that his prosecutors will file charges against any caretakers deemed criminally negligent in caring for children, whether the deaths or injuries were "accidental" or not. (Attachment I, pp. 28-29.)
- Utah: In 2006, the District Attorney in Provo, Utah, charged a mother with reckless endangerment and/or negligent homicide in the bathtub drowning of her son. In that instance, the mother had closed the door to the bathroom while she went to get some

The Honorable Edmund G. Brown, Jr.
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COAC demonstrated a callous indifference toward the safety of the children left in its care. The facts supporting this include past incidents of near drowning, numerous complaints of inattentive lifeguards, non-responsiveness to complaints, and lack of licensing. The latter deprived the parents of children left in COAC's care of Department of Social Welfare oversight regarding safety; appropriate credentials and facilities; and the propriety of young, untrained and unsupervised counselors. COAC's indifference rose to the level of criminal negligence when its conduct resulted in the death of a 4-year-old child – a little boy who repeatedly was dunked by a large male counselor who then swam away leaving him to drown in plain view of two lifeguards and three counselors.

The continuing indifference to what occurred is evident in COAC's large-display, color advertisements that appear almost daily in local newspapers. Among other things, these ads depict young children in the club's pool and reference "outstanding youth programs." (A copy of such an ad is enclosed as Attachment II.)

In any other county in the State, this incident would have resulted in the filing of criminal charges against the COAC corporation and its principals. The result can be no different in Santa Barbara. As Attorney General, we hope you will investigate this case and submit it to a grand jury for an unbiased review so that California's criminal laws are uniformly and fairly enforced.

Very truly yours,

CAPPELLO & NOEL LLP



A. Barry Cappello

Enclosures
cc: Oded and Anat Gottesman

towels, believing that her sons (ages 2 and 14-months) could not get into the bathroom while the door was latched. (*People v. Krebs*, Attachment I, p. 41-42.)

EXHIBIT 1



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Thursday, November 9, 2006

Last modified Thursday, January 6, 2005 11:10 PM PST

Trial ordered for day-care operators in death of child

By: Associated Press

RIVERSIDE -- A couple who ran a day-care center at their home were ordered to trial on child endangerment charges for the death of a toddler who drowned in a spa.

Twenty-month-old Aryanna Sanchez wandered into the spa on March 29, 2004, at the La Sierra-area home of Fernando and Debra Lynn Gonzales, both 30.

At the conclusion of Wednesday's preliminary hearing, Superior Court Judge Carl E. Davis ruled there was enough evidence to order trial.

Deputy District Attorney Carlos Monagas told the judge a toxicologist will testify, if necessary, that the couple were under the influence of a controlled substance at the time of the child's death.

Jacquie Hartigan, a senior investigator for the California Department of Social Services, testified that the couple faced citations and needed to make improvements at their home. Some of those corrections included warnings to keep the spa enclosed and covered.

"These are people who made a business of caring for children," Monagas said. "They solicited parents to bring their children, their most precious possessions, to them. The charges in this case reflect a callous disregard for the safety of the children in their care."



Bill requires letter grades for state day-care centers

12:17 AM PST on Tuesday, March 29, 2005

By JOHN WELSH and LISA O'NEILL HILL / The Press-Enterprise

An Inland lawmaker wants children's day-care owners to post letter grades similar to those found at restaurants.

Assemblyman John Benoit said he thinks parents should have that upfront rating information available. If a day-care center was not meeting mandated requirements, its letter-grade mark would reflect that.

"When you walk into a restaurant and you see an A or a B or a C, you get an idea of whether it's up to snuff," said the Palm Desert Republican.

Benoit's bills hit the Legislature today on the one-year anniversary of Aryanna Aaliya Sanchez's death. The 20-month-old Riverside girl drowned in a backyard spa while at the house of a couple running a day-care business in Riverside's La Sierra area. A trial against her former providers is scheduled to begin next month. A couple face felony charges of willful child endangerment.

Benoit said he believes his bills could face opposition within the Legislature or, if they do move forward, a state finance committee might put a price tag on them -- and that would essentially hurt their chances of passing in California's financially strapped situation. Plus, some who are day-care center veterans said they believe plenty of rules and regulations are in place already.

"Like so many other things, this is a knee-jerk reaction to a very horrible event," said Dennis Vicars, executive director of the San Francisco-based Professional Association for Childhood Education, a nonprofit, member-based organization that keeps watch of public policy.

More Inspections Urged

Vicars argued that such legislation usurps a system that needs more funding, not more bureaucracy. He said there are about 14,000 free-standing private preschools and another 45,000 day-care providers in neighborhood houses but the state's Department of Social

"Aryanna's Law"

Assemblyman John Benoit introduces two child-safety bills today. The bills are named after Aryanna Sanchez, a young child who drowned March 29, 2004, in a partially covered spa at a licensed day-care center in Riverside. State regulators had cited the facility numerous times for violations, including leaving the spa uncovered and having a broken pool-gate latch.

AB 617 would establish a uniform statewide child day-care facility grading system. An A, B, C, D or F grade would be posted at each facility based on the health and safety violations found during the inspections by state regulators.

AB 633 would require greater disclosures to parents of serious or chronic health and safety violations discovered at child-care facilities. In addition, AB 633 would ensure that new child-



Special To the Press-Enterprise
Aryanna Aaliya Sanchez
drowned a year ago today.

Services downsized roughly 84 positions in 2003.

What's happening now is centers aren't getting annual inspections, Vicars said. Therein lies a major problem, said Vicars, a former owner of 23 centers himself. He suggested Benoit spend more time trying to find the money to hire more social workers to inspect current facilities.

Social workers, for example, cited the La Sierra couple for violations -- including infractions for leaving the spa uncovered or partially covered -- but Aryanna's mother never knew of those offenses.

care directors are familiar with child-care laws and regulations.

"Kaitlyn's Law"

The law is named after Kaitlyn Russell, the 6-month-old Corona girl who died in August 2000 after being left alone for at least two hours in a vehicle where temperatures topped 130 degrees.

The law: Authorizes a \$100 fine to a person responsible for a child 6 years or younger who leaves that child unattended in a vehicle if the child is placed at a significant safety risk, or the vehicle's engine is left running or the vehicle's keys are left in the ignition. The bill sets aside 70 percent of the fines' proceeds for prevention programs.

"It came to our attention, tragic as this death was, there had been a huge problem behind the scenes," Benoit said.

Remembering

Dozens of photographs celebrate the short life of Aryanna Sanchez inside an apartment in Riverside's Arlington neighborhood. It's the home of Anita Aguilar, the girl's mother.

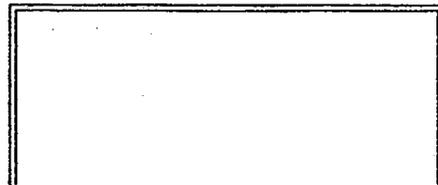
Aguilar is a 24-year-old, soft-spoken, polite woman. But the Riverside native is very capable of boasting about the little girl who was born the day before the Fourth of July with the "perfect, little round head."

"She was just happy to be out," Aguilar said on a recent Monday night after her job as a court clerk in the Riverside County juvenile division. Aguilar, the oldest of seven children, already had the mothering instincts. Now Aguilar has only the photos of the little girl who loved giving everyone kisses when she said "bye."

Aryanna died March 29, 2004 when she wandered to a backyard area that included an uncovered spa, according to authorities. Aguilar visits her daughter's grave at Olivewood Cemetery in Riverside weekly. Aryanna's final resting place can be seen "from a mile away," she said, referring to all the holiday decorations.

Right now the theme is Easter. Stuffed bunnies. Eggs. A bunny-shaped Easter basket with a bunny inside it.

"I can't celebrate the holidays with her like everybody else," said Aguilar on a recent visit. "I call it her garden."



Benoit's Bills

Benoit crafted two bills he hopes will protect other children in day-care centers. He has dubbed them "Aryanna's Law."

It's not the first time an Inland toddler's death sparked new legislation. Kaitlyn's Law is named after 6-month-old Kaitlyn Marie Russell, the Corona girl who died in August 2000 inside a minivan after her baby sitter forgot about her. The law calls for officers to cite anyone leaving a child under the age of 6 unattended inside a vehicle.

A hearing on Benoit's bills takes place today before the Human Services Committee. One of the bills would require the State Department of Social Services to develop a grading system, much like the grading system in restaurants. The grades would be based on any health and safety violations and would require the centers to post them publicly until a new grade is issued.

The companion bill would require that day-care centers disclose to parents all substantiated complaint investigations. And if the Department of Social Services was in the process of revoking the facility's license, the day-care center would be required to make copies of the accusation for parents, the bill states.

Benoit said his bills will expose day-care facilities with numerous violations, empower parents and encourage high-quality care.

After Aryanna's death, her mother approached Benoit to see what could be done to protect other children. The center had been given citations for drug use in the home, he said.

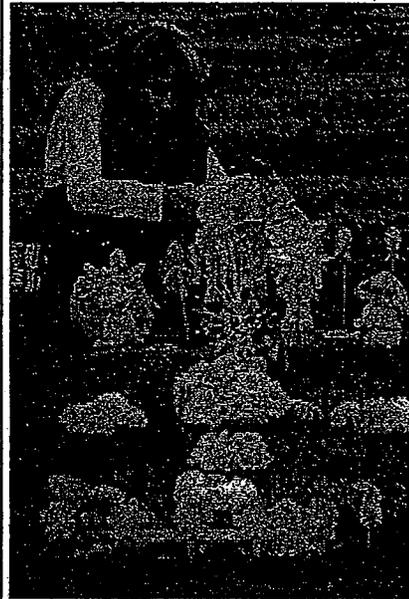
One of the bills also would create an 800 number so people could call with questions about specific day-care providers or facilities.

"It would allow anybody who hasn't had formal complaints to get an A rating," he said. "If there's been some kind of serious complaint, then they would just have to show a B or a C until those things have been addressed."

Gwenda Ridgeway is a director at University Children's Center and Preschool near UC Riverside where she's worked since 1979. The day-care facility has been owned by one person -- Margaret Lais -- for 37 years, she said.

She said she appreciated Benoit's bills for their ideas, but believes they would "overload an already overloaded system." Plus she said it's up to parents to visit a day-care center and make up their own minds.

"Your reputation will speak for itself," Ridgeway said.



Mark Zaleski / the Press-Enterprise

Anita Aguilar visits her daughter's gravesite weekly. "I call it her garden," Aguilar says. She approached Assemblyman John Benoit, R-Palm Desert, to see what could be done to protect other children.

Trial Pending

A trial looms for the day-care couple charged with multiple felony counts of willful child endangerment. The couple, Debra Lynn and Fernando Gonzales, have pleaded not guilty to the charges. An attorney for Debra Lynn Gonzales, Warren Small, was unavailable Monday but previously described Aryanna's death as "a horrible accident. But certainly not criminal."

Fernando Gonzales' San Bernardino attorney, David Call, echoed that sentiment in a telephone interview Monday. The Gonzaleses both are punishing themselves. He was not familiar with Benoit's bills but he said he hoped people would recognize there's already a great deal of legislation about day-care facilities.

"We all know you have to be very careful," Call said. "For a moment, he wasn't."

If and when a trial begins, Aguilar will be there for each day's hearing. She said she tries to distance herself from "that day." She said she does not want to be bitter. She said the proposed legislation is one way she knows her daughter will make a difference.

"All I can be is thankful for having her and getting that time I did," Aguilar said. "She'll forever be an angel."

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Online at: http://www.pe.com/localnews/inland/stories/PE_News_Local_D_aryanna29.f4b5.html

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Thursday, September 7, 2006

California Assembly Approves Childcare Safety Measure in Memory of Aryanna Sanchez

California Political Desk
January 23, 2006



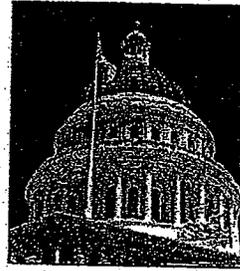
Assemblyman
John J. Benoit



Assemblyman
John J. Benoit

SACRAMENTO
- The State Assembly by a vote of 67-0 today approved Assembly Bill 633, a measure authored by Assemblyman John J. Benoit (R-Palm Desert) in response

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to the March 2004 drowning death of Aryanna Sanchez at a licensed childcare home in Riverside.

Assemblyman Benoit said, "Aryanna's tragic death occurred even though state regulators had already cited the facility numerous times for violations, including the spa cover being left off and the pool gate latch not working properly. It's time to stop keeping parents in the dark when their kid's safety is at stake."

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Under AB 633's provisions, each licensed child daycare facility must provide parents of children currently enrolled in that facility notice of serious substantiated violations, non-compliance conferences, and, any actions by the Department of Social Services to revoke that facility's license. Childcare facilities must also disclose this

information for a one-year time period to parents newly enrolling their children at the facility. Finally, new facility directors would be required to complete an orientation given by the Department of Social Services.

AB 633 now awaits consideration by the State Senate. The measure is supported by the California District Attorneys Association, the Riverside County District Attorney, the Junior Leagues of California, the Inland Empire Safe Kids Coalition, and the Riverside County Sheriff's Department.



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Press Release
FOR IMMEDIATE RELEASE
Date: 12/03/04

Contact person(s): Media Coordinator, Donna Edwards - 565-3099
Media Spokesperson, Chief Deputy Larry Scoufos
Deputy District Attorney: William J. Brockley

Santa Rosa, Sonoma County, California

No Contest Pleas Entered By Mother of Toddlers

Sonoma County District Attorney Stephan Passalacqua announced today that Réna Corban, 35, entered no contest pleas to involuntary manslaughter, two counts of child endangerment, and admitted an enhancement for inflicting great bodily injury. Her maximum prison exposure is thirteen (13) years and four (4) months. Corban will be sentenced by Superior Court Judge Elaine Rushing on January 19, 2005.

On August 19, 2004 at approximately 10:00 a.m., Corban, who began drinking wine earlier in the morning, returned to her Healdsburg home in her Toyota minivan with her two sons, Liam, age 2 and Jayden, age 4. Corban entered her home and left the two boys in the driveway inside the minivan with the windows rolled up. The father of the children found the boys in the van when he returned from work at approximately 6:00 p.m. Corban was found passed out in the home. Her blood alcohol level was later determined to be .28%, more than three times the legal limit for driving a vehicle.

It was estimated that the temperature inside the van exceeded 120 degrees. Paramedics arrived but were unsuccessful in reviving the two year old boy. The child was pronounced dead at Healdsburg District Hospital. Jayden was later released that evening from the hospital to his father.

Prosecutor William Brockley said, "The District Attorney's Office did not offer anything to the defendant other than to admit all charges and face the maximum prison time at sentencing."

This page was last updated on October 21, 2005 by [webmaster](#)

KTVU.com

Mother Given Prison Sentence In Healdsburg Child's Death

POSTED: 7:59 am PDT May 4, 2005
UPDATED: 10:03 pm PDT May 4, 2005

SANTA ROSA — "You'll just never know how sorry I am," Rena Corban said shortly before she was sentenced this afternoon in Sonoma County to more than seven years in prison for child endangerment that took away her two-year-old son Liam.



The incident, in which the children were locked inside the family's van last summer, nearly killed Liam's older brother Jaden.

"I will do the best I can to come out of this for Jaden," Corban said.

It was the first time the 36-year-old Healdsburg mother had spoken about the horror of last Aug. 19. On that day, Corban passed out from alcohol and Vicodin in her home while her children baked in 120-degree heat inside her locked Toyota van in the driveway of their Hummingbird Court home.

Her heartache, she said, was "indecipherable," and her grief was "relentless."

"Life and my family as I know it is gone forever," Corban sobbed.

Looking vaguely perplexed but mostly emotionless, she listened while her estranged and grieving husband Justin Paulsen read a lengthy statement that left nothing to the imagination before Superior Court Judge Elaine Rushing.

Paulsen's mother, sister and a family friend also addressed the court. Deranged, disturbed, delusional, callous, un-remorseful and liar are the words they used to describe Rena Corban.

"I wasn't prepared for what was said about me today," Corban said later.

Paulsen recounted finding his sons in the van when he returned home from work around 6 p.m. They had been there for eight hours and Paulsen said he told Rena Corban, "Get up damn you! Liam's dead!" when he shook her from the stupor of a three-day drinking binge.

Paulsen said his wife is a "master manipulator and a pathological liar." Liam "died at the hands of a selfish and careless alcoholic," Paulsen said struggling to maintain his composure.

He said his son's death made him "reclusive and depressed beyond words."

Rena Corban had locked Liam in the car once before in October 2003 when she went into a bead store. She received a warning from a police officer. Although she was sober during that incident, her alcoholism was no secret and Corban refused to take responsibility for it and stick with treatments, Paulsen said.

"I will never volunteer to let her see Jaden ever again. I simply cannot forgive her," Paulsen concluded.

It was Corban's aunt Jan Meli who drew the focus of the two-hour sentencing hearing away from the devastation of losing a child and the anger and bitterness about a failed seven-year marriage to the fate of the survivor of the tragedy.

"How can Jaden thrive in this atmosphere? Hearts are broken and closed tight. The damage of Aug. 19 is done. How heavy the nightmare she awoke to must be. Is there no hope of Jaden to ever see his mother outside of confinement?" Meli said.

She said Paulsen was asking for his "pound of flesh," and she wondered about Jaden Paulsen at age 18.

"Will what he asks for reflect Jaden's future or only Justin's personal conflicts?" Mell asked.

"I don't think there's a heart in this courtroom that isn't broken," Deputy District Attorney William Brockley said.

There was weeping during a four-minute video of Jaden and Liam playing to the song "He Ain't Heavy (He's My Brother)" by the British group The Hollies.

"The case would be different if she hadn't been warned before. She was warned at least twice. I can understand sympathy, but not lenience," Brockley told Rushing.

"What this case is about is putting yourself first before your children," he said.

"We're not asking for state prison because she's an alcoholic. She suffers from a disease. We're asking for punishment based on her sober decisions," Brockley said.

Rushing noted that Corban had pleaded no contest to the manslaughter and child endangerment charges and seemed genuinely remorseful. She has no prior record and she seems willing to comply with terms of probation, Rushing said.

"But her ability to do so is problematic," Rushing said. "I have grave doubts she will succeed."

Corban, the judge said, is "at this moment" a danger to herself, her family and society.

Rushing rejected the county probation department's recommendation of a 13-year, four-month term.

"To do this would equate her with the most hardened of offenders," Rushing said.

Rushing's 7-year, four-month sentence for Corban was the low end of Brockley's request that ranged up to 11 years and four months.

Corban's attorney, Chief Deputy Public Defender Kathleen Pozzi, wanted Corban to receive probation and long-term alcohol and drug treatment. The state Department of Corrections had recommended probation after examining Corban earlier this year.

Pozzi asked, "What could be more devastating than to know you took your own child? She is a kind, loving, generous, wonderful, wonderful mother," Pozzi said before continuing: "No matter what you do to her, she will live in a hell for the rest of her life. Undoubtedly."

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[Print this Article](#)**SAN JOSE****Sitter of boy killed by train pleabargains**- Cicero A. Estrella
Saturday, April 8, 2006

The babysitter in charge of a toddler who was killed by a train in San Jose last year agreed Friday to a plea bargain that allows her to avoid prison, the Santa Clara district attorney's office said.

The babysitter, Katrina Hatton, pleaded no contest to one felony count of child endangerment in Santa Clara County Superior Court, Deputy District Attorney Dan Nishigaya said.

Judge Jerome Nadler likely will sentence Hatton to four years of probation in June, Nishigaya said.

Hatton was taking care of 2-year-old Alexander Arriaga and his 4-year-old brother on Nov. 21. She brought the boys across railroad tracks to a restaurant where she was going to apply for a job. Hatton then re-crossed the tracks to retrieve her infant daughter, who was in a stroller, but Alexander followed her and was struck by an Amtrak train.

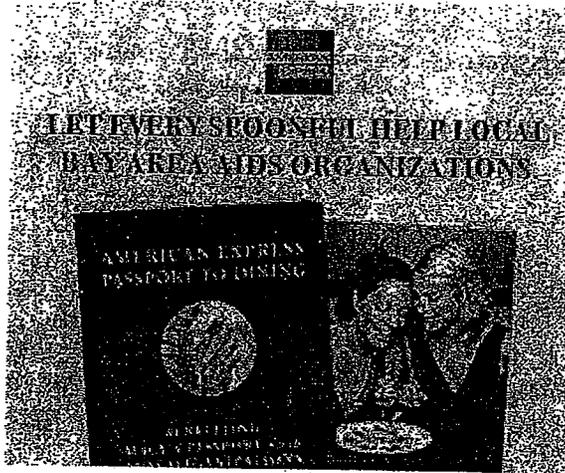
The day Alexander Arriaga was killed, Hatton had been asked to watch him and his brother by her roommate, who needed to take a drug test. The roommate had been babysitting for a friend who was at a job orientation.

Hatton, who planned to apply for a job at McDonald's, had never met the mother of the two boys.

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URL: <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2006/04/08/BAGGII5SMC1.DTL>

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Babysitter Gets Four Years Probation In Plea Deal

POSTED: 4:38 pm PDT April 7, 2006
UPDATED: 6:34 pm PDT April 7, 2006

SAN JOSE -- Katrina Hatton, who witnessed a toddler she was babysitting get run over and killed by a train in south San Jose last year, pleaded guilty to a single felony count of child endangerment Friday as part of a plea bargain that kept her out of state prison.

Hatton was sentenced to four years of probation by Judge Jerome Nadler in Santa Clara County Superior Court.

The courtroom was filled with emotions during the proceedings. A prisoner awaiting her own hearing wept, the judge's voice broke as he spoke from the bench and a normally bustling San Jose courtroom went silent as a tearful young mother described her life since her son was killed by a train while in Hatton's care.

Nicole Wilson, whose 2-year-old son Alexander Arriaga was killed by an Amtrak train on Nov. 21, spoke at Hatton's plea hearing in Santa Clara County Superior Court. Wilson described first seeing her surviving 4-year-old son Elijah at the San Jose Police Department that afternoon.

"The saddest part of it is my son hugs me and says, 'Why are you crying, Mommy? Is it because of Zander? ... There's a lot of blood on him but they're going to put a Band-Aid on him and he'll be fine,'" Wilson said.

Wilson blamed Hatton for being negligent and in a hurry to get to a nearby McDonald's restaurant to fill out an employment application. Her haste caused her to ignore the danger of the train tracks, Wilson said.

"I don't understand how she could not see the train coming," Wilson said. "I don't even think she cared. All she cared (about) was getting on the other side ... She wanted to get there quick. She did everything to get there quick and that's how it happened," Wilson said.

A visibly pregnant Wilson spoke through tears the entire time. She carried a large picture of Alexander into the courtroom and described the anguish of having to deal with the mangled condition of his body.

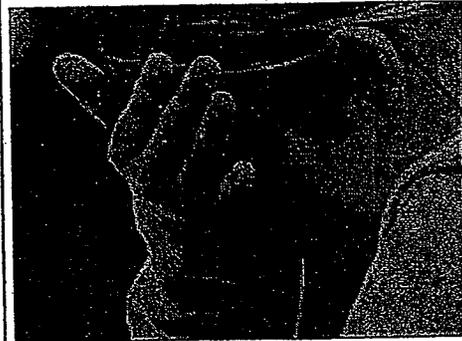
"You don't know what it is like, to have to take in your toothbrush for DNA because they cannot recognize him," Wilson said.

Wilson spoke before a full courtroom including more than a dozen county jail prisoners who had court hearings scheduled for the same time. At least one female prisoner was observed wiping away tears while Wilson spoke.

Superior Court Judge Jerome Nadler had to pause for a long moment before continuing the hearing after Wilson finished. His voice broke when he did speak.

"Seventeen years ago today, I lost a child," Nadler said, explaining how he understood Wilson's pain.

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Hatton was sentenced to four years of formal probation, including regular reports to a probation officer as well as parenting classes and psychological counseling, after pleading no contest, the equivalent to a guilty plea, to a single felony charge of child endangerment. She will have the opportunity to have her charge reduced to a misdemeanor if she successfully completes her probation and all of the other terms of her sentence without getting into further trouble with the law, according to Nadler. She is scheduled to return to court on June 2 to finalize her sentence.

Hatton, who appeared to be wearing maternity clothes, hurried out of the courthouse with a supporter without making any comments. Outside the courthouse, her attorney, Deputy Public Defender Craig Kennedy, said he hoped her plea would help ease the pain of Alexander's parents.

"She did not want to prolong this matter not only for herself but for Alexander Arriaga's family," Kennedy said.

Kennedy believes the sentence was appropriate.

"This was a tragic accident," Kennedy said. "This was not something done purposefully or intentionally."

Prosecutor Dan Nishigaya was not immediately available for comment on Friday's plea.

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EEO Report

Child Drowns While At Daycare

Reported by: [9News](#)
Web produced by: [Lauren Rizzo](#)
Photographed by: [9News](#)
6/13/02 10:34:08 AM

An East Walnut Hills day care provider has been charged in the drowning death of a 2-year-old who was under her care.

Dione Hillman, 31, has been charged with child endangering in connection with the death of Ouasmane Thiam. A prosecutor said Hillman allowed the boy to play in a blow up pool Tuesday afternoon at her home at 3129 Hackberry while she took a bath.

Hillman is being held on a \$15,000 bond.

Hillman has been a certified day care provider through the Department of Job and Family Services since 1999. Department of Job and Family Services officials told 9News that Hillman took care of six children including her own and had a previous warning for not putting a child in a car seat and had no prior felonies.

The Cincinnati Police and the Department of Job and Family Services continue to investigate the incident.

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Dione Hillman in court
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Dione Hillman's home
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Dione Hillman in court
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EEO Report

Cincinnati Woman Indicted In Child's Drowning Death

Reported by: 9News
Web produced by: Liz Foreman
Photographed by: 9News
6/21/02 1:42:33 PM

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An East Walnut Hills woman was indicted Friday after a child drowned while in her care.

A Hamilton County grand jury indicted Dione Hillman, 31, on charges of involuntary manslaughter, endangering a child and obstructing justice in the drowning death of Ousmane Thiam, 2.



Dione Hillman
(WCPO/WCPO.com)

Investigators said Thiam drowned in an inflatable pool at Hillman's day-care business last week on Hackberry Street while Hillman was taking a bath.

Several other children were also left unattended in the pool, police said.

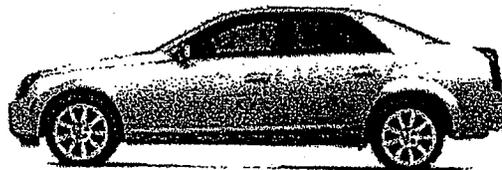
If convicted, Hillman could face as much as 20 years in prison.

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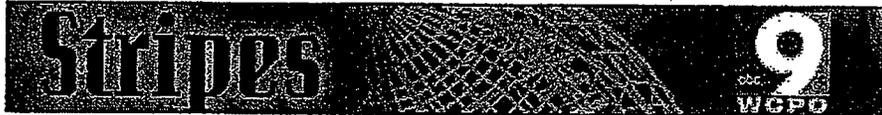
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EEO Report

Daycare Worker Sentenced To Three Years In Jail

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6/26/03 11:24:51 AM

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The daycare provider charged with the death of a 2-year-old literally couldn't stand to be sentenced Thursday morning.

Dione Hillman, 31, fainted when she was sentenced to three years in jail for involuntary manslaughter.

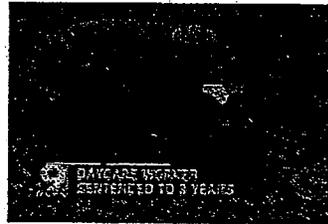
Investigators said Ousmane Thiam, 2, drowned in an inflatable pool at Hillman's day-care business last week on Hackberry Street while Hillman was taking a bath last June.

Several other children were also left unattended in the pool, police said.

Hillman could have faced as much as 20 years in prison.

Because Hillman fainted, the judge continued her sentencing until July 21.

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Dione Hillman on the ground after she fainted
(WCPO/WCPO.com)

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Experts disagree with jury verdict against woman in boy's drowning

Wednesday, October 05, 2005

By Paula Reed Ward, Pittsburgh Post-Gazette

Standing along the bank of a rain-swollen creek, Susan Newkirk watched as the 2-year-old boy tumbled in and was swept away.

She couldn't swim. Instead of diving into the raging waters after her friend's son, she yelled to his father for help.

The little boy died.

Certainly, her defense attorney argued during her trial for endangering the welfare of a child, his client had a moral obligation to try to save the boy. But, he continued, she did not have a legal one.

The jurors judging Ms. Newkirk's case obviously disagreed when they convicted her in July. Last week, the Hollidaysburg woman was sentenced to up to 18 months in jail.

But legal experts disagree with the verdict.

Instead, they say Ms. Newkirk did not have a "duty of care" to the little boy because she had no special relationship with him.

Her public defender, David Beyer, has vowed to appeal her conviction, arguing that she was not the child's parent or baby sitter, and therefore had no duty to protect him.

On Sept. 18, 2004 -- the day after Hurricane Ivan brought torrential downpours across Western Pennsylvania -- Ms. Newkirk, 41, joined her friend, Thomas E. Reffner, and his 2-year-old son, Hunter Delasko, to do repairs to a trailer in Claysburg, Blair County.

While Mr. Reffner worked on the trailer, Ms. Newkirk walked along South Poplar Run Creek.



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She told police that Hunter had been with her and almost fell in. At that point, Ms. Newkirk took the boy back to his father, telling Mr. Reffner that Hunter should not be by the water.

A short time later, the toddler rejoined Ms. Newkirk.

"The little boy walked down to her," Mr. Beyer said.

As he was throwing sticks and stones into the water, Hunter fell in.

"She had no legal duty to go in and save this child," Mr. Beyer said. "If a person is not a parent or guardian, then they owe no duty to that child."

But Blair County District Attorney Dave Gorman said she was, at that moment, the child's guardian.

"Common sense dictates someone in that close proximity to a child is obligated to do something," Mr. Gorman said. "I think anybody in their right mind would jump in."

Both the defense and prosecution agree that Mr. Reffner never specifically asked Ms. Newkirk to watch his son. But the district attorney doesn't think that matters,

"If she didn't believe she had a legal duty, then why did she pull the kid back the first time?" Mr. Gorman asked.

Had Ms. Newkirk left the trailer after returning Hunter to his father, she would have fulfilled her obligation, and there would have been no charges, the prosecutor said.

"It's not just the fact she didn't go in after the kid," Mr. Gorman said. Even having a child that close to a raging stream violates a duty to care, he continued.

As for Ms. Newkirk's argument that she couldn't swim, Mr. Gorman didn't think it was relevant. Two passers-by went into the creek to try to save Hunter after he'd fallen in, and one of them also couldn't swim. One man was able to reach Hunter, but the boy slipped from his grasp before he could pull him to safety, Mr. Gorman said.

David Herring, a professor of child welfare law at the University of Pittsburgh, said there is no Good Samaritan law in Pennsylvania.

"You can't ask them to have to sacrifice their own lives," Mr. Herring said. "That's quite a stretch to impose that duty on her."

He called the case against Ms. Newkirk an "aggressive prosecution."

"The father's the one the law should be holding responsible," he said.



Mr. Reffner was charged, but he pleaded guilty to a lesser charge -- reckless endangerment. He was offered probation to testify against Ms. Newkirk. The prosecution, however, never called Mr. Reffner to the stand. Mr. Gorman said his testimony wasn't necessary.

As for the plea agreement, the district attorney said he wasn't sure a jury would have convicted him.

"I'm not saying in any way, shape or form Mr. Reffner isn't culpable," the prosecutor said. "I think there was an issue as to whether a jury would have returned a guilty verdict on [him]."

But Kirk Henderson, an assistant public defender for Allegheny County, said that's not a valid justification for the lesser charge.

"A parent has the ultimate responsibility," he said.

Under the current case law, charging Ms. Newkirk should have come down to whether she was aware of the duty to the child, Mr. Henderson said. He didn't buy the district attorney's argument that Ms. Newkirk recognized her duty when she returned Hunter to his father the first time.

"I don't think that one time, telling a child what to do invests that person with responsibility," Mr. Henderson said.

"People have their own choices they have to live with, but that doesn't make it criminal."

Mr. Beyer agrees.

"The jury wanted someone to pay for this little boy," he said. "I can understand from a moral perspective, we all think something different should have happened here. That doesn't mean she's guilty of a crime."

(Paula Reed Ward can be reached at pward@post-gazette.com or 412-263-1601.)

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PaloVerde
THE ARIZONA STATE UNIVERSITY WEST
LITERARY MAGAZINE
Nonfiction

May, 2002
Volume 10, Number 1

Kathleen Crocker

Kathleen Crocker also contributed "Let Me Say" to this issue of *PaloVerde*.

A Personal Prison

by Kathleen Crocker

On September 27, 2000, ten-month-old Valeria Romero drowned in a partially filled bathtub. Little Valeria's drowning death could have ended there, like so many child-drowning cases do, with somber television commentary and a funeral. But it did not end there. Vanessa Rico, Valeria's twenty-five year old mother, was selected for prosecution by the Maricopa County Attorney's office. After hundreds upon hundreds of child-drowning deaths in Arizona in the past decades, political, legal, and social ideologies converged to make history. For the first time, an Arizona parent would be tried for negligent homicide in a drowning death that carried no unusual extenuating circumstances. Outside of a few, brave dissenters; media coverage was virtually unanimous in its condemnation of Rico. The trial was swift, and the verdict inevitable: guilty.

The purpose of this paper is not to re-try Vanessa Rico, nor to come to any conclusions concerning her guilt or culpability in the drowning death of her daughter. The intent of this analysis is to locate the many pieces of a puzzle. After all, the prosecution of Vanessa Rico did not occur in an ideological void. Racism and stereotypical perceptions of Hispanics, traditional beliefs about women's sexuality, motherhood, and domesticity, coupled with archaic notions of 'class' control have all assembled to create a climate of blame and facilitate in this prosecution. What at first glance appears to be a simple scene of crime, prosecution, and conviction upon closer inspection becomes distorted and disconcerting. The pieces that make up this puzzle are ugly, and their implications may threaten those who think themselves immune.

The Case

Case # CR2000-016705 begins with the Maricopa County Attorney's Office.

In a post-verdict interview, County Attorney Richard Romley explained how his office differentiated this case from dozens of others. After leaving her two children

in the bathtub, says Romley, "(She) never told anyone the ten-month-old was in the tub. It rose to a criminal standard at that point" (Klawonn and Sowers). According to Rico, the two children (a two-year-old boy and Valeria) were placed in the bathtub with the water running. Leaving the drain *unstopped*, Rico left the apartment to meet a neighbor who had offered to give her a ride to work the following day. After giving the man her phone number, Rico was interrupted by another neighbor's screaming. Inside the apartment, one of the two Mexican residents (with whom Rico had been visiting when she decided to bathe the children) had discovered Valeria unconscious. Rico admitted that no attempt at C.P.R. was made (Sowers).

In a rare legal maneuver, Judge Barry Schneider removed himself on July 3, 2001, as the case opened. After reviewing the facts, Judge Schneider explained that he saw the case as "only a tragedy and not a criminal act, . . ." adding that, if it were up to him, Rico would not be charged. Schneider went on to say that if the county attorney's office insisted on prosecuting Rico for negligent homicide, all parents whose children have drowned should be prosecuted also, since some degree of negligence exists in every case (Klawonn).

Editorial commentator Robert Robb questioned the standard of "negligent homicide" as well. On July 15, during the trial, Robb's opinion piece, "Romley is Raising the Bar for Parents, but How High?" ran in the *Arizona Republic*. In it, Robb questions County Attorney Romley's power to ascribe criminality by asking a series of theoretical questions. "What if the injury to the baby had been less severe? Is it any less negligent to leave a baby alone in a tub if, by the grace of God, nothing happens?" Robb says the old standard "was understandable and defensible," that is, intentionally hurting a child is criminal. The new standard that Romley applies to the Rico case, however, is vague, highly subjective, and "its consequences are (not) at all clear." Yet Robb's critical commentary during the Rico trial was the exception and not the rule.

Even before the trial began, columnist E.J. Montini sided with the county attorney's office. Referring to the proliferation of child-drownings and the ineffectiveness of prevention campaigns, he says, "Nice hasn't worked. Sympathetic hasn't worked. Jail might work" (Montini). In the *Ahwatukee Foothills News*, one columnist bemoaned the absence of personal accountability and perceived Romley's decision to prosecute as an enforcement of parental responsibility. "It seems when children's lives are at stake, personal accountability is nowhere to be found these days" (Hopkins). Journalist and T.V. personality Jana Bommersbach addressed Vanessa Rico directly, saying, "Vanessa...there is a difference between an accident and a grossly negligent act" (Bommersbach). Coincidentally, just weeks before the trial began, the Phoenix Fire Department kicked off its drowning prevention campaign entitled, "Enough is Enough," in an attempt to "persuade" people to be more diligent with children and water (Craig). The rhetoric had been escalated and consensus achieved.

The Context

A child's death ranks among the most emotionally charged events a society faces. Collectively, we react with sorrow for the loss of an innocent life and all its potential. It is not uncommon to see hardened newscasters become visibly moved when reporting on the death of a little child. In Arizona, the inevitable outcome of our love for water is a constant barrage of these horrible reports. It is no wonder that communities, civic organizations, and governments would seek to lessen the numbers of tiny victims that our pools, lakes, and even bathtubs claim each year. When ideologies become legal strategies, however, it becomes necessary to examine the context within which these strategies arise.

Vanessa Rico is not just any mother. She is a particular one. Although she has lived in this country since the age of eight, she is not a legal resident of the United States and is not fluent in English. She is poor, living in a part of central Phoenix that is considered low-income, and a single mother. Her children have separate fathers, and she is, of course, female (Sowers). Although some might argue that Rico's prosecution was a result of her criminal actions alone, it is impossible to miss the fact that on each of these counts, Rico fails to meet the ideal. Ethnically, she belongs to one of most persecuted groups in the U.S., non-English-speaking Hispanics. Her class status is one of veritable powerlessness, and her gender, particularly in the context of sexual practices, is historically vulnerable. If this were a wealthy white Scottsdale housewife, would the words "negligent homicide" be uttered?

The Crime

Arizona law defines negligent homicide as follows: "A person commits negligent homicide if with criminal negligence such person causes the death of another person" (ARS 13-1102). Any reading of this statute suggests that subjectivity is the rule in cases of negligent homicide. Because of this subjectivity and the liberty it gives to prosecutors, we must examine the cultural, political, and social implications of this legal definition.

In a telephone interview, Rudolfo Perez Jr., director of the Phoenix office of MALDEF (Mexican American Legal Defense and Education Fund), said that his office was initially concerned with the County Attorney's decision to prosecute Rico. "We asked," Perez said, "is the County Attorney being fair in the way the law is being applied?" Knowing that "young minorities are prosecuted far more often than non-minorities for similar crimes," MALDEF contacted the County Attorney's office. After presenting the county attorney's office with a similar case, one in which a Grand Canyon University student and father had accidentally shot his son while cleaning a gun, MALDEF questioned why this white father had not been prosecuted (and even been allowed to leave the state!) while Rico had been singled out. Unfortunately, this strategy backfired. Instead of dropping the charges against Rico, the county

attorney filed charges against the Grand Canyon University father within two weeks. MALDEF pursued the case no further (Perez Jr).

Civil rights groups have been trying to address the abuses of criminal enforcement for decades. Most recently, the National Council of La Raza (N.C.L.R.) documented a tripling of cases of reported law enforcement harassment, abuse, and racial profiling. This disturbing trend may be part of a larger wave of anti-Hispanic sentiment that swept across the Southwest in recent years. The NCLR has chosen to focus on law enforcement and legal personnel as a possible long-term solution. As Adrian Garcia states succinctly, "Latinos remain severely underrepresented in most major police departments across the country" (Muñoz and Joge). Representation, though fundamental, is only one factor minority groups face in a network of legal obstacles.

Evidence that racism and ethnocentrism taints the application of criminal law is overwhelming. We have only to look at racially and ethnically disproportionate prison populations to suspect this. But paradoxically, legal and political structures are hard pressed to admit that "selective prosecution" exists. Selective prosecution, singling out a person or group for prosecution based on ethnicity, race, gender, etc., while under-prosecuting other persons or groups, is "available in theory but unattainable in practice" (Cole 331). While the Supreme Court has acknowledged the potential for such abuses, the burden of proof is tremendously high. As David Cole explains, "To establish selective prosecution, a defendant must prove that the prosecutor singled him (her) out *and did not prosecute others engaged in the same conduct*" (331) (emphasis mine). And yet the defendant cannot gain access to prosecutorial records, documents, etc. until such proof has been met, creating the classic Catch-22 situation. Further, if the defense does not introduce "selective-prosecution theory" during the trial by objecting to the introduction of evidence, the selective prosecution appeal is waived (Cole 331). For Vanessa Rico, the standard may be impossible since the County Attorney's office quickly selected a second case for prosecution, this time a poor *but white* single mother.

Criminologist Clarice Feinman notes, "Women who have been arrested, convicted, and incarcerated have been disproportionately from the lower socioeconomic class and members of ethnic or racial minority groups" and that "hypocrisy" is the norm in the application and enforcement of law (Feinman 15). Further, Ngaire Naffine calls into question fundamental biases and blind spots that exist in the concept of criminality itself. "Crime is also something that men are expected to do, because they are men, and women are expected not to do, because we are women." Although men are the "chosen subjects" of study in the mass majority of cases, "maleness or masculinity are hardly ever mentioned as a possibly significant variable" (Naffine 6). Building on Naffine's and Feinman's suppositions, crime committed by women may be prone to a deeply pathological interpretation.

The Calling

In her essay "Disruptive Bodies and Unruly Sex," a thorough treatment of the intersections of race, class, and gender in criminal law and application, Carol Smart historically situates the position of women. Beginning in the early nineteenth century, "an intense legal gaze" fell upon the "issues of reproduction, mothering, and sexuality" (13). During the Victorian era in Britain and the U.S., marriage was increasingly idealized and used to control the sexuality and physicality of women. Also, as colonialism spread throughout the world and notions of racial superiority began to take hold, specific types and practices of motherhood became increasingly important as well. The quintessential doting homemaker, properly supervised, financially dependent, morally pure, and effortlessly domestic, became the bedrock upon which not only masculinity but Western culture itself rested.

When the especially heinous crime of infanticide became known, "unmarried mothers were constructed as the prime suspects for child murders" (16). In Great Britain, laws were enacted against infanticide in response to this perceived "moral decline." But these laws were focused on unmarried mothers. "The unmarried mother was the most dangerous of all, not only to her infant but also to the social order. The married mother (conversely) existed within a restrictive system of tutelage which gave her husband almost complete governance over her" (24). To Smart, this suggests that "the focus was less on the infant than the sexual and reproductive behavior of a woman who had no man to support her" (17). Infanticide, then, became stereotyped as a crime committed by poor, often minority, sexually deviant women. A precedent had been set, which still persists today, concerning the "construction of poor women as dangerous mothers in legal discourse" (23).

"During the nineteenth century ministers (too) built up the notion that motherhood is a full-time job for which women are especially fitted by nature" (Sered 92). Even in the context of illness, both parents most often see the death of a child as a failure on the part of the mother, thanks to this increased investment in motherhood and domesticity. Of course, notions of "nature" as they relate to the Divine have become increasingly disassociated in the modern era. But, as Sered argues, the "power of humans to ensure children's health" has changed the framework, not the argument (Sered 93).

All this emphasis on domesticity then, becomes aligned not only with women as a population, but with their very nature. How does society make sense of a woman and mother who utterly fails in her "calling" by *allowing* a child to die in her care? Articulating a mother's experience, Jeanette Cooperman says that one of the essential characteristics of housework and motherhood is that it is "isolated" and "round-the-clock" (6). When a woman such as Vanessa Rico has a momentary lapse, forgetting her motherly duties, she violates a social assumption about the very essence of motherhood. The loss of a child and its profound consequences for the mother are overshadowed by this more fundamental violation. Of course, this violation might be nullified if the perpetrator represents traditional motherhood in other ways, residing in a financially stable, two-parent home, or displaying the

'correct' ethnicity or race. In Vanessa Rico's case, however, all these factors work against that perception. Rico, apparently, epitomizes the antithesis of ideal motherhood.

The Conclusion

Vanessa Rico was found guilty of negligent homicide and sentenced to probation, a seemingly symbolic punishment. But then, her entire case could be seen as a symbolic gesture. Certainly, the rhetoric from the county attorney and the media implied that an example might be helpful in deterring future child-drownings. Prosecutors never intended to ask for severe penalties in this case, and the appearance of intolerance for parental "irresponsibility" was upheld. The consequences for Vanessa Rico, though, are ongoing.

Since her conviction, Rico has been detained by the Immigration and Naturalization Service. She will likely remain in jail until a determination can be made concerning her citizenship status. Her two remaining children, who are currently in protective custody, are U.S. citizens. This means that, should Vanessa Rico be deported, she will lose her two living children as well. This process of "determination," however, could take months (Sowers). In the meantime, another mother will soon face state prosecution in the drowning death of her child.

As bell hooks rightly concludes, "...[S]exism, racism, and class exploitation constitute interlocking systems of domination" (615). The difficulty in analyzing the case of Vanessa Rico is that no single factor can be isolated as the impetus for her prosecution. It is in the combination of *all* of these factors that Rico found herself the focus of increased surveillance and suspicion by the state. Time and time again, in interviews, Rico repeatedly asked why she was being singled out while both the legal authorities and the media treated other parents sympathetically. But overall, Rico accepted her fate without much consternation. The psychological guilt that all parents feel when faced with the preventable death of a child no doubt played a role in this acceptance. Already feeling guilty, she might even feel relief to be punished, an aid in the healing process. For a grieving mother already living in a personal prison, the external one might seem incidental.

For the rest of us, however, those who dismiss this prosecution as a just reward for the crime of irresponsibility, it is a stern warning. We are no longer being judged on the sins of *commission*, but on the sins of *omission* as well, and culpability is being measured, not by concrete fact, but by perception. For mothers, particularly poor or ethnically and racially targeted mothers, the stakes have been raised exponentially. Ambiguous standards have become the norm, and the everyday potentialities associated with active, inquisitive children have become the topic of state surveillance. Motherhood is no longer a "full-time job." It now requires the omnipresent and omniscient vigilance of a goddess. The archaic "cult of true womanhood" is not dead; it has been resurrected as a state-sponsored religion

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Believe in the **POWER** of the **MOUSE**
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Rio Salado College Online

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Murky Waters

The drowning death of a child is always a tragedy. But when does it become a crime? County prosecutors are wading into a dangerous debate.

By Paul Rubin

A vase of plastic flowers rests on its side atop a tiny unmarked grave in Section 53 of Phoenix's Greenwood Memory Lawn Cemetery. Valeria Rico Romero was 10 months old when she drowned in a bathtub in September 2000.

Valeria's 24-year-old mother says that, maybe someday, she'll be able to afford a stone for the youngest of her three children.

In fact, Vanessa Rico asked a Phoenix police detective hours after her daughter died if she'll be allowed to be buried next to Valeria when the time comes.

Detective Steve Orona's report does not indicate how he responded. A few minutes later, he jailed Rico on a charge of negligent homicide.

The news riveted Arizonans. It was the first time in state history a parent or caretaker had been charged with responsibility for the accidental drowning death of a child. The circumstances of Valeria's death and the ensuing publicity overshadowed most of the other 27 child drownings in the Valley last year.

Valeria died about 3 p.m. on September 27, 2000, at the small west-side apartment of Vanessa Rico's then-boyfriend. Rico put Valeria and her 2-year-old son, Antonio, in a bathtub with the water running. Then she closed the bathroom door and left the apartment.

Rico stepped out to the parking lot, where she chatted with a young man who had driven her to job interviews that day. Two other women were in the apartment, but Rico never asked them to look after the kids.

Early reports suggested Rico left for up to 20 minutes, but more likely it was about five. During her absence, one of the other women finally checked on the babies.

She found Valeria face down in the more-than-half-filled tub, as Antonio stood near the running faucet, the drain stopper in place. The woman snatched the motionless child from the water. Someone screamed for Rico, who fainted when she saw her baby. Valeria was 19 pounds and in excellent health when she died.

Rico lied to police about what had happened, saying she'd just left to fetch a towel from another room for a minute or two.

Within a day of Rico's arrest, Peoria police arrested 20-year-old Janis Anne Perry on similar charges after the bathtub drowning of her daughter, Kataryna. Born with Down syndrome, the 19-month-old had the developmental level of a 10-month-old. She drowned as Perry checked the mail outside, then spoke with a girlfriend on the phone in another room.

Maricopa County Attorney Rick Romley soon announced that his prosecutors would

David Terrill



Phoenix's Vanessa Rico, seen here at her September 21 sentencing for negligent homicide, left her babies alone in the bathtub. Her 10-month-old daughter, Valeria, drowned.

David Terrill

file charges against any caretakers deemed criminally negligent in caring for children, whether the deaths or injuries were accidental or not.

"When a parent fails to perceive a substantial and unjustifiable risk to a child," Romley said after the arrests, "the line between accident and criminal conduct is maybe crossed. In [the Rico and Perry] cases, the facts established that the line has been crossed."

What he meant was Rico and Perry had put their babies in harm's way by placing them in tubs, then leaving the bathroom, a different situation than one involving a parent whose child somehow fell into a pool and drowned.

Talk-show hosts, news columnists, and 77 percent of local citizens in a Channel 15 poll backed Romley. Some compared the local women to Susan Smith -- the South Carolina mother who drowned her two young sons in a lake to free herself for a romance.

Rico and Perry both pleaded not guilty.

But it took a Superior Court jury only a few hours last July 9 to convict Vanessa Rico. On September 21, Judge Eddward Ballinger Jr. sentenced the young woman to probation, though he could have sent her to prison for up to four years.

And on October 12, Janis Perry pleaded guilty to negligent homicide in her case.

Prosecuting caretakers for unintentionally causing a child's death is a knotty task: The accused may be technically guilty under the law. But, in the Rico and Perry cases, police produced little evidence that the mothers *meant* to hurt their babies.

Despite Romley's highly publicized intentions to aggressively prosecute child neglect, his office hasn't filed charges against anyone in more than a year for negligent homicide or abuse in accidental child injury or death cases.

"That's because we look at each of these cases really carefully," says Cindi Nannetti, head of the office's sex-crimes unit. "Rick doesn't take these matters lightly, and it's our job to prosecute those cases that make sense to us to prosecute."

Still, the number of child drownings countywide has remained steady in the past year. Twenty-six children have drowned so far in 2001 (14 under the age of 5), compared with 28 (15 under the age of 5) for all of last year.

Unfortunately, child neglect isn't limited to drownings. Children perish in hot cars, on city streets, even from accidental shootings when adults leave guns within reach. Romley would have had many cases to choose from, according to a *New Times* examination of incident reports at the Phoenix Fire Department, news reports, and interviews with law enforcement.

A few examples of troublesome child drownings from the past year:

- A 4-year-old boy visiting from Ohio who drowned in a north Scottsdale pool after his mother left him alone "for a few minutes."
- Two brothers, ages 2 and 4, who drowned in their grandmother's west Phoenix pool, where the water was so green and murky that firefighters didn't know the second brother was submerged until minutes after they pulled out the first. One of the boys had been missing for about 20 minutes.
- A 3-year-old north Valley boy who wandered through an open gate, fell into his grandparents' swimming pool, and drowned. He went unnoticed for an hour.



PERRY, JANIS ANNE

Peoria mother Janis Perry pleaded guilty last week to negligent homicide in the bathtub drowning of her 19-month-old daughter.



Some local citizens compared the unintentional bathtub drownings to South Carolina mom Susan Smith's premeditated drowning murders of her two young sons.

Kevin Scanlon

• A 9-month-old boy who, just last month, drowned in a pail that held about five inches of dirty water. He'd been submerged for several minutes.

• A 14-month-old west Phoenix infant who crawled past a patio door and fell into an unfenced pool at an unlicensed day-care home. The toddler was one of 11 children at the residence, and had been underwater for about five minutes before another child spotted her.

There also have been numerous cases of near-drownings, in which children have suffered serious brain damage and lesser injuries.

In fact, the Arizona Child Fatality Review Team recently concluded that, of the 187 child-drowning deaths statewide from 1995 to 1999, 86 percent could have been prevented. About nine of 10 child drownings occurred because of poor supervision by adult caretakers and, in cases involving residential pools, the lack of adequate barriers between home and water.

If a child drowns in a pool because of a caretaker's inattentiveness, or because of a faulty or nonexistent pool fence, doesn't that meet the definition of child abuse under Arizona law?

According to the law: "Any person who causes a child to suffer physical injury or abuse . . . or permits a child to be placed in a situation where the person or health of a child is endangered is guilty of [felony child abuse]."

Dr. Mary Rimsza, one of the state's leading experts in child abuse, suggests Rick Romley has targeted poor single mothers for prosecution, while letting people with financial resources go free.

"If you're going to prosecute only a small number of these preventable deaths, then how do you make sure it's not being done with bias toward those of a lower socioeconomic status, or their ethnicity?" says Rimsza, who chairs the Arizona Child Fatality Review Team, a statewide task force that analyzes every child death. "I'm just not sure of the logic that they are using in deciding who to prosecute."

"We haven't seen one prosecution for criminal negligence of someone who failed to adequately supervise a child in a pool. Is this because only the rich have pools? Are these drowning deaths any less negligent than those that occurred in a bathtub? I'm concerned that, if the laws are interpreted liberally, there will be an awful lot of parents who will be facing prosecution."

Romley spokesperson Bill FitzGerald bristles at the notion that the office targets anyone on the basis of socioeconomic status or otherwise.

"Mary Rimsza is absolutely wrong about that," FitzGerald says. "We take each case as it is submitted, and look at the individual nuances that each case has. If we think it is a case that is solid, we go for it. That's it."

Adds Romley, "We understand that parents make mistakes. There has to be some aggravating factor. You consciously put the child in danger. The negligence has to be significant. It has to be more than just having made a mistake. They have to be aware that it could cause serious injury or death."

During the late 1990s, Tim Ryan won a reputation as a fierce advocate for children in his capacity as a prosecutor with the Maricopa County Attorney's Office.

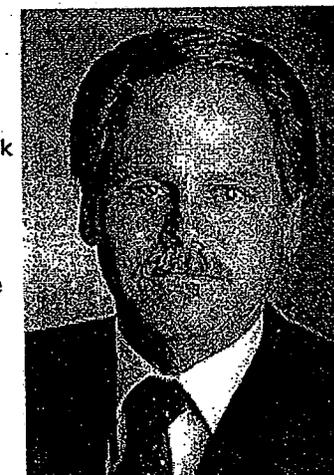
As a member of the Family Violence Unit, Ryan faced the worst of the worst at trial -- generally parents and guardians who had pummeled, burned, stabbed, scalded or



Former Family Violence Unit prosecutor Tim Ryan: "You're going after people who wish they were dead instead of their child."



Dr. Mary Rimsza, chair of the Arizona Child Fatality Review Team: "If the laws are interpreted liberally, there will be an awful lot of parents who will be facing prosecution."



Rick Romley won overwhelming public support for his new policy on child-

murdered the young children in their care.

drowning prosecutions.

In 1997, he won a first-degree-murder conviction in the horrific case of Brian E. Anderson, a Mesa man who had beaten his 4-year-old stepson, then held him underwater until the boy drowned. One key piece of evidence was a telltale handprint on the victim's face. Though Ryan sought the death penalty, a judge sentenced Anderson to life in prison.

Now in private practice, Ryan says he doesn't understand why Rick Romley's office is set on prosecuting cases like Vanessa Rico and Janis Perry.

"I know that Rick has always taken a heightened interest in seeing that every child death is properly investigated and reviewed," Ryan says. "But are they changing the standard for criminal prosecution in a way that will allow the office to be perceived as focusing on minorities and poor women?"

Ryan says most senior prosecutors during his tenure balked at prosecuting caretakers for what seemed to be accidental, if deadly, lapses in judgment: "I remember the [East Valley] grandmother who left her grandson in the car. She was helping her boyfriend run a business, and also was taking care of her daughter's kid. She was just so busy that she left the baby in the car, and he roasted to death -- a horrible death.

"Our Incident Review Board [senior attorneys and supervisors] concluded that she was a loving person who just screwed up, and that a jury would never convict her because her appearance was so genuine, and she was inconsolable."

What, Ryan asks, is different between that case and Vanessa Rico's?

"Let's change a few facts," he says. "Instead of drowning in a tub or frying in a back seat, someone leaves the back door open, gets distracted by a phone call, and a kid falls into a pool and drowns. It's still inattentiveness. That's the Pandora's box they've opened. You're going after people who wish they were dead instead of their child."

Ryan recalls that, in another case, he addressed the board as it contemplated prosecution of a Gilbert couple who also made the fatal mistake of leaving their baby in a scorching car.

"This couple had a bunch of kids, and I spoke about what's it like to be part of a large family," says Ryan, one of 11 siblings. When Ryan was about 4, he told the board, his father -- an eye doctor -- took him and eight of his siblings to northern Arizona to go sledding. On the way, they stopped at a Payson trading post, where Tim somehow got separated from his father. Trouble was, Dr. Ryan didn't know Tim was gone for almost two hours.

"A lady at the store took me to the nearby DPS [Department of Public Safety] station, and I stayed there and had fun until my dad finally figured it out, and came back down and got me. Was he, quote, inattentive? Sure. Could have done a better head count. But if something had happened to me, should he have been prosecuted? No way."

The board declined to prosecute the East Valley couple.

In late June, Superior Court Judge Barry Schneider met with the opposing attorneys in the Vanessa Rico case. Such meetings are standard before a scheduled trial, as a judge tries to get a feel for the way the case might go, including any possibility of a plea bargain.

Schneider asked deputy county attorney Maria Armijo why she was prosecuting Rico on the negligent homicide charge, according to an affidavit filed by Armijo.

"He sees this [Rico] case only as a tragedy and not as a criminal act, and that there is nothing that could really come out of charges . . . [and that] Ms. Rico would think about her daughter every day and live forever with it," the affidavit says. "[Schneider] said that if he were the elected official, he would not charge this case. [He said] if we should charge this, we should charge all of the pool drownings."

Armijo called for Schneider's removal from the case because of alleged "bias and prejudice" against the state. The judge soon recused himself.

Schneider wouldn't discuss the Rico case with *New Times*, but said Armijo's affidavit generally was accurate. The judge's closed-door comments were not unique in the debate over the propriety of charging parents in their children's preventable, but still accidental, deaths.

Until recently, the attitude of prosecutors around the nation tended to mirror Schneider's. Ten years ago, the Maricopa County Attorney's Office was much more lenient toward parents who had made a terrible mistake. One particularly troubling case involved a 5-month-old child who'd been left in a parked car when the temperature outside was 108 degrees. Somehow, that child survived.

"This is a very difficult area for everyone," office spokesperson Bill FitzGerald told *New Times* in explaining then why the Valley mother was not being charged, "including the police, firefighters, the prosecutors. Where do you draw the line, and say the parents have been through enough?"

The enough-is-enough concept when it comes to accidental child drownings still holds sway in some jurisdictions, including Los Angeles County. Sandi Gibbons, a public information officer for the District Attorney's Office, says that in her 12 years on staff she can't recall any prosecutions similar to the Rico or Perry cases.

"We'll go hard as can be on intentional child abuse or assault or whatever," Gibbons says. "But not for a kid drowning when you were stupid enough to leave the room or the pool area for a few minutes."

Elsewhere, however, the attitude is changing. In Park City, Utah, a man was sentenced to one month in jail earlier this summer after being convicted of negligent homicide in the death of his 28-month-old son. The man left the child in his pickup truck, then went to scout hunting locations for about an hour. The boy opened the door, wandered into the wild, and froze to death.

And last month, Pima County prosecutors filed their first negligent homicide charges in a child drowning incident with distinct similarities to the Maricopa County cases. Pima County Attorney chief criminal deputy Rick Unklesbay says that, on August 2, single mother Monique Castillo left her 2-year-old son and 13-month-old daughter alone in the bathtub. She then chatted outside with a neighbor for about 10 minutes. During that time, the little girl drowned.

Castillo has pleaded not guilty.

"These are very tough cases," Unklesbay says. "You're dealing with families who already have suffered a loss, and so this does compound the tragedy. You're not dealing with criminals, per se, here. You can't say it was an intentional act, so you have to look at it as being so negligent. I think the public understands the need for us to look hard at these cases, as long as it has to do with someone else."

Kids drown in pools, Jacuzzis, canals, bathtubs, buckets, just about whatever they can get into.

The federal Centers for Disease Control and Prevention in Atlanta says drowning remains the number one cause of death of children from birth to 4 years old. Predictably, the main factors that lead to drownings are lack of supervision and lack of barriers.

Though most of the Valley's jurisdictions now require pool fencing or other safety devices, many of the 200,000-plus residential pools lack adequate barriers, according to fire department officials in Phoenix and elsewhere.

But even if every homeowner were to build an impenetrable fortress around his or her pool, children will continue to drown unless their caretakers are relentlessly alert. Being perfect, as every parent well knows, is humanly impossible.

"It's like a time bomb back there in those pools," says Mary Rimsza, herself a mother of two. "Parents need to be vigilant every minute of every day. Unfortunately, people are people, and people make mistakes."

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2003-009108-001 DT

12/09/2003

HONORABLE EILEEN WILLETT

CLERK OF THE COURT
D. Monroe
Deputy

FILED: 12/11/2003

STATE OF ARIZONA

SHAWN LYNN STEINBERG

v.

JOANN MARY DAUBERMAN (001)

ALFONSO CASTILLO
CHRISTOPHER P THEUT

DOB: 02/22/1980

APO-SENTENCINGS-CCC
APPEALS-CCC
DISPOSITION CLERK-CSC
OFFICE OF CONTRACT COUNSEL
RFR
VICTIM SERVICES DIV-CA-CCC

SUSPENSION OF SENTENCE - PROBATION GRANTED

| | |
|-----------------------|----------------------|
| State's Attorney: | Shawn Lynn Steinberg |
| Defendant's Attorney: | Alfonso Castillo |
| Defendant: | Present |
| Court Reporter: | Rick Gaio |

The Court received the Defendant's Motion to Release Defendant to Pre-Trial Services.
The Motion is now moot.

The legal guardian for the Defendant's minor child addresses the Court.

IT IS ORDERED appointing Christopher P. Theut as Guardian Ad Litem for Nicholas Rolando Dauberman. Date of birth and address are available for the Guardian Ad Litem.

IT IS FURTHER ORDERED that the Guardian Ad Litem is to provide a report to the Court regarding the wellbeing of Nicholas Dauberman within the next thirty days.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2003-009108-001 DT

12/09/2003

The Court requests that the Guardian Ad Litem also coordinate with the legal guardian all services that might be available for the care of Nicholas Dauberman, and to continue to do so throughout the term of the Defendant's probation.

WAIVER OF TRIAL: The Defendant knowingly, intelligently and voluntarily waived all pertinent constitutional and appellate rights and entered a plea of guilty.

IT IS THE JUDGMENT of the Court Defendant is guilty of the following:

OFFENSE: Count 1: Negligent Homicide
Class 4 Felony
A.R.S. § 13-701, 702, 702.01, 801, 3601(A)
Date of Offense: On or about 03/25/2002
Non Dangerous - Non Repetitive

IT IS ORDERED suspending imposition of sentence and placing Defendant on probation as stated in the Uniform Conditions of Probation.

Count 1 Probation Term: 4 years beginning 12/09/2003.

Conditions of probation include the following:

Condition 16 - Not drink any alcoholic beverage.

Condition 17 - Not have any contact with the victim(s) whatsoever, unless approved in writing by the Adult Probation Department.

Condition 21 - Count 1: Negligent Homicide: Incarceration in the Maricopa County Jail: 9 month(s) from 12/09/2003

Presentence Incarceration Credit: 0 days

Upon screening and acceptance, abide by all conditional release program rules.

The Defendant shall participate in and successfully complete the ALPHA program.

Condition 23 - Restitution, Fines, and Fees:

PROBATION SERVICE FEE: \$50.00 per month, beginning the first day of the third month after release from jail.

ASSESSMENT in the amount of \$5.00 as follows:

PROBATION SURCHARGE: \$5.00

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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12/09/2003

All amounts payable through the Clerk of the Superior Court.

Condition 25 - Abide by the Special Conditions as noted on the attachment to the Terms and Conditions of Probation.

Condition 26 - Other: Substance abuse treatment, parenting classes, parent aide services, vocational training, psychological evaluation and all treatment recommended

Condition 17 (continued): Not to have any contact with your children whatsoever, unless approved in writing by the ADP, and, with Nicholas, approved and directly supervised by the permanent legal guardian of the child.

You are not to be employed in any child care capacity.

Count(s) 1: IT IS ORDERED remanding Defendant to the custody of the Maricopa County Sheriff.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

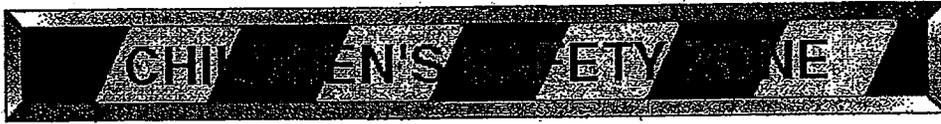
CR2003-009108-001 DT

12/09/2003

Defendant's thumbprint is permanently affixed to this sentencing order in open court.

/s/ HONORABLE EILEEN WILLETT
JUDICIAL OFFICER OF THE SUPERIOR COURT

(thumbprint)



Current Stories & Events

Current Stories Index

2 charged in water incidents

Apr. 2, 2003

Criminal charges have been filed against two women who left toddlers unattended in water in two separate incidents last year.

Joann Mary Dauberman, 23, of Phoenix, has been charged with negligent homicide. She is accused of leaving her two sons unattended in the bathtub for 20 minutes in March while she wrote a letter to her boyfriend in prison.

When she returned, 13-month-old Raymond was facedown in the tub. He died at the hospital. His 2-year-old brother was unharmed.

In a separate case, Francis Yates, 66, of Glendale, faces child abuse charges for allowing her then-15-month-old grandson, Sammy, to slip into a filthy pool in her backyard in October. The boy got out of the house through an open door, then into the pool through a propped-open gate.

Yates pulled the boy out after two or three minutes and he was breathing when rescue crews flew him to a Phoenix hospital.

It wasn't the first time a toddler ended up in her pool, a fact that weighed heavily with prosecutors, Maricopa County Attorney Rick Romley said.

In November 2000, a 14-month-old boy who was being baby-sat at Yates' home got into the pool through a pet door and an open gate. That boy also survived.

Romley said he asked the grand jury for indictments because the two women's inattention to the children "crossed over from being just negligent to criminally negligent."

In 2000, two other Phoenix women were convicted of negligent homicide in the bathtub drownings of their young children. Vanessa Rico received four year's probation and has since been deported to Mexico due to her illegal immigration status. Janis Perry was sentenced to six months in jail.

By Carol Sowers
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 [Superior Court](#)
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| Case Information | | | | | |
|--------------------------|--|--------|------------------|----------|-------------------|
| Case Type | Criminal | | Location | Downtown | |
| Party Information | | | | | |
| Party Name | Rel | Sex | Attorney | Judge | Case # |
| State Of Arizona | Plaintiff | | SHAWN STEINBERG | | |
| Joann Mary Dauberman | Defendant | Female | ALFONSO CASTILLO | Mahoney | CR2003-009108-001 |
| Clerk Of The Court | In The Matter Of | | Determined To Be | | |
| Case Documents | | | | | |
| Filing Date | Description | | Docket Date | | Filing Party |
| 3/9/2005 | ODP - Order of Discharge of Probation | | 4/15/2005 | | |
| 2/22/2005 | PTP - Petition Early Termination Probation Order | | 3/10/2005 | | |
| 10/21/2004 | PMP - Petition to Modify Condition of Probation/Order | | 11/12/2004 | | |
| 6/4/2004 | REP - Report | | 6/21/2004 | | |
| | NOTE: GUARDIAN AD LITEMS REPORT TO THE COURT | | | | |
| 3/2/2004 | DRE - Disposition Report | | 6/9/2004 | | |
| 12/11/2003 | 109 - ME: Sentence - Probation | | 12/11/2003 | | |
| 12/9/2003 | TCP - Terms & Conditions Of Probation/Money Ordered | | 12/16/2003 | | |
| 12/9/2003 | PSR - Presentence Report | | 12/17/2003 | | |
| 12/9/2003 | ORD - Order | | 7/21/2004 | | |
| | NOTE: GRANTING PERMISSION FOR CAMERA COVERAGE ONLY IN THE COURTROOM IN WHICH A PROCEEDING BEING HELD | | | | |
| 12/8/2003 | 022 - ME: Order Signed | | 12/8/2003 | | |
| 12/7/2003 | NRR - Notice Of Rights Of Review | | 6/3/2004 | | |
| 11/24/2003 | 105 - ME: Plea Agreement/Change Of Plea | | 11/24/2003 | | |
| 11/18/2003 | 027 - ME: Pretrial Conference | | 11/18/2003 | | |
| 11/17/2003 | MOT - Motion | | 6/9/2004 | | |
| | NOTE: TO RELEASE DEFENDANT TO PRE TRIAL SERVICES | | | | |
| 11/17/2003 | MOT - Motion | | 4/16/2004 | | |
| | NOTE: TO RELEASE DEFENDANT TO PRE-TRIAL SERVICES | | | | |
| 11/17/2003 | PAG - Plea Agreement | | 11/19/2003 | | |
| 10/15/2003 | MOT - Motion | | 3/12/2004 | | Defenda |
| | NOTE: FOR BOND REDUCTION OR O.R. RELEASE | | | | |
| 10/15/2003 | 905 - ME: Correspondence Received By Court | | 10/15/2003 | | |
| 9/18/2003 | 027 - ME: Pretrial Conference | | 9/18/2003 | | |
| 9/15/2003 | NOT - Notice | | 12/9/2003 | | |
| | NOTE: UPDATED JOINT CASE MANAGEMENT PLAN | | | | |
| 7/22/2003 | 027 - ME: Pretrial Conference | | 7/22/2003 | | |
| 7/15/2003 | NOT - Notice | | 3/11/2004 | | |
| | NOTE: JOINT CASE MANAGEMENT PLAN | | | | |
| 6/24/2003 | 021 - ME: Nunc Pro Tunc Order | | 6/24/2003 | | |
| 6/23/2003 | 590 - ME: Complex Case Order | | 6/23/2003 | | |
| 6/23/2003 | 019 - ME: Ruling | | 6/23/2003 | | |
| 6/20/2003 | ORD - Order | | 8/4/2004 | | |

| | | |
|---|--|------------|
| NOTE: GRANTING MOTION FOR DESIGNATION THIS CASE COMPLEX | | |
| 6/13/2003 | RTR - Return Receipt For Official Court Files/Transcripts/Exhibits | 6/16/2003 |
| 6/12/2003 | RRF - Release Receipt For Official Court Files/Transcripts/Exhibits | 6/13/2003 |
| 6/12/2003 | OFT - Order for Temporary Removal of Court File/Transcripts/Exhibits | 6/13/2003 |
| 6/12/2003 | MTR - Motion for Temporary Removal Of Court File/Transcripts/Exhibit | 6/13/2003 |
| 6/9/2003 | RET - Request For Extension Of Time | 1/10/2004 |
| NOTE: TO CHALLENGE GRAND JURY PROCEEDINGS | | |
| 6/7/2003 | MOT - Motion | 1/10/2004 |
| NOTE: TO DESIGNATE CASE AS COMPLEX | | |
| 5/23/2003 | 194 : Me: Initial Pretrial Conference | 5/23/2003 |
| 5/5/2003 | 019 - ME: Ruling | 5/5/2003 |
| 4/30/2003 | SUA - Subpoena And Affidavit Of Service | 11/10/2003 |
| 4/30/2003 | SUA - Subpoena And Affidavit Of Service | 11/10/2003 |
| 4/30/2003 | SUA - Subpoena And Affidavit Of Service | 11/10/2003 |
| 4/25/2003 | RET - Request For Extension Of Time | 5/12/2003 |
| NOTE: TO CHALLENGE GRAND JURY PROCEEDINGS | | |
| 4/21/2003 | SDT - Subpoena Duces Tecum | 11/4/2003 |
| 4/18/2003 | NDD - Notice of Discovery Disclosure/Witness/Interviews | 10/17/2003 |
| 4/15/2003 | IAD - Initial Appearance Document | 11/13/2003 |
| 4/10/2003 | 152 - ME: Not Guilty Plea Arraign | 4/25/2003 |
| 4/3/2003 | 002 - ME: Hearing Vacated | 4/3/2003 |
| 4/2/2003 | WAR - Warrant For Arrest | 4/2/2003 |
| NOTE: SERVED 3/31/03 | | |
| 3/31/2003 | WAR - Warrant For Arrest | 10/11/2003 |
| 3/26/2003 | IND - Indictment | 4/2/2003 |
| 3/26/2003 | 604 - ME: GJ True Bill/Warrant Issue | 4/2/2003 |
| 3/16/2003 | IAD - Initial Appearance Document | 7/20/2004 |
| 3/4/2003 | DCO - Direct Complaint | 3/4/2003 |

Case Calendar

| Date | Time | Event |
|------------|------|------------------------------|
| 3/24/2003 | 8:30 | Preliminary Hearing |
| 4/8/2003 | 8:30 | Original Arraignment Hearing |
| 5/14/2003 | 8:30 | Initial Pretrial Conference |
| 7/17/2003 | 8:30 | Complex / Capital Case |
| 9/4/2003 | 8:30 | Trial Management Conference |
| 9/8/2003 | 9:30 | Trial |
| 9/12/2003 | 8:30 | Complex / Capital Case |
| 11/14/2003 | 8:30 | Complex / Capital Case |
| 11/17/2003 | 8:30 | Change Of Plea |
| 12/9/2003 | 8:30 | Sentencing |
| 12/9/2003 | 8:30 | Oral Argument |
| 1/30/2004 | 8:30 | Trial Management Conference |
| 2/2/2004 | 9:30 | Trial |

Thursday, June 29, 2006

Mom charged in bathtub drowning of 1-year-old child

[Print](#)

The Associated Press

PROVO, Utah -- A mother has been charged in the bathtub drowning of her 1-year-old son.

January Krebs, 28, of Provo has been charged in 4th District Court with reckless endangerment or negligent homicide.

She is accused of leaving the boy alone in the bathroom on Feb. 25.

Krebs left to get some towels out of the dryer and came back about five minutes later to find the child in the tub with his 2-year-old brother, who was the one she had put in the bath, said police Sgt. Reed Van Wagoner.

Krebs and her boyfriend called 911 and attempted to resuscitate him. The 2-year old was not injured, Van Wagoner said.

There is only one charge but two options -- negligent homicide or reckless endangerment. The options allow a potential jury more leeway in its decision.

Krebs is to appear in 4th District Court on July 18 at 8:30 a.m.

Van Wagoner estimated Provo police are called to two or three bathtub drownings a year.

There also are many cases a year in which the child is successfully resuscitated.

That happened again on Wednesday.

A Provo mother took her child out of the tub, put the child down and went to get something from the kitchen, Van Wagoner said.

She returned to find child in the bathtub. The parents were able to get the child breathing before paramedics arrived, Van Wagoner said.

"If parents just knew," Van Wagoner said. "They should drain the tub when nobody is in there. (There's) all kinds of safety issues. Some ... parents are plain just being naive. It's just a matter of educating them."

This story appeared in The Daily Herald on page D1.

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Monday, July 03, 2006

Mother charged in bathtub drowning tells her side

[Print](#)

The Associated Press

SALT LAKE CITY -- A Provo mother charged in the bathtub drowning of her 14-month-old son says it was an accident that could have happened to any parent.

January Krebs, 28, also denied placing the victim's 2-year-old brother in the tub and then leaving the room for five minutes while getting towels from a dryer, as reported by police.

"I never put my children in the bathtub, either one," Krebs told The Salt Lake Tribune on Friday. "And I was away less than two minutes getting a towel."

Krebs said that on Feb. 25, she filled the tub, undressed the two boys and then closed the bathroom door, leaving them to run around in the house.

"I thought I had locked the door because I had always locked the door," she said.

But her 2-year-old son, Zackery Matthew Krebs, managed to pull the latch-type handle and push his potty-training toilet to the side of the tub, where he used it as a footstool to climb into the water, she said.

The younger boy, Spencer James Krebs, also tried to climb into the tub, but "fell in head first," Krebs said.

She said she found him face down in water with his feet hanging over the side of the tub.

She said she woke her boyfriend, called 911 and he started CPR, following instructions from the emergency operator.

The boy was flown to Utah Valley Regional Medical Center, and then to Primary Children's Medical Center, where he was pronounced dead the next day. He remained on life-support another day so doctors could harvest his organs.

"He did save lives through this tragedy," Krebs said.

Krebs said the criminal charges -- which she learned about from reading a newspaper story -- came as a surprise.

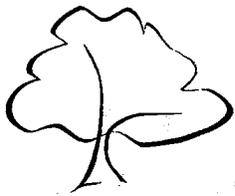
"It was devastating," she said.

Krebs is charged with negligent homicide or reckless endangerment -- a single Class A misdemeanor charge with two options, allowing a potential jury more leeway in its decision.

Krebs is to appear in 4th District Court on July 18 at 8:30 a.m.

This story appeared in The Daily Herald on page D1.

EXHIBIT 2



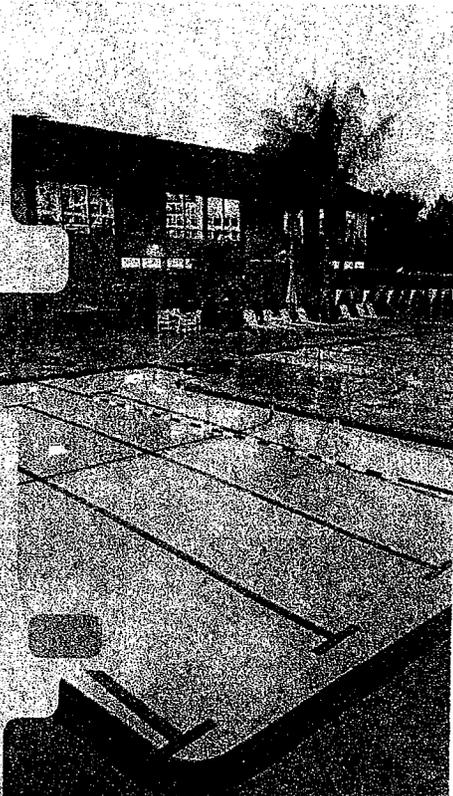
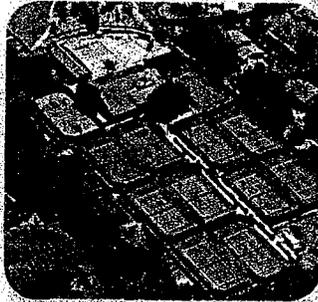
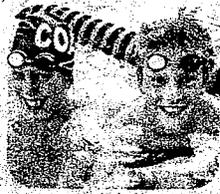
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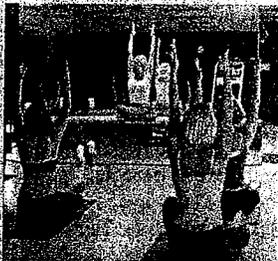
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