

**CAPPELLO
& NOËL** LLP
TRIAL LAWYERS

A. BARRY CAPPELLO

November 10, 2006

File No. 06009.001

Via California Overnight

The Honorable William Lockyer
Attorney General of the State of California
1300 I Street, Suite 1740
Sacramento, California 95814

Re: Yoni Gottesman Drowning

Dear Attorney General Locker:

As you know, this office represents Anat and Oded Gottesman, parents of the deceased minor child Jonathan "Yoni" Gottesman. Yoni was 4 years old when he died on August 15, 2005. He drowned in the Cathedral Oaks Athletic Club ("COAC") swimming pool within a few feet of two lifeguards and three camp counselors while attending an unlicensed day care program at the facility.

A Santa Barbara County Sheriff's deputy was called to the scene that day, but conducted no investigation of the events leading to Yoni's death. After a cursory investigation, the Santa Barbara County Coroner's office pronounced Yoni's death to be an accidental drowning. Only after our clients hired legal counsel who engaged a private investigator to conduct an investigation into their child's death (a summary of which was provided to the District Attorney's office), did the District Attorney conduct any investigation at all. Even with all of the information provided by private counsel, the D.A.'s investigation was sloppy, inadequate and incomplete. Over our clients' strenuous objections, District Attorney Tom Sneddon announced at a July 13, 2006, press conference that he did not intend to pursue any criminal charges relating to Yoni's death.

We request that the Attorney General's office open an independent investigation into Yoni's death and convene a grand jury for the purpose of issuing indictments for child endangerment and involuntary manslaughter against those persons and entities found to be responsible for Yoni's death. We find it necessary to request your intervention as Attorney General to prevent a grave miscarriage of justice.

06009.001 - 135486

First, as set forth herein, we believe that the laws of the State of California are not being equally enforced across the State. If certain conduct warrants prosecution for child endangerment or involuntary manslaughter in Riverside, Sonoma or San Jose counties (see cases below), that same conduct must also be prosecuted in Santa Barbara county. It is not. As Attorney General, we ask that you intervene to ensure the equal application and enforcement of State laws.

Second, it has become clear that the Santa Barbara County Sheriff and District Attorney failed to timely and adequately investigate Yoni's death. In doing so they ignored important evidence, and in some instances did not follow up on crucial evidence. The D.A. did not scrutinize the Sheriff's failure to investigate or his conflicts of interest with owners of the COAC. The D.A. did not act to prevent even the appearance of impropriety in the handling of the investigation. He did not consider that on lesser facts and evidence, other jurisdictions in California have found probable cause to charge child endangerment and involuntary manslaughter. The entirety of these events has resulted in discriminatory enforcement of the criminal laws.

I. Events Leading to Yoni's Death

The COAC operated a child day care program called the "Summer Activity Camp" ("Camp") for children ages four to ten at the Club's facility located at 5800 Cathedral Oaks Road in Santa Barbara, from 1999 to the date of Yoni's death on August 15, 2005. Regardless of its name, the State of California Department of Social Welfare has determined that the Camp was a day care program within the meaning of Health & Safety Code section 1596.70, requiring a license. Licensing ensures that day care programs will be inspected periodically by department personnel to insure compliance with, among other things, adequacy of staffing, staffing credential requirements, background checks and safety of facilities. Despite the licensing requirements, COAC had no license to conduct the Camp at the time of Yoni's death in August 2005, or at any other time.

In the two weeks before his death, Yoni attended another day camp in Santa Barbara. When it ended, Yoni's parents signed him up to attend the COAC Camp with two of his friends. The Camp involved art, games and sports, including tennis and swimming. In promotional materials for the Camp, COAC stated that it was "proud to introduce an exciting and educational program for children ages 4-10." Part of the educational experience offered in connection with the Camp was swim lessons. COAC's brochure for swim lessons touted its "solid reputation for providing the highest quality swim instruction available," and promised that participating children would have a "*safe experience*." Even today, COAC's website boasts that its aquatics instructors are "professionally trained to help you reach your goals safely," and that its child care program is a "fun and safe environment."

Despite the public representations that activities at COAC were safe, and the implication that the Camp was a properly licensed program that met all requirements of the State of California, in fact the Camp was an unsafe, illegal and unlicensed child care program. The deficiencies of the Camp included, but were not limited to:

- a) Improper hiring and training of lifeguards, resulting in incompetent lifeguard personnel being "on duty" when young children were in the pool;
- b) Lack of training of Camp counselors regarding the assignment of specific children to specific counselors, which would have required the counselors to observe, monitor and protect the children in their care;
- c) Failure to establish a procedure during the Camp's "recreational swim time" under which specific lifeguards and/or counselors were assigned to observe, monitor and protect specific children in the pool;
- d) Even after administering swim tests to determine the swimming skill level of all Camp participants, complete failure by the lifeguards and counselors to monitor the children and ensure they swam only in the section of the pool (e.g., the shallow end) for which their ability allowed, resulting in increased and potentially life-threatening danger to the children; and
- e) Improper and inadequate CPR and resuscitation training, procedures and equipment.

On August 15, 2005, the day he died, Yoni attended the Camp for the first time. Anat Gottesman took her four-year old son to the Camp believing it to be a safe facility and program to entrust with the care of her son. In the morning, Yoni participated in a separate swim lesson, during which time the swim instructor arrived at the opinion that Yoni was "overconfident in his swimming abilities," and that he needed to hold on to the side of the pool. This opinion was not conveyed to the Camp counselors or lifeguards.

Shortly after 2:00 p.m., thirteen children, including Yoni, went to the pool accompanied by the three counselors and a counselor-in-training. As part of the Camp swim session, the children were given a "swim test" that consisted of children swimming at the same time from the stairs to the lane line and back. Afterwards, the counselor who gave the test restricted Yoni to the shallow end of the pool. The counselors and lifeguards did nothing to enforce that restriction, however. Moreover, the shallow end of the 30' by 45' pool was 3'6" deep (the deeper end was 6' deep); little Yoni was only 3'5" tall. Thus, he would not be able to stand, and his head would be completely submerged, even in the shallowest portion of the pool.

The Camp had three counselors and a director. While at the pool, the children were supervised by two lifeguards and the three counselors. In addition, two swimming instructors were present periodically while giving swim lessons to other children. As the children began to

swim, two counselors remained on the pool deck; one was seated in such a position that she could not possibly monitor the pool, and the other was distracted by other children not in the pool. Only one counselor was in the pool with the children, but he did nothing to monitor the safety of the children; on the contrary, as explained below, he added to the danger faced by the children. One lifeguard was at each end of the pool. A total of approximately 12 to 14 people were in the swimming pool at the time.

During the first twenty minutes of the "recreational swim time," Yoni Gottesman drowned. Yoni drowned, not through some unforeseen or unstoppable cause, but through the negligence and wilful misconduct of Defendants. The COAC pools are monitored by closed circuit television which is recorded on a hard drive.¹ Of the five operable cameras on August 15, one was directed at the pool in which the Camp children swam. The final minutes of Yoni's life were captured by the surveillance camera focused on the COAC pool. The video shows:

- a) A COAC counselor aggressively "dunking" and otherwise "rough-housing" with several children in the pool, during which he repeatedly raises children in the air and then dunks them into the water with significant impact; Yoni Gottesman is believed to have been among those children;²
- b) Immediately after a round of dunking, all of the figures swimming away from the site except one: a single child's form is seen briefly struggling to stay afloat. Shortly thereafter, that form goes prone, floating in or atop the water.
- c) **Eight minutes** passing without any of the three counselors or two lifeguards taking any notice of the lifeless figure floating only feet away.
 - One lifeguard – *directly in front of and only a few feet away from* where little Yoni was dying – sits motionless and oblivious to Yoni's condition;

¹ Rather than review the original hard drive, the DA utilized lower-quality video CD's. This not only rendered the video less useful, it also apparently led to the DA's report referencing a slightly different time line (by approximately 8 to 10 seconds) than what is shown on the original hard drive.

² Our office currently is in the process of locating an expert technician capable of enhancing the video, but it appears from the entirety of the video that Yoni was one of the children dunked. As part of an investigation by your office, we would like to submit the hard drive of the video to the State crime lab to see if it is able to enhance the video.

one of the few times the lifeguard moves is to turn his back to the pool and adjust his umbrella for better shade protection.

- The second lifeguard (from the far end of the pool) similarly does nothing to save Yoni for the first *six minutes* Yoni is floating in the water; he then *walks right past where Yoni is floating face-down and motionless in the pool and leaves the pool deck to get a soda*. He does not return to the pool area until after Yoni is pulled from the pool.
 - The counselor in the pool repeatedly returns to within a couple of feet of where Yoni is floating face-down in the pool, and continues to “dunk” other children, but takes no notice of Yoni’s motionless body right next to him.
- d) It is only after a *Camper* notices Yoni floating in the pool and calls for help that anything happens. Even that call for help elicits no reaction from the nearest lifeguard; it is not until a counselor on the pool deck – who hears the call from the little boy – goes to the lifeguard and points out the lifeless figure that the lifeguard finally jumps in to pull Yoni from the pool. Not surprisingly, when he finally was pulled out of the water, Yoni was non-responsive, limp, blue in coloring and had white foam seeping from his mouth.

Thereafter, improper resuscitation and CPR techniques and equipment were used on Yoni. Even after Yoni was pulled from the pool, it took nearly another two minutes for a call to be placed to 911. Without any basis, the dispatcher was told it was “a seizure.” The paramedics arrived approximately eight minutes after Yoni was pulled from the pool and found that Yoni had no pulse. They immediately questioned the lifeguard about how long the child had been submerged in the pool; the lifeguard responded: “No more than a minute.” A Deputy Sheriff, Tom Green, arrived approximately six minutes after the paramedics. At 2:48 p.m., twenty-one minutes after he was pulled from the pool, Yoni was transported to Goleta Valley Cottage Hospital. He was pronounced dead an hour later.

We have contacted several renowned experts in the field of aquatics safety and the pathology and stages of drowning. Uniformly, they all state that: (1) The “10/20 Rule” advocated within the ANSI/NSPI Standards for Public Swimming Pools, as well as other organizations, should be implemented and adhered to by lifeguard personnel at all public and semi-public swimming pools; (2) At a minimum, lifeguards must scan their zone of responsibility twice within each 30-second period (the “30-Second Rule”); and (3) The American Red Cross advocates the need for a lifeguard to be vigilant and to constantly scan his/her zone of

responsibility.³ Had any of these actions occurred, Yoni's distress would have been recognized with appropriate intervention occurring before he deteriorated into respiratory arrest, and then further into cardiac arrest. Furthermore, (4) COAC was responsible for developing and implementing its own operational protocols and was responsible for guaranteeing that lifeguard and counselor personnel were able to adhere to these protocols; (5) Anytime a child is allowed to swim in water above his shoulders, he is at a heightened risk for drowning; (6) It is medically impossible for a child to drown in the 20 - 30 seconds it should have taken for the lifeguards to recognize Yoni's distress, and time is critical as there is a limit on full recovery (e.g. brain damage occurs after 3 - 4 minutes under water); and (7) After COAC and its employees assumed the responsibility to care for Yoni, they abandoned him and breached their duty of care to properly supervise him. The experts we have spoken with have called what happened to Yoni Gottesman "outrageous," "deplorable" and "horrific."

II. Events Immediately After Yoni's Death

Deputy Sheriff Green left the scene a mere **twelve minutes** after he arrived. Although he briefly chatted with the lifeguard who pulled Yoni from the pool, Deputy Green left without conducting any formal interviews, without pursuing any kind of investigation, and without apparently taking any notice of the video cameras or attempting to secure the video recordings. (See, Santa Barbara County District Attorney's Office Investigation Report, Attachment I, DA00064.) Deputy Green did nothing to designate the pool area as a crime scene and took no action to preserve the integrity of the scene until a full investigation could be conducted. Instead, because Deputy Green left the scene, COAC employees immediately hosed down the pool deck and nearby objects, and removed all soiled towels. Deputy Green did not write a report until sometime later when asked to do so by his Supervisor.

Another Deputy Sheriff, Kelly Moore, who was on duty that afternoon, left his shift and went to the COAC at 3:30 p.m. after receiving a call from his wife. His wife reported that his niece, who worked at COAC, had called and was distraught. Although he was not there in an official capacity, Deputy Moore noticed the cameras and discussed with his niece telling the management to save the tapes. He also noticed that the staff had been sequestered and asked to write statements of what had occurred. (Attachment I, DA00077-78.) Through this process, COAC was able to control and monitor the preparation of written statements by its employees. No one from law enforcement intervened in this questionable procedure.

³ This latter protocol essentially is codified in California Code of Regulations, Title 22, Chapter 20, Section 65539(b), which provides that the number of lifeguards "shall be adequate to maintain *continuous surveillance* over the bathers."

When the Coroner was notified of Yoni's death, the Sergeant in charge of the Coroner Bureau, Deputy Court Williams, and Sheriff Coroner Investigator Deputy John Kolbert, conducted a cursory investigation and summarily concluded Yoni's death was an accidental drowning. (Attachment I, DA00079-82.) Until Mr. and Mrs. Gottesman retained legal counsel who hired a private investigator to conduct an investigation and undertake extensive witness interviews, no real inquiry was made into how a four-year-old child – otherwise completely healthy – possibly could have died in plain view of numerous adults who were charged with his care and safety.

Following the tragic death of Yoni Gottesman, the State of California, Department of Social Services, fully investigated the Camp and determined that: (1) COAC provided child care when it operated the Camp; (2) the Camp did not have a license to provide child care; and (3) the Camp did not meet the criteria to be license exempt. On October 11, 2005, the Department of Social Services sent COAC a letter notifying it that it was operating a child care facility without a license in violation of California Health and Safety Code Sections 1596.80 and 1596.805. COAC appealed that ruling three separate times, all of which were rejected by the Department of Social Services. To Plaintiffs' knowledge, COAC never attempted to rectify its violation of law by obtaining the requisite license. Even more astounding, prior to the third rejection of COAC's appeals, the President and Oversight Manager of COAC stated that she didn't know what would happen if the third appeal failed because, in her opinion, "what is needed for child care licensing is not appropriate for a camp-type situation."

The drowning of Yoni Gottesman was not the first, or last, water safety incident at COAC or its sister organization, SBAC. As early as mid-2000, to only a week prior to Yoni's death, a number of near drownings occurred at COAC that were attributable to negligent supervision. As late as two days prior to Yoni's death, parents observed COAC lifeguards paying little or no attention to the children in the pool. Within weeks following Yoni's death, a parent observed children swimming *completely unattended by a lifeguard* at the SBAC pool. COAC did nothing to inform parents of these incidents and/or the lack of supervision prior to enrolling their children in the Camp.

III. The District Attorney's Inadequate Investigation and Baseless Refusal to Prosecute

On November 2, 2005, the Gottesmans' former counsel wrote to District Attorney Sneddon requesting a formal investigation be opened into whether the death of their son was the result of criminally culpable conduct. That request included a copy of our clients' private investigator's report and the witness statements he gathered. The District Attorney's office assigned D.A. Investigator Paul Kimes to conduct an investigation. Mr. Kimes' report, dated May 25, 2006, is attached hereto as Attachment I (pages DA 00001 to 00160).

Investigator Kimes did not begin his investigation until 4 months after Yoni's death, and did not issue his report until 9 months after Yoni's death. Yoni's parents, the complaining parties, were provided with a copy that had virtually all of the witnesses' names blacked out. This made much of the report meaningless and forced our firm to spend over 100 hours piecing together who said what.⁴ Most of the key witnesses were not interviewed until six months after the Yoni's death, and most of those witnesses were not interviewed in person but by only by telephone. Worse, in many instances Investigator Kimes suggested facts to interviewees rather than letting them respond to non-leading questions uninfluenced by his suggestions. Many aspects of the report are vague as to time, place and dates. Many statements contained in it are conclusory and not based on established facts. Most important, the investigator failed to follow up on key pieces of evidence and witnesses.

A. The D.A. Failed to Follow Up on Key Evidence of Prior Incidents at COAC.

Our client's private investigator uncovered many witnesses who gave important evidence regarding prior incidents at COAC in which lifeguards and child care personnel were lax, procedures were inadequate, and/or facilities were dangerous. While Investigator Kimes interviewed many of these witnesses, he conducted no investigation into these prior incidents and the evidence seems to have been totally ignored in the prosecutorial decision.

Examples of the evidence apparently ignored, and for which little or no follow up investigation was conducted, can be found in Attachment I at:

DA00025 (reference to COAC's refusal to provide a parent with copy of release form signed, and identification of a parent who stated the swimming pool at COAC was "an accident waiting to happen" since the lifeguards did not carefully watch the pool);

DA00047 (lack of certification records for COAC staff involved in the incident);

DA00060 (children at the Camp were not properly supervised, and the staff was not properly trained);

DA00066 (misinformation given to paramedic by lifeguard regarding how long Yoni was under water);

DA00116-117 (Camp personnel encouraged a child who could not swim nevertheless to participate in the afternoon swim session; parent was "shocked and outraged");

⁴ Our office filed a request for an unredacted copy of the District Attorney Investigation Report, among other things, under the California Public Records Act. A copy of the unredacted report subsequently was provided to us, and is the version submitted herewith as Attachment I.

DA00128 (statement by the coroner's office, in response to evidence that Yoni was under water for a long time, that "kids bob up and down in the pool all the time, so it would be hard to tell who was dead and who was alive....");

DA00129 (one of the lifeguards was fired from the Montecito Country Club the week before the drowning);

DA00130-132 (former Camp director identifying numerous concerns about safety issues and prior incident of child's near-drowning at COAC);

DA00138-139 (additional prior incident of an child's near-drowning at COAC, as well as several other incidents of inattentive or absent lifeguards at COAC);

DA00140 (yet additional reference a child needing to be revived at COAC, information regarding inexperienced personnel at COAC, and a statement by a UCSB lifeguard reflecting unsafe conditions at COAC);

DA00141-143 (COAC misrepresented that it was licensed by the State and met all licensing requirements, when it was not and did not; the Camp was not safe and what the witness observed in the pool area of COAC was "irresponsible"; and the lifeguard who sat by while Yoni drowned was on duty at COAC the following day);

DA00146 (Camp was "hazardous" because counselors were inattentive to children in the pool);

DA00148-149 (no life guard on duty at affiliated club; conscious disregard of safety of children in pool area);

DA00150 (COAC lifeguards being inattentive or leaving the pool area completely).

B. The D.A. Ignored Evidence of Violation of License Requirements.

Despite tacit or explicit statements to the contrary, COAC's 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. 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.

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.

C. The D.A. Ignored Evidence of A Delayed, Mishandled Emergency Response.

COAC employed young, inexperienced day care and water safety personnel who were inattentive, casual, and not properly trained, certified or supervised. What is most glaring is that COAC was aware of this situation long before this tragedy occurred. Had COAC taken seriously its responsibility to properly provide for the care and safety of the young children in the Camp, Yoni Gottesman would be alive today. Instead, COAC allowed lifeguards to be inattentive or completely absent from the pool area, counselors to have little or no knowledge of water safety and proper CPR techniques, and a general aura of malaise to exist among its employees. Had COAC been required to submit to State licensing review, these deficiencies could have been corrected before they resulted in a child's death.

The District Attorney seemingly was oblivious to the facts: Yoni floated prone and motionless in the water for **eight minutes** in plain view of lifeguards and counselors, yet no one took notice or intervened to save Yoni's life. Even after the lifeguard pulled Yoni from the pool, no one immediately called 911. When someone finally did call to 911, she erroneously reported that the child had a seizure. CPR was not properly administered to Yoni when he first was pulled from the pool. When the paramedics arrived and questioned how long the child had been in the water, the lifeguard misrepresented that Yoni had been under water for only 1 minute; this greatly affected (and misdirected) what medical response was required (see, Attachment I, DA00067-68).

D. The D.A. Failed to Conduct A Thorough, Timely Investigation.

Sheriff's Department and Coroner personnel conducted no real investigation at the time of Yoni's death, did not preserve evidence at the scene or interview percipient witnesses. Initially, they did not even know there were multiple video cameras that may have recorded the events. Witnesses who contacted the Coroner with evidence of prior unsafe conditions and incidents of near-drowning at COAC were ignored (see, e.g., DA00127-128; DA00138-139).

The D.A. investigator compounded these errors by interviewing witnesses long after the incident, conducting many interviews by telephone, and failing to follow up on some of the most incriminating allegations. For example, the investigator interviewed the COAC General Manager and the President of the Corporation that owned COAC *six months after the fact*. Perhaps worse, the investigator interviewed these two key witnesses *together* at their insistence (DA00071). The investigator ignored reported attempts by these same COAC personnel to discourage parent inquiries about Camp safety or subsequent intent to seek psychiatric help for their children, all of which seems to have been done in an effort to protect COAC and to cover up past incidents (see, e.g., Attachment I, DA00024-25 and DA00127-128).

E. Whitewash of Sheriff Council Connection With Club Owner.

The private investigator hired by the Gottesmans discovered that, soon after Yoni's death, the owner of COAC, Richard Berti, made a very substantial contribution to the Sheriff's Council. The Sheriff's Council is a local charity closely aligned with the Sheriff that raises money to assist the Sheriff's department in buying new equipment and paying its expenses. Berti had been on the Council's Executive Committee since 2004. At the annual fund raising gala in 2004, he bought a table for \$10,000 and about \$1000 in raffle tickets. Shortly after Yoni's death, Berti upped his contributions substantially, paying \$15,000 for a table and buying over \$3000 in raffle tickets – one of the largest ticket purchases. At the 2005 dinner, Berti also mysteriously won a lottery for \$25,000 and immediately donated the money back to the Sheriff's Council. Unlike past years, where the lottery was randomly – and publicly – conducted by pulling a ticket from a drum in full view of the gathered audience, Berti was simply announced as the winner. Berti claims he was completely surprised by this occurrence, and that donating the money back was just “an immediate reaction to the situation.” (Attachment I, DA00159.) Berti repeatedly denied news accounts in which he was accused of using his position on the Sheriff's Council to influence the Sheriff's department and its investigation of this drowning (Attachment I, DA00160), but the protestations only prompt a reaction that ‘the gentlemen doth protest too much.’ We understand that your office has been investigating Sheriff's Council fund-raising activities and finances; perhaps that investigation will shed some light on what went on here.

When Investigator Kimes interviewed law enforcement personnel and other witnesses, he did not ask questions to elicit facts about the witnesses' knowledge regarding any connection between COAC's owner and the Sheriff's Council. Rather, Kimes began his interviews by *telling* the witnesses about the allegations of favoritism and conflict of interest (see, e.g., Attachment I, DA00049). He then essentially invited witnesses to deny those allegations (see, e.g., Attachment I, DA00064; DA00074; DA00078; DA00079; DA00082).

Berti's notable financial contributions to the Sheriff's Council lead to an unavoidable appearance of impropriety. In spite of this, the D.A. never checked phone records between Berti and the Sheriff immediately following the incident. The conclusion is that the D.A., one small-town, good old boy to another, either didn't take the allegations seriously or didn't want to pursue a prosecution that might support the allegations against the Sheriff and/or the owner of COAC. This alone is grounds for an independent investigation and submission of the case to a grand jury.

IV. The D.A. Ignored Precedent in His Own and Other Jurisdictions

In declining to prosecute anyone for the death of Yoni Gottesman, District Attorney Sneddon ignored both previous prosecutions he pursued for child endangerment on far less

egregious facts not resulting in death, and previous prosecutions in multiple other jurisdictions on similar facts resulting in death. (Attachment II, pp. 1 to 26, contains several articles about California prosecutors who filed child endangerment and/or involuntary manslaughter charges.)

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). Without question, lifeguards and counselors allowing a child in their plain view to float face-down in a pool for eight minutes is a massive departure from what an ordinarily prudent or careful person would do. Given the known dangers of swimming pools, that conduct, whether caused by inattention, laziness or otherwise, is incompatible with a *proper regard for human life or an indifference to the consequences*. 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.

A. District Attorney Sneddon’s Prior Prosecutions Relating to Children.

Beginning in approximately June, 2003, District Attorney Sneddon undertook one of the most extensive – and expensive – investigations ever conducted in Santa Barbara County. In December, 2003, Mr. Sneddon charged entertainer Michael Jackson with numerous counts, including lewd conduct with a child younger than 14, attempted lewd conduct, administering alcohol to facilitate child molestation and conspiracy to commit child abduction. (Attachment II, pp. 27-35.) Mr. Sneddon very publicly and relentlessly pursued the prosecution of Michael Jackson, a prosecution predominately based upon the claims of a mother who indisputably was an unreliable complainant. The alleged victim and his brother gave contradictory testimony, apparently coached by the mother who had a financial motive. With little hard evidence, Mr. Sneddon personally tried the case (the first one he had tried in years), accompanied police on the service of search warrants of a private investigator’s office, and threw all the resources of his department into the case. In June, 2005, two years after the case began, Mr. Jackson was acquitted on all counts. The County spent over \$2.5 million on logistical and other costs related to the trial alone, as well as hundreds of thousands of dollars in court costs and over \$1 million in investigation costs. (See e.g., Attachment II, pp. 36-38.) The District Attorney’s office will not return our calls enquiring into the amount spent on the D.A.’s investigation, but knowledgeable estimates place it in the millions of dollars.

Is it possible that Mr. Sneddon thinks alleged child molestation is more serious and warrants more of his department’s attention than conduct which, when viewed in the context of past incidents and violations of the law, constitutes gross criminal negligence that resulted in the death of a little boy? Perhaps not. In 2006, the Santa Barbara District Attorney’s office filed

charges against a father who, while under the influence of methamphetamine, accidentally rolled over onto his infant twin girls and killed them. The father was charged with two counts of involuntary manslaughter and two counts of child endangerment. (*People v. Gomez*, Attachment II, pp. 1-2.) Most recently, on October 23, 2006, Mr. Sneddon filed charges against the driver of a car who hit a teenage boy on a bicycle when the sun momentarily blinded him. The driver was charged with one count of vehicular manslaughter, and the complaint specifically states that the driver acted *without gross negligence*. (*People v. Botello*, Attachment II, pp.39-41.)

Apparently then, the District Attorney is not adverse to filing charges – even against a parent – in a situation involving an “accident.” The question is: In a situation as egregious as the facts of this case, where the conduct was *so far beyond* what any “ordinarily prudent or careful person” could possibly fathom, why were no charges filed? The answer is that no justifiable reason exists. We ask you to rectify that injustice.

B. Other Jurisdictions’ Prosecutions Relating to Children.

A review of the child endangerment and involuntary manslaughter cases prosecuted in California and other jurisdictions leaves little uncertainty that the death of Yoni Gottesman should have resulted in the District Attorney filing criminal negligence charges. A sampling of such cases follows.

1. Cases Filed in California.

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. On March 29, 2004, twenty-month-old Aryanna Sanchez wandered into an uncovered spa and drowned at a child-care facility owned and operated by Debra and Fernando Gonzalez. Three other children were at the day care when the drowning occurred. While the Gonzalez Family Child Care 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 charged the Gonzalez’s with 3 counts of child endangerment and one count of child endangerment causing death. Debra Gonzalez also was charged with two counts of being under the influence of a controlled substance. State officials immediately suspended the Gonzalez’s day care license, and the facility remained closed. The couple pleaded guilty to child endangerment. Fernando Gonzales was sentenced to six years in state prison in 2005, while Debra Gonzales was sentenced to two years in prison in February, 2006.

As a result of this incident, Assemblyman John Benoit, who represents Riverside, introduced AB 633 and AB 617, both bills named after Aryanna, 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 II, pp.3-9.) 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 II, pp. 24-26.)

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 II, pp. 21-23.)

2. Cases Filed in Other States.

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. Some examples follow.

In Ohio, Dione Hillman was charged with involuntary manslaughter and child endangerment in the drowning death of two-year-old Ousmane Thiam. Ms. Hillman was a certified day care provider through the Department of Job and Family Services in Hamilton County, Ohio, since 1999. Hillman ran a child care facility and took care of six children, including her own, ages two through six years old. On June 11, 2002, at about 7:30 p.m. she told the older children to watch the younger children, including Ousmane, while she went upstairs and took a bath. Hillman fell asleep in the tub, during which time Ousmane drowned. Hillman was found guilty of involuntary manslaughter and child endangerment, and sentenced to three years in jail, as well as 5 years probation. (*People v. Hillman*, Attachment II, pp. 42-44.)

In 2005, the District Attorney in Blair County, Pennsylvania filed charges against a woman when the two-year-old boy she was watching fell into a rain-swollen creek and drowned. On September 18, 2004, Susan Newkirk joined her boyfriend, Thomas E. Reffner, and his two-year-old son, Hunter Delasko, to do repairs on a mobile home. While Reffner worked on the trailer, Newkirk and Hunter went down to South Poplar Run Creek, which was swollen with rainfall from Hurricane Ivan. At one point, Hunter almost fell into the water, at which time Newkirk returned Hunter to the mobile home and told Reffner that Hunter should not be near the stream. But, soon after, the boy rejoined Newkirk along the bank, fell in and drowned. Newkirk, who could not swim, did not go in to save him. Newkirk was charged with endangering the welfare of a child, as was Reffner. Reffner pled guilty to a lesser charge of reckless endangerment, and was offered probation in exchange for his testimony against Newkirk. Newkirk was convicted of child endangerment and sentenced to 9 to 18 months in Blair County Prison. (*People v. Newkirk*, Attachment II, pp. 46-48.)

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

In Arizona, the Maricopa County Attorney filed negligent homicide charges against two mothers, Vanessa Rico and Janis Perry, who allowed their children to drown in two separate incidents within 24 hours of each other. On September 27, 2000, Vanessa Rico left her two children, a two-year-old boy and ten-month-old Valeria, in a bathtub with the water running and the drain unstopped, while she went out to talk to a neighbor. While she was gone for approximately 5 minutes, Valeria drowned in the partially filled bathtub. Rico was charged with negligent homicide, convicted and was placed on probation for four years. Later, Rico was also deported to Mexico. The case was 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 II, pp. 49-61.) The other mother, Janis Perry, was charged with negligent homicide in the drowning death of her 19-month-old daughter, Kataryna, who had Downs syndrome. The infant drowned after Perry left her in a bathtub unattended while she checked the mail outside

and spoke with a girlfriend on the phone in another room. Perry was sentenced to six months in jail as well as four years' probation, and was ordered to undergo mental health testing, counseling and parenting classes. (*People v. Perry*, Attachment II, pp. 57-61.)

In 2003, the Maricopa County Attorney filed charges against a mother in the drowning death of her son. Joann Dauberman left her two sons unattended in the bathtub for 20 minutes while she wrote a letter to her boyfriend in prison. When she returned, her 13-month-old son, Raymond, was face down in the tub. Dauberman was charged with negligent homicide. Dauberman plead guilty, and was sentenced to 9 months in jail, and 4 years probation. (*People v. Dauberman*, Attachment II, pp. 62-69.)

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 II, pp. 57-58.) The Santa Barbara District Attorney should enforce the same standard of law.

Very recently, in Provo, Utah, the District Attorney charged a mother with reckless endangerment and/or negligent homicide in the bathtub drowning of her son. On February 25, 2006, January Krebs filled a tub with water to bath her sons. She closed the door to the bathroom while she went to get some towels, believing that the boys could not get into the bathroom while the door was latched. Her 2-year-old son managed to open the latch, allowing himself and his 14-month-old brother to enter the bathroom. The 2-year-old then climbed into the tub by pulling his "potty training stool" to the side of the tub and using it as a step; the 14-month-old also tried to climb into the tub, but fell in head first. When their mother returned with the towels, she found her youngest son face down in the water with his feet hanging over the side of the tub. Although she immediately called 911 and started CPR, she was unable to resuscitate her son and he died at the hospital. (*People v. Krebs*, Attachment II, p. 70-71.)

V. CONCLUSION

Wake Forrest University School of Law recently completed a study on trends of what prosecutors charge in child endangerment cases. Among other things, the Wake Forrest study looked at whether the cases that are charged involve parents, relatives, babysitters or other unrelated persons. The analysis showed that caretakers, guardians and people not related to a child are more likely to be prosecuted. (Attachment II, pp.72-112, at pp 77-78.)

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

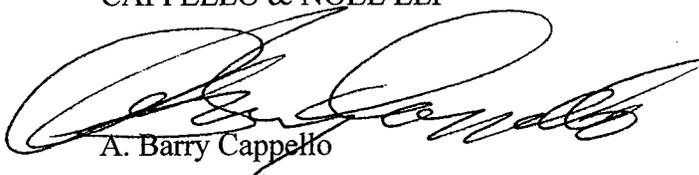
William Lockyer
November 10, 2006
Page 17

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 under the “watchful eyes” of two lifeguards and three counselors. What happened to Yoni Gottesman was a crime. It should be prosecuted as such.

In any other county in the State, this incident would have resulted in the filing of criminal charges. The result can be no different in Santa Barbara. On behalf of the Gottesman family, we ask that the Attorney General's office take all steps necessary to ensure the equal application and enforcement of the criminal laws of the State of California.

Very truly yours,

CAPPELLO & NOEL LLP



A. Barry Cappello

Enclosures

cc: Oded and Anat Gottesman

Attachment 1



SANTA BARBARA COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF INVESTIGATION

INVESTIGATION REPORT

DATE: November 8, 2006
TO: District Attorney Thomas Sneddon
FROM: DA Investigator Paul Kimes
SUBJECT: Cathedral Oaks Athletic Club Drowning of Jonathon "Yoni" Gottesman

Witness list: (Interviewed for this report)

Persons present at the Drowning, or with information directly related to the Drowning

- 1) GOTTESMAN, Oded (Decedent's Father)
GOTTESMAN, Anat (Decedent's Mother)
7555 Seagull Dr.
Goleta, CA 93117
(H) 685-5863
(W) 963-0986
- 2) SHIPLEY, Sam DOB: 3/21/1987 CA Op # D4788449
(Camp Counselor in pool at time of drowning)
184 Nogal Dr.
Santa Barbara, CA 93110-2205
(H) 705-9750
- 3) HAIMOVITZ, Gavin
(Camper and friend of Yoni. Last person known to have seen Yoni alive and swimming in the pool)

HAIMOVITZ, Tina
(Mother of Gavin)
HAIMOVITZ Gavin DOB: 7/30/2000 Grade = Pre-K 5 years old
31 El Cielito
SB CA 93105
(H) 966-6169
- 4) SARAGOSA, Nancy
(COAC visitor who had two sons, Anthony and Johnny, in the pool on the day of the accident)
SARAGOSA, Anthony
(Visitor to COAC who found Yoni floating underwater and summoned help)
SARAGOSA57@aol.com

Persons present at the Drowning or with information directly related to the Drowning (Continued)

- 5) DARLING, Jeanette "Jennie" CA Op # D1591041
(Camp Counselor on deck of pool)
420 S 7th St. Apt #3
San Jose, CA
(408) 298-1565 (SBSD rpt)
(408) 476-7554 (COAC Incident rpt)
- 6) BOWEN, Michael DOB: 10/3/1986 CA Op # D4300708
(Lifeguard on duty who pulled Yoni out of water and started CPR)
(Cell) 708-0660
- 7) KASIMATIS, Gabriela "Gabi"
(Swim instructor who assisted with CPR)
1016 Camino Corto Apt #A
Isla Vista, CA 93117
(H) (619) 322-7535
- 8) SOFINYA, Maryam DOB: 1/5/1986 CA Op # D4226102
(Camp Counselor on pool deck who called "911")
(H) (805) 403-9007
- 9) BOWLES, Ellen
(Swim instructor who cleared pool and started to gather equipment for CPR)
(H) (250) 561-1761
(604)467-3184 (Mother's home telephone)
- 10) CLARK, Esther DOB: 12/18/1969 CA Op # A2228410
(Aquatics Director and person who relieved "Gabi" Kasimatis with CPR breaths)
5800 Cathedral Oaks Blvd.
Goleta, CA 93117
- 11) HELLER, Elizabeth
(Camp Director)
2324 State St.
Santa Barbara, CA 93105
(H) 252-0817
- 12) MERIN, David DOB: 9/13/1983
(Lifeguard getting drink)
626 E Valerio St
Santa Barbara, CA 93101
(Cell) (973) 698-6693
- 13) SWALLEY, Harrison
(Counselor In Training in pool at time of drowning)
- 14) SCHNIEPP, Susan
(She was at the pool that afternoon. Her 3 1/2 year old twins were having a swimming lesson.)
(H) (805) 964-2077

Persons present at the Drowning or with information directly related to the Drowning (Continued)

- 15) SOFRO, Mindy
(Club member in pool)
4620 Via Saladita
Santa Barbara, CA 93111
(H) 967-4504
- 16) GREEN Tom
(Santa Barbara County Deputy Sheriff who responded)
(W) 568-3399
- 17) NILSSON, Johan.
(American Medical Response EMT)
(W) (805) 688-6550
- 18) LAUDERDALE, Robert
(American Medical Response EMT)
(W) (805) 688-6550
- 19) MAIN, Julie DOB: 4/9/1956 CA Op # N2108143
(Over site Manager and President of Corporation)

VALENTINE, Charlotte DOB: 9/13/1949 CA Op # R0494680
(COAC Manager and Vice President of Corp)
5800 Cathedral Oaks Blvd.
Goleta, CA 93117
(805) 964-7762 Ext 22
- 20) MOORE, Kelly
(Santa Barbara County Deputy Sheriff who was off-duty)
(W) 681-4279
- 21) KOLBERT, John
(Coroner Investigator assigned to investigate the death)
- 22) ANTHONY, Robert Dr.
(Santa Barbara County Forensic Pathologist)
(W) 681-1729

WILLIAMS, Court
(Santa Barbara Sheriff Deputy, Sergeant in charge of Coroner Bureau)
(W) 681-4146
- 23) TONELLO, David
(District Attorney Investigator who assisted with the COAC computer and video)
- 24) ORNELAZ, Stefan
(Maintenance Director at COAC)

PARENTS and CHILDREN in Attendance at Activity Camp

- 25) BELLETTI, Lorrie
(Mother of Activity Camper Amber Belletti)
BELLETTI, Amber DOB: 4/6/2000 Grade = Pre-K 5 years old
123 Lassen Drive
SB, CA 93111
(H) 403-0943
- 26) BRADBURY, Mark
(Father of Megan)
BRADBURY, Megan DOB: Unk Grade = Unknown 9 years old
31 Calaveras Ave.
Goleta, CA 93117
(H) 685-2700
- 27) BURR, Jennifer
(Mother of Hunter Burr)
BURR, Neil (Father of Hunter Burr)
(W) 368-8377
BURR, Hunter DOB: 8/10/1998 Grade = 2 7 years old
2524 Castillo St. #C
SB, CA 93103
(H) 689-2479
- 28) COHEN, Elaine (Mother of Seth)
COHEN, Seth DOB: 6/23/2000 Grade = Pre-K 5 years old
(Camper and friend of Yoni)
935 Weldon Rd
SB, CA 93109
(Parents are COHEN, Elaine and Bill)
(H) 965-4336
- 29) CROSSLAND, Joan
(Mother of Parker)
CROSSLAND, Parker DOB: 10/26/1999 Grade = K 5 yrs old
5323 Orchard Park Ln.
Santa Barbara, CA 93111
(H) 683-4484
- 30) DELMARSH, Kit
(Father of Ila & Eri)
DELMARSH, Ila DOB: 1/9/1998 Grade = ??? 7 years old
DELMARSH, Eri DOB: 4/1/2000 Grade = ??? 5 years old
6624 Sueno Rd
Isla Vista, CA 93117
(H) 968-2203

PARENTS and CHILDREN in Attendance at Activity Camp (Continued)

- 31) EARLE, Serena
(Mother of Natani)
EARLE, Natani DOB: 1/9/2001 Grade = Pre-K 5 years old
(Camper)
(H) 896-6431
- 32) MADHOW Uramanyu
(Father of Sunil)
FOLGUERA, Alejandra
(Mother of Sunil)
MADHOW, Sunil DOB: 7/22/2001 Grade = Pre-K 4 years old
2515 Burton Dr.
SB, CA 93109
(H) 884-5102 (W) 893-5210
- 33) MARTIN, Greg
(Father of Ryan)
MARTIN, Ryan DOB: 4/14/1999 Grade = 1st 6 years old
(Camper and friend of Yoni)
5218 Calle Barquero
SB, CA 93111
(H) 965-4336
- 34) SCHMITZ, Ingrid
(Mother of Anya)
SCHMITZ, Anya DOB: 2/1/1999 Grade = 1st 6 years old
5520 San Patricio
SB, CA 93111
(H) 681-0018
- 35) STRAEDE, Kathy
(Mother of Ila & Eri)
STRAEDE, Ryan DOB: 11/20/1999 Grade = K 5 years old
STRAEDE, Devyn DOB: 02/02/2001 Grade = Pre-K 4 Years old
719 Cathedral Point Lane
Santa Barbara, CA 93111
(H) 964-3283
- 36) VOLLGARIS, Eric
(Father of Kyle)
VOLLGARIS, Jami
(Mother of Kyle)
VOLLGARIS, Kyle DOB: 9/3/2000 Grade = Pre-K 4 years old
216 E. Mission Ave.
Isla Vista, CA 93101
(H) 682-3540

Persons with Information, but not present at time of Drowning

- 37) KUJAN, Katrina
(Former Director of Activity Camp 2003–2004)
1944 D. Jamieson Lane
Montecito, CA 93108
(H) 565-4628
- 38) YOUNG, Colleen
(Child Care Program Regional Manager)
360 S. Hope Ave. Suite C-105
Santa Barbara, CA 93105
(W) 682-7647
- VALENCIA, Maria
(Child Care Program Supervisor)
360 S. Hope Ave. Suite C-105
Santa Barbara, CA 93105
(W) 682-7647
- McKENZIE, Janet
(Attorney for California Dept. of Social Services)
- 39) LYNCH, Michal
(Daughter was revived by a family friend from a near drowning at COAC in 2000)
(805) 964-7969
- 40) CHILDS, Shari
(Her son was in hospital at same time as Rebecca Lynch, the above referenced child who had been revived at COAC)
Home: (805) 568-0848
Mobile: (805) 570-8757
- 41) Del BONIS, Mary
(Her children go to school with the Gottesman children)
(H) 682-0706
- 42) DISKIN, Hilary
2325 Foothill Lane
Santa Barbara, CA 93105
Home: (805) 965-9659
- 43) FRIEDMAN, Jill
(A local attorney who stated her colleague had information regarding other incidents at COAC)
- 44) WALLS, Chelsea DOB: 7/17/1982
(Babysitter for children in swim class)
(W) (949) 874-7002

Persons with Information, but not present at time of Drowning (Continued)

- 45) ALPERT-WOOD Julie
(Terminated club membership after she found kids in the swimming pool without a lifeguard, or parents watching)
(H) 966-7344
- 46) SMITH, Rena
(Present at COAC two days prior to drowning with lifeguards who were not paying attention)
(H) 682-6715
- 47) COSENTINO, Rachel
(According to Tina Haimovitz - Cosentino said "COAC pool was an accident waiting to happen")
(H) 563-8852
- 48) GARCIA, Mario
(Club Member swimming in other pool at time of drowning)
(H) 964-2517
(W) 893-2991
- 49) BERTI, Richard
(Owner of COAC)

INTRODUCTION

This case was initiated by the District Attorney's office. The matter was brought to the attention of the District Attorney's office through efforts of the parents of four year old Jonathon (Yoni) Gottesman and their attorney. The allegation was that four year old Yoni fatally drowned because of negligent care provided by the staff of the Activity Camp held by Cathedral Oaks Athletic Club (COAC). Part of the allegation was that the Santa Barbara Sheriff's Department did not conduct a thorough investigation into the drowning. There was an underlying allegation that the sheriff's department came to the conclusion that the drowning was an accident because of financial contributions made by the owner of Cathedral Oaks Athletic Club to the Santa Barbara Sheriff's Council. There was also an allegation that Cathedral Oaks Athletic Club had operated the Activity Camp as an unlicensed Day Care program for a lengthy period of time.

An additional concern to be addressed by this investigation was to obtain access to the original video which was purported to contain footage of the drowning.

The first part of this report will give a brief summary of how the investigation was done.

After the investigation summary, the report had been divided into sub-sections in an effort to address the different concerns more clearly. The order that those concerns will be addressed is:

- 1) The Drowning
- 2) The Video
- 3) The Child Care License
- 4) Santa Barbara Sheriff and Sheriff's Council

INVESTIGATION

Reports were compiled from Santa Barbara Sheriff's Department, Coroner, California Department of Social Services, and the Law Corporation of Grassini & Wrinkle (The law firm representing the Gottesman family). These reports were reviewed and a witness list compiled.

Interviews were conducted with at least one parent, if not both parents, of the children in attendance on the day of the drowning. When appropriate, the child was interviewed personally. The parents were interviewed because most the children who attended this program were 4, 5, and 6 years old. The belief was that the parents would recall what their child said on the day of the incident more accurately than the child themselves.

Interviews were conducted with COAC staff including Activity Camp Counselors, the Activity Camp Director, Lifeguards, Swim Instructors, Aquatic Director, General Manager of COAC and Over-site Manager/President of the corporation. I also interviewed Mr. Richard Berti, one of the owners of the COAC.

Interviews were conducted with the staff of the California Department of Social Services regarding the day care license issues and status of the case against Cathedral Oaks Athletic Club for operating a day care program without a license.

Interviews were conducted with Santa Barbara Sheriff Department personnel. Those personnel were the responding deputy, the coroner investigator, the coroner supervising investigator, the forensic pathologist, and an additional Santa Barbara Sheriff Deputy who went to COAC after the drowning for the emotional support of his niece, a swim instructor, who was present at the time of the drowning.

Several people were located and interviewed who were present in the pool at the time of the drowning. One of those was the young boy who found the unresponsive Yoni Gottesman under water and summoned COAC staff.

The computer used to record the different camera angles of the pools at COAC was obtained from the possession of the attorney representing the COAC. Copies of the hard drives were provided to both the attorneys of COAC and the Gottesman family. The video captured during the day of the drowning was reviewed. The number of cameras in operation at the time of the drowning was questioned and addressed.

The "911" dispatch tape was obtained and reviewed.

The COAC pool area and area where the Activity Camp was held was viewed.

DROWNING SUMMARY

After a thorough investigation involving numerous interviews, an examination of the scene, and viewing of video from the Cathedral Oaks Athletic Club cameras, the following can be established.

On 8/15/2005, Jonathon (Yoni) Gottesman attended a day care program at Cathedral Oaks Athletic Club and known as the Activity Camp. This was Yoni's first day at this program and facility.

Yoni was given a swim test that he passed at the beginning of a free period in the pool at approximately 2 P.M. He was told to stay in the shallow area of the pool.

A nine year old boy, Anthony Saragosa, noticed that Yoni seemed to be underwater too long. Anthony swam underwater and looked at Yoni's face. He saw that there was foam coming out of Yoni's mouth. Anthony summoned assistance from COAC staff.

Camp Counselor "Jennie" Darling pointed Yoni out in the water to lifeguard Michael Bowen. Lifeguard Bowen jumped into the water and pulled out Yoni.

Lifeguard Bowen and Swim Instructor Gabi Kasimatis start CPR.

Camp Counselor Maryam Sofinya called "911" on her cell phone and reported "....a kid drowning, possible seizure.... "

The call was dispatched as ".... seizures related to a drowning.... "

Santa Barbara Sheriff Deputy Tom Green was told by his supervisor to respond to location even though the call was a medical emergency. Upon arrival Deputy Green assisted the paramedics and directed the father of the drowning victim to the Goleta Valley Hospital. Deputy Green cleared from the scene believing that this was a medical call only and that Yoni was alive.

Coroner Investigator John Kolbert responded to Goleta Valley Cottage Hospital when notified of Yoni's death. Investigator Kolbert conducted an investigation into the cause of the death, viewed video of the pool area and drowning, and it was determined that the death was an accidental drowning.

The Supervising Coroner Investigator, Sgt. Court Williams, also responded with Investigator Kolbert to Goleta Valley Cottage Hospital and assisted with the investigation. Sgt. Williams reviewed Investigator Kolbert's reports and approved them.

Forensic Pathologist Dr. Robert Anthony conducted an autopsy and found that the cause of Yoni's death was "Drowning".

The Death was classified as an accident by the Coroner's Office.

TIMELINE taken from VIDEO and CAD Printout

CD-2

- 14:19:15 Swimmer (Yoni?) appears to be inactive. (Corrected from video tape time of 14:39:15)
- 14:20 Larger person swims to deep end of pool leaving figure alone. Figure does not move from spot on water. According to Oded Gottesman, Yoni could not tread water. If true and figure seen is Yoni then he would already be in trouble. (Corrected from video tape time of 14:40)
- 14:22:50 CD 1 ends. (Corrected from video tape time of 14:42:50)

CD-2

- 14:23 Figure goes prone and appears to be buoyant/floating in, or on top of water. (Corrected from video tape time of 14:43)
- 14:26:20 – Life Guard from deep end of pool is seen coming to the guard in the shallow end. (Corrected from video tape time of 14:28:50)
- 14:27 This guard then leaves area and goes off camera. (Corrected from video tape time of 14:47)
- 14:27:45 Jennie starts to get up from her chair. (Corrected from video tape time of 14:47:45)
- 14:27:49 Jennie talks to lifeguard and points into water. (Corrected from video tape time of 14:47:49)
- 14:27:50 Shallow end lifeguard jumps into pool and pulls body out of water. (Corrected from video tape time of 14:47:50)

CAD Printouts

- 14:29:03 Call initiated at 911 Dispatch (CHP)
- 14:30:13 Paramedics Dispatched
- 14:31:56 Call initiated at SBSB Dispatch
- 14:33:43 Paramedics on scene
- 14:35:40 Sheriff Deputy Tom Green was Dispatched
- 14:40:06 Sheriff Deputy Tom Green on scene
- 14:48:03 Paramedics Transport
- 14:54:13 Sheriff Deputy Tom Green Cleared scene

THE VIDEO

I was given a tour of the COAC pool area by Charlotte Valentine and Julie Main. They pointed out that there were five cameras in the pool area. I have numbered each of the cameras and indicated their position on the diagram.

The computer which had the video files showing the COAC pool area was obtained by Senior DA Investigator David Tonello. Please see his report for further on pages 83-101.

I reviewed the videos for the time immediately prior to and during the time of the drowning. During my review I found that there were five different camera angles recorded.

The following is a description of the camera angles found on the COAC computer.

- A. The front desk at the entrance to the COAC. *(Not on diagram)*
- B. The kid pool and adult pool. This is the camera angle that was provided at the beginning of this investigation. *(Camera 2 on diagram)*
- C. The area between the Jacuzzi area in the south west corner of the pool area and the club house. This angle does show the gate at the entrance to the pool area. *(Camera 3 on diagram)*
- D. The adult pool and the walkway up to the child care building. *(Camera 4 on diagram)*
- E. The child care area. *(Not on Diagram)*

The times indicated in the following descriptions are taken from the video clock. Detective John Kolbert indicated that the video clock was fast by 20 minutes at the time he reviewed the video on 8/17/2005.

I found the following activities were shown on the different Camera angles.

Camera 3 shows Activity Camp kids and counselors come into the pool area through the pool gate.

Camera 4 shows Activity Camp kids walk toward the locker room to change at 14:18:26 hours (Corrected time would be 13:58 hours).

Camera 4 shows Activity Camp kids walk toward the kids' pool at 14:27:14 hours (Corrected time would be 14:07 hours).

Camera 2 shows kids swim to floating lane line and back toward stairs in what appeared to be the swim test as described by Jennifer Darling. Sam Shipley was standing in the water watching the kids swim to floating lane line and back.

Camera 2 shows Yoni in pool and staying in place, inactive, at 14:39:15 hours (corrected time would be 14:19 hours).

Camera 2 shows female counselor, Jennifer Darling, getting up from her chair, walking over to the lifeguard at the shallow end, and pointing into the water at 14:47:45 hours (corrected time 14:27:45 hours).

Camera 2 shows shallow end lifeguard jump into water and pull Yoni out of water at 14:47:50 hours (corrected time is still 14:27:50 hours).

I found that there was no video recorded from the camera (*Camera 1 on the diagram*) located at the southeast corner of the pool area on a large trellis. I contacted Charlotte Valentine regarding why there was no video for this camera. She at first did not understand why there was no video for that camera. After speaking with her maintenance person, Stefan Ornelaz, she recalled that the camera labeled as #1 had been installed after the drowning. Charlotte Valentine stated she would provide proof of when that installation took place. I had not received those documents at the time I wrote this report.

On 3/21/2005 I spoke with Stefan Ornelaz by telephone and received the following e-mail with attached photos of the cameras and whether they were operational on the day of drowning.

From: ornelaz stefan [coacmaintenance@yahoo.com]
Sent: Tuesday, March 21, 2006 12:28 PM
To: pkimes@co.santa.barbaraca.us
Subject: Re:COAC Photos

Attachments: 1534218594-IMG_0009.JPG; 2294077018-IMG_0010.JPG;
3093683048-IMG_0011.JPG; 1097052375-IMG_0012.JPG; 12054754-IMG_0013.JPG;
1337762594-IMG_0015.JPG; 4249936095-IMG_0016.JPG

Any further Questions Mr.Kimes feel free to contact me here at the club or my cell phone.My number is 895-7303.

Stefan Ornelaz

Image#0009-Maintenance area \ No camera \ Housing only
¹*(Not on diagram)*

Image#10-Childcare \ No camera \ Housing only
(Camera 5 on diagram)

Image#11-Same camera as #10 Different angle \ No camera \ Housing only
(Camera 5 on diagram)

Image#12-Childcare trellis \Operational now and day of accident
(Camera 4 on diagram)

Image#13-Next to Childcare building \Operational now and day of accident!
(Captures Jacuzzi and waterpipes)
(Camera 3 on diagram)

Image#15-Corner camera that captured accident
(Camera 2 on diagram)

Image#16-Attached to small pool trellis \No camera \Housing only
(Camera 1 on diagram)

Maintenance Director
Stefan Ornelaz
5800 Cathedral Oaks road
Goleta, ca.93117
964-7762

¹ I added the bolded italics text to this e-mail.

THE CHILD CARE LICENSE

The Cathedral Oaks Athletic Club (COAC) was still appealing the administrative case with the California Department of Social Services at the time of this report. The COAC appeal had been denied at the Regional Level and was being reviewed at the next level in Sacramento. It should be noted that the California Department of Social Services did not inspect the COAC Activity Camp facility to determine if it could meet the standards of a licensed facility. The California Department of Social Services found that COAC Activity Camp was an unlicensed child care facility and no further inspection of the facility itself was necessary for the state administrative hearings.

An investigation into whether the COAC facility and staff would meet the licensing standards even though they were not licensed was conducted by the District Attorney's Office. The following is a list of some areas where it appeared that the COAC Activity Camp did not meet the state standards for a licensed Child Care facility. It was based on viewing the Activity Camp area, statements of COAC staff, parents of kids who attended the camp, and personnel of The California Department of Social Services.

- There was no bathroom available in the area of the Activity Camp. The children had to be escorted across the COAC parking lot, through the clubhouse, into and across the pool area into the bathroom.
- There was no water service, or hot water, in the Activity Camp area. Water was provided by a hose that was run from a parking area water spigot into the Activity Camp area and hooked up to a temporary washing station.
- There was no permanent fencing around the Activity Camp play area. There was a creek area adjacent to the Activity Camp play yard border. There was some plastic construction fencing along one side. According to Charlotte Valentine fencing was rented to separate the Activity Camp yard from the creek.
- There was no separation between the 4 year olds and the 9 year olds.
- Very few of the Activity Camp staff had taken any Child Development classes that would be required of child care staff at a licensed facility.
- None of the Activity Camp staff had taken the courses necessary to be the director of a licensed child care facility.
- There was no criminal record check done on any COAC employees based on fingerprint comparison.
- Activity Camp staff did not have Tuberculosis tests done prior to starting to work for COAC

SANTA BARBARA SHERIFF AND SHERIFF'S COUNCIL

Santa Barbara Sheriff's Department personnel involved in the investigation of this case were interviewed. All stated that they did not know Richard Berti owned Cathedral Oaks Athletic Club. They also stated they did not know Richard Berti was involved with the Santa Barbara Sheriff's Council. They stated their investigation was not influenced by any connection to the Sheriff's Council.

Julie Main, the over-site manager of Cathedral Oaks Athletic Club, stated none of the sheriff's department employees who came out to the COAC to investigate ever asked who owned COAC. Julie Main stated there was no way for the deputies to make the connection between COAC, Mr. Berti, or the Sheriff's Council because no one mentioned any of those connections.

Richard Berti was also interviewed. He denied that he tried to influence the sheriff's department investigation in any way.

GOTTSMAN, Oded (Father of Yoni)
GOTTSMAN, Anat (Mother of Yoni)
7555 Seagull Dr.
Goleta, CA 93117
(H) 685-5853

DATE: 12/7/2005

LOCATION OF INTERVIEW: DA Office, First Floor conference room (Partially recorded)

Mr. Oded Gottesman and Mrs. Anat Gottesman came to the District Attorney's Office for an interview at my request. I introduced myself and explained that I had been assigned to investigate the drowning of their son, Yoni.

I explained that the three things I wanted to accomplish with my investigation were:

- 1) Identify the person(s) responsible for Yoni's safety at the time of the drowning and find out what happened to their son.
- 2) Hold any person(s) accountable as appropriate, for any criminal negligence in caring for Yoni; and
- 3) Make sure that steps are taken so that this does not happen again to another boy attending a day camp. I explained that I had general questions that I would like to talk with them about during this first interview.

Mr. Gottesman expressed anger and displeasure with the way that the sheriff's department had handled his son's drowning. I explained that there did not seem to be an investigation into the care that Yoni had received and whether that care was negligent and resulted in his drowning. I explained that the Coroner's Investigator only established that Yoni's death had been an accident. He had not addressed the issue of who was caring for Yoni in the pool, or who was responsible for his safety.

Mrs. Gottesman stated she dropped Yoni off at the Activity Camp area which was located near the rear of the Cathedral Oaks Athletic Club (COAC) property. She said this was a Monday and estimated it was at 0900 hours. She said she signed Yoni up for a week of camp. She estimated it took about 10 minutes to complete paperwork. She said that Yoni saw some friends as he walked into the building and went over to them and started playing immediately. Yoni was very excited and happy when he arrived because he recognized a lot of the kids who were there.

Mrs. Gottesman described the woman she met when she dropped off Yoni. The woman was in her 20's, approximately 5'5", and had blond straight shoulder length hair. Mrs. Gottesman stated she saw one or two other adults around the area. Mrs. Gottesman stated only one or two kids were playing outside. A friend of Yoni's by the name of Ryan Martin was one of the kids playing in the yard at the time Yoni arrived.

Mrs. Gottesman was given a camp shirt which she put on Yoni immediately.

Mrs. Gottesman stated she had packed a lunch for Yoni and he had it in his back pack. Mrs. Gottesman stated she did not recall what was packed in Yoni's lunch that day. She also packed his swim suit, towel and other things he needed for the day. Mrs. Gottesman stated she did not know when or where Yoni actually ate his lunch because she was not there.

Mrs. Gottesman stated Yoni had been attending a camp known as "Camp Haverim", but that program had ended on the Friday prior to them going to the COAC Activity Camp. This camp was

held at the Casa de Maria Facility. Itzik Bensason was the director. Mrs. Gottesman stated she thought Yoni had gone to this camp during the two weeks prior to his death.

Mrs. Gottesman explained that she picked the Activity Camp at COAC because several of Yoni's friends were going there. Mrs. Gottesman stated she did talk with the parents of kids who had gone to the Activity Camp and had not heard anything to cause her concern. Mrs. Gottesman explained further that two of Yoni's friends from "Camp Haverim" were going to be attending the Activity Camp at COAC. Mrs. Gottesman identified the two friends of Yoni as Gavin Haimovitz (Mom is Tina), and Seth Cohen (Mom is Elaine). The mother of one of those friends called Mrs. Gottesman on the Friday (August 12, 2005), the last day of "Camp Haverim" and told her that the Gavin and Seth were going to be attending the COAC Activity Camp and that it would be fun if the three boys could attend together. Mrs. Gottesman looked at the brochures from COAC, at what was advertised on the internet, and thought that this would be a good program for Yoni. Mrs. Gottesman stated she called COAC to check if there was space for Yoni in the Activity Camp the following week and was told she could sign him up on Monday, August 15, when they came to attend.

Mrs. Gottesman admitted that she did not ask anyone at COAC Activity Camp if they had a license. Mrs. Gottesman stated she assumed they were licensed. Mrs. Gottesman stated she did not think about a license because this was a well established athletic club, the camp had been run many years, with many advertisements and seemed to be well organized. She thought that it would be safe and she did not think to ask whether they had a license.

Mrs. Gottesman stated she knew Yoni would be outside, be with his friends, and get to swim. These were her main reasons for allowing him to go to the Activity Camp program. Mr. Gottesman stated Yoni was athletic and liked to play sports and Mrs. Gottesman agreed. Mrs. Gottesman stated she understood that the Activity Camp was playing sports most of the day with swimming toward the end to the day.

The plan was for Mr. Gottesman to pick up Yoni at 3 P.M. when the Activity Camp was over.

Mrs. Gottesman stated there was swimming involved in the camp that Yoni had attended the week prior. Mrs. Gottesman stated she did not have an issue with there being a swimming program involved with the Activity Camp.

I asked about Yoni's swimming abilities. The following information is a compilation of the statements of both Anat and Oded Gottesman. Yoni had taken swimming lessons "off and on" for two years prior to his death. The YMCA was the primary facility where the classes were taken. Mrs. Gottesman stated for the last six months of his life Yoni went to swimming lessons twice a week at the YMCA.

The Gottesman family did not have a pool at their home, but they did swim at the home of family friends often. They went to the home of the Haimovitz family to swim in their pool often, usually every week-end.

Both Anat and Oded Gottesman stated Yoni was confident with swimming and comfortable in a pool. Mr. Gottesman stated he swam with Yoni often and he never saw Yoni get into a situation where he had to interfere, or assist Yoni. Mr. Gottesman stated Yoni knew his limitations and always played within his limitations. Mr. Gottesman stated Yoni could swim approximately 5 yards, or as long as he could hold his breath. Mr. Gottesman stated Yoni's limitation was that he could not breathe and swim at the same time. Mr. Gottesman explained that Yoni swam with his head under the water, but could not take a breath without stopping at a ledge, or where he could

hang on to someone, or something. Both parents expressed concern that Yoni could not tread water, or stay in place and keep his head above water. Yoni might have got into trouble if he found himself in the middle of the pool and no one was there to hold him up above the water line. They said that most of the swimming Yoni did in their presence was from one edge of the pool to the other. This might be straight across the pool, or diagonal across the corner of a pool. Mr. Gottesman stated occasionally he would be in the middle of a pool and Yoni would swim to him where he could hold Yoni's head above the water line. Neither Mr. Gottesman nor Mrs. Anat Gottesman knew if Yoni would know to, or be able to, push himself off the bottom to get his head above the waterline, or push himself off of the bottom over to the side of the pool. Mr. Gottesman reiterated that Yoni had swum for hours and never had trouble. Mr. Gottesman stated Yoni knew how to play without getting into trouble.

Both Mr. and Mrs. Gottesman expressed concern about the original hard drive still being in the hands of COAC. Mr. Gottesman's understanding was that his attorney had told the attorney representing the COAC that the hard drive was evidence and should be maintained until this matter had been cleared. Mr. Gottesman stated he did not trust that the hard drive would be kept by COAC. Without the original hard drive any enhancement of the video would be jeopardized.

Mr. Gottesman stated he had been told that video provided to them was taken by a camera that was 40 feet away from the pool. Mr. Gottesman stated he was also told there was a camera located 25 feet away from the pool. Mr. Gottesman stated he had also heard that the hard drive on the computer can store up to two weeks of material. Mr. Gottesman stated his attorney was only provided a short clip of one camera angle and that camera was not the closest camera. This information was provided to them by people they know who are members of COAC.

Mr. Gottesman had another concern and that was that the format on the hard drive was different than the format on the CD that was provided. Mr. Gottesman stated the conversion from the hard drive file to the CD file would cause the quality of the video to be of a poorer grade than the original hard drive video. Mr. Gottesman stated it was "highly likely" that there will be better video material and a better camera angle on the hard drive.

Mr. and Mrs. Gottesman talked about several of the near drownings at COAC, or Santa Barbara Athletic Club, that were reported to them after the news reports about Yoni's drowning. These are documented in their attorney's reports.

Mr. Gottesman stated there was an incident during a birthday party held on the Saturday prior to the drowning. Mr. Gottesman pointed out that this incident might be on the tape since the tape was supposed to be capable of storing two weeks of material.

Mr. Gottesman stated there were numerous people who had contacted him with various types of information about the conditions there at COAC. He stated he had given the names of all of these people to his attorney and interviews had been done. Mr. Gottesman said that not all of these interview summaries had been sent to the District Attorney because they did not want to overwhelm anyone who was going to review the situation.

Mr. Gottesman stated one of the people he heard about was a babysitter who had left about an hour prior to the drowning. She described the lifeguards as "being inattentive, apathetic, and reclining in

their chairs” and so were the counselors². She described what she saw “as an accident waiting to happen”³.

Mrs. Gottesman stated if she had been told about any of the incidents that they learned about after the drowning, she would not have allowed Yoni to attend the Activity Camp.

His attorney pointed out there were two things in common with the near drowning incidents reported to them,. 1) There was always someone else in the pool next to the person who did the rescue, not the lifeguard. 2) The staff did not call “911” or did not want to call “911”.

Mr. Gottesman stated they were lured into thinking the COAC was a safe environment by the advertisements and information that the club members and other parents gave them about the Activity Camp. No one knew about all the near drownings that had occurred and there was nowhere for them to check for a record of such incidents.

Mr. Gottesman stated when he first met with the licensing agency he was told that the COAC was not licensed. He was also told that it was exempted. Mr. Gottesman asked why they were not licensed and he was told, “They do not have a license, so I assume they are exempted.” Mr. Gottesman stated this made no sense to him. He gave the example; if a person drives a car without a license then DMV can assume that person must be exempted. Mr. Gottesman stated he had obtained the codes that the agency used and he pointed out in the codes why he felt COAC was not exempt. Mr. Gottesman was also told that the licensing agency does not look for violations of the law. They only act on complaints. He was told that they do not inspect programs that are not licensed.

Mr. Gottesman stated he was frustrated with the sheriff’s department investigation. Mr. Gottesman stated if a person is stopped for a traffic violation the deputy would look into whether the person had a license and registration, if the driver was DUI and whether he had a history of similar violations. Mr. Gottesman asked the coroner investigator whether the department had looked into the licensing and registration of the COAC, whether there was anything wrong with lifeguard such as him being intoxicated, or some other reason why he did not see Yoni floating a few feet in front of him, and whether the sheriff’s department had checked into whether there was a history of such incidents. He was told that the sheriff’s department was not authorized to look into those things. Mr. Gottesman concluded that the sheriff’s department investigation did not find anything wrong because they did not look into anything.

Mr. Gottesman also stated the sheriff/coroner investigator never did tell him that there was a video that recorded the drowning. Mr. Gottesman stated he found out about the video from other people who were members of the club. Mr. Gottesman stated the sheriff’s department could have indirectly assisted the COAC if the video showing the drowning had been recorded over. Mr. Gottesman stated he thought that the hard drive had been retained and preserved by the attorney for COAC.

Mr. Gottesman stated he spoke with Terral “Terry” Janeway, the father of Katie Janeway, the girl who drowned in the Santa Barbara City pool under similar circumstances. Mr. Janeway was at the

² The Activity Camp kids came over at 2 P.M and Yoni was found at approximate 2:25 P.M. It is questionable whether this person actually saw the counselors if she left an hour prior to the drowning.

³ According to the letter dated November 2, 2005 and written by Attorney Lawrence Grassini this statement was actually a third hand statement originally said by a Santa Barbara Athletic Club lifeguard named “Allie”. It was not said by the babysitter, Chelsea Walls

club a few hours after the drowning and he saw the pool was roped off. He asked COAC staff what happened. He was told there had been an emergency at the pool, but everything was under control. Mr. Gottesman stated Mr. Janeway did not find out what happened until he got home and watched the news.

Mr. Gottesman opined that the COAC staff had an agenda to keep things quiet by saying Yoni had a seizure, waiting to call "911" and things like that. Mr. Gottesman stated he thought all these things were not a coincidence.

SHIPLEY, Samuel CA Op # D4788449
(Camp Counselor)
184 Nogal Dr.
Santa Barbara, CA 93110-2205
(H) 705-9750

Samuel Shipley was contacted in person at his home on 1/12/2006.

DATE: 1/12/2006

LOCATION OF INTERVIEW: 184 Nogal Dr. (Tape available)

I advised Samuel Shipley that I was conducting an investigation into the drowning that occurred at COAC during the summer of 2005. I told Mr. Shipley that I understood he might have been at the COAC at the time of the drowning. I also pointed out that I had received a written statement from the other counselors and others, but there was none from him.

Mr. Shipley stated he had gone home because he was upset by what had happened. His telephone also went dead, so they could not reach him when they tried to contact him. Mr. Shipley thought he wrote a statement the next day, if not then, it was definitely during that week. He gave it to his boss, Elizabeth Heller. Mr. Shipley thought he kept a copy and would provide that to me. His mother had probably filed it and he did not know where it was, but would get it to me. (At time of this report I had not received a copy of what he wrote.)

Mr. Shipley stated he had also been interviewed by investigators at the COAC. He thought that the investigators were working for the Gottesman family.

Mr. Shipley stated his identification was down in his car when I asked him for it. I then asked him if he knew his number and he recited his California Operator's number which I listed above. Mr. Shipley confirmed that he had been a Camp Counselor at COAC. Mr. Shipley stated it was paid position. Mr. Shipley started working there from the middle of June through the end of August.

Mr. Shipley identified his supervisor as Elizabeth Heller. He graduated from San Marcos High School. Mr. Shipley stated he has not attended college because he was preparing to do a Mission for the Mormon Church.

I asked Mr. Shipley if he had any training in the development of children, teaching credentials, CPR certificate, or any anything else related to teaching children. Mr. Shipley stated he was an Eagle Scout, had worked with kids in the past, and had some first aid and CPR training in his scouting. Mr. Shipley stated the CPR training was probably four years prior to my interview.

Mr. Shipley was asked if he had a tuberculosis test and he thought that his last test had been the end of 2003, or beginning of 2004.

Mr. Shipley stated no one had told him what to put in his written statement.

Mr. Shipley stated he was in the pool. Mr. Shipley stated he had been playing with "Hunter, Amber, and two others". Mr. Shipley stated Yoni was not one of the others. Mr. Shipley confirmed he was the figure seen throwing the kids into the air. Mr. Shipley had not seen Yoni the whole time they were in the pool.

Yoni had two of his close friends, or kids that he hung out with, that he was playing with. Mr. Shipley stated he had not seen either of them in the pool.

I asked Mr. Shipley how the Activity Campers were supervised. Mr. Shipley stated there were two lifeguards on either end of the pool. Mr. Shipley stated before the free swim period the kids were given a swim test. The test consisted of the child swimming across the pool from one set of stairs or the pool to the other stairs and back. If the swimmer can make it without trouble they can go anywhere in the pool. If they struggled then they would have to stay in the shallow end, and if they can't swim at all then they have to stay on the steps.

Mr. Shipley stated he thought he was the counselor in the pool at the time Yoni took his swim test.

Mr. Shipley stated the counselors were an extra set of eyes watching the pool. The counselors were not assigned certain sections of the pool. Mr. Shipley said that he was not assigned certain kids in the pool. The kids liked the counselors to go into the pool with them and his boss (Elizabeth Heller) told them it was okay for the counselors to go in the water with the kids if they wanted. There was no formal instruction given as to watching certain sections, or certain kids while in the pool.

Mr. Shipley identified the three counselors as Jennie Darling, Maryam, and himself.

Mr. Shipley confirmed there were 15 kids at the camp. He stated not all of the kids were in the pool. He explained that some would be on time out for bad behavior and not allowed into the pool. He stated there were also other kids and their parents who were club members present in the pool at the time.

Mr. Shipley stated he was near the deeper end of the pool "on the far side". He was playing with the kid named Hunter. Mr. Shipley stated he heard the lifeguard say, "Everybody out of the pool". This was not unusual because the lifeguards would do this so they could take a break.

As he started getting out Mr. Shipley saw Yoni was on the pool deck. He did not recognize Yoni because his hair was wet and darker than when it was dry. He then saw Yoni's wrist band and realized that it was one of the campers.

Mr. Shipley again stated he could not recollect seeing Yoni swimming in the pool. Mr. Shipley stated Jennie Darling gave the swim tests and he thought she had tested Yoni. Mr. Shipley stated he probably was the counselor in the pool at the time of the test because he was the only counselor who went into the pool. He thought Yoni made it across the pool and back, but he was kind of struggling so he was told he had to stay in the shallow end.

Mr. Shipley really didn't have any ideas how this drowning could have been prevented. He stated the lifeguards missed seeing him. Mr. Shipley then expressed surprise about that because it was a relatively calm day, there had been more kids in the pool other days. Mr. Shipley stated he did not understand why no one saw Yoni in trouble.

Mr. Shipley stated he had seen the video tape. Mr. Shipley stated he did not recall seeing or knowing who swam away from Yoni toward the deep end. Mr. Shipley said that it was not a counselor because he was the only counselor in the pool. Mr. Shipley confirmed that Jennie was the person who went up to the lifeguard and pointed out where Yoni was just before the lifeguard jumped in and pulled him out.

Mr. Shipley stated that Jennie was with the kids on the steps and Maryam was with the kids "on time out".

Mr. Shipley estimated that there were 3 or 4 kids on the steps, 2 outside the pool and 9 or 10 campers in the pool.

Mr. Shipley stated he was paid as a camp counselor and received a membership while working there. He knew a few people who worked in the café there, but did not know any of the administrators. He did not know either of the lifeguards.

Mr. Shipley stated no one had told him what to tell me, or anyone, regarding the drowning.

Mr. Shipley stated the Activity Camp went from 8 A.M. to 3 P.M. The kids would be brought by their parents between 8 and 9 o'clock. Mr. Shipley stated they signed in. Mr. Shipley stated they played either in the yard, or trailer. They would have a snack about 10 o'clock, then arts and crafts, until 12 or 12:30, when they would have lunch. Mr. Shipley stated after lunch on Tuesday and Thursday they played tennis. Mr. Shipley stated about 1:45 they went over to the pool and swam until about 2:30. Then they would get ready to go home. I asked Mr. Shipley about swim class and he then confirmed that the kids who had swim classes would go about 11 o'clock. Mr. Shipley stated the swimming lessons were given by some of the lifeguards.

HAIMOVITZ, Tina (Mother of Gavin)
HAIMOVITZ Gavin DOB: 7/30/2000 Grade = Pre-K 5 years old
(Camper and friend of Yoni)
31 El Cielito
SB CA 93105
(Parents) Tina & Brian
(H) 966-6169
(Cell) 886-1641

Ms. Tina Haimovitz called me back at my request on 12/13/2005. Ms. Haimovitz later offered to bring her son, **Gavin Haimovitz**, to the District Attorney's Office for an interview. That interview was conducted on 12/20/2005.

DATE: 12/13/2005

LOCATION OF INTERVIEW: Telephonic (Tape available)

Ms. Tina Haimovitz confirmed that she was the mother of Gavin Haimovitz and that the information on the Activity Camp application enrolling Gavin was correct.

Ms. Haimovitz stated Gavin had turned five in July and entered Kindergarten in September 2005. She stated Gavin was about 2 inches taller than Yoni had been. Ms. Haimovitz estimated Gavin's weight was less than 50 pounds, approximately 45 pounds.

Ms. Haimovitz stated she had met the Gottesman family through pre-school where the boys had been enrolled at the same time. They had been friends for approximately 3 years.

Ms. Haimovitz stated she did not have any connection to the COAC, and did not know anyone employed there.

Ms. Haimovitz stated she had been interviewed by Keith Miller, the Private Investigator for the Gottesman family back in September. She thought this was after Miller had spoken with Elaine Cohen. Ms. Haimovitz stated his interview lasted about 30-45 minutes. Ms. Haimovitz stated her statement to the private investigator was a short time after the drowning and her recall of things would have been better then than now. Ms. Haimovitz stated she had also spoken with different parents about what happened.

Ms. Haimovitz stated the day Yoni drowned was the first day for Gavin and Yoni at the COAC Activity Camp. She stated they had also been to Camp Haverim together. Seth Cohen had also been there with Gavin and Yoni. She stated Yoni and Gavin had also attended zoo camp together in the past. Ms. Haimovitz had checked into the zoo camp instead of the COAC Activity Camp, but it was full. She did not want Gavin to go to the "Y" camp because she wanted better supervision than she saw at the "Y" camps.

Ms. Haimovitz did not check into the licensing for the Activity Camp because she did not know that a license was required to run a camp. Ms. Haimovitz did not ask any questions about the counselors, counselor to child ratio or how the children were supervised. Ms. Haimovitz stated she did not question anything about the camp because it was at the club, it had been run before, it was well advertised and she knew people who had sent their kids and loved it.

Ms. Haimovitz thought that upon arrival she was met by the director, Elizabeth Heller, when she dropped off Gavin, but she was not sure.

Ms. Haimovitz stated Gavin was picked up by Elaine Cohen at the end of the camp day. Ms. Haimovitz was at a dentist appointment as the camp ended and that was why Elaine Cohen had picked up Gavin. Ms. Haimovitz stated she received a telephone call and Ms. Cohen was crying uncontrollably and could not be understood. Gavin then got on the phone and told her Yoni had drowned and died. Ms. Haimovitz stated Gavin told her Yoni had been under water and didn't breathe for 15 minutes, but she did not know where he got that time period from. Ms. Haimovitz opined that a five year old did not judge time very well and so she did not know where he heard this from. Ms. Haimovitz stated Gavin was taken to the locker room with the other kids and Gavin never saw Yoni again. (Ms. Tina Haimovitz later stated she really did not recall whether Elaine Cohen called her, or Gavin spoke with her first.)

Gavin told Ms. Haimovitz that he was not with Yoni. Gavin told her that he did not see anything happen to Yoni prior to Yoni being pulled out of the pool. She had never really got a straight answer from Gavin as to where he was at the time of the drowning, or what he was doing.

Ms. Haimovitz opined that Yoni could swim and was actually a better swimmer than Gavin. Ms. Haimovitz stated it was her understanding that all of the children were given a swim evaluation at 11:00 o'clock. She paid for Gavin to have a swim lesson. It was her understanding that the children had lunch after the swim lesson and then went back to the pool for swimming again after lunch.

Ms. Haimovitz stated she and Elaine Cohen went back the day after the drowning to get Yoni's things. Ms. Haimovitz stated she spoke with a big husky young man with a reddish blond hair who identified himself as a counselor. He told Ms. Haimovitz and Elaine Cohen that he was a counselor and in the pool at the time of the drowning. Ms. Haimovitz said that he told her that he would take two kids in his arms, lift them out of the water, and then fall back into the water. Ms. Haimovitz stated the young man said the kids laughed and had fun. Ms. Haimovitz did not recall if she asked him which kids he had done that with.

Ms. Haimovitz stated at the time she received Yoni's things, she asked for a copy of the release she had signed for the camp and the person she spoke with refused to give her a copy. Ms. Haimovitz was told to get it from the COAC attorney.

Ms. Haimovitz stated she had heard a rumor that Yoni was playing with Michele Martin's son, a boy named Ryan. Yoni and Ryan were running and jumping into the pool together. This was just "hearsay" and she did not know if this was really what happened.

Ms. Haimovitz confirmed that she did have a pool at her home and Yoni would come over nearly every weekend to swim. Yoni was a good swimmer. She had not heard any complaints from the children about having trouble swimming during the camp.

Ms. Haimovitz stated Rachel Cosentino had been at a birthday party the week prior to Yoni drowning and she called the pool situation an "accident waiting to happen". Ms. Haimovitz stated Ms. Cosentino stated the lifeguards were lying down and not watching the pool.

DATE: 12/20/2005

LOCATION OF INTERVIEW: District Attorney's Office, Child waiting room (Tape available)

Gavin Haimovitz came to my office with his mother Ms. Haimovitz. Introductions were made. Ms. Haimovitz was allowed to stay in the room with Gavin during the interview.

Ms. Haimovitz stated she had told Gavin that I was going to talk with him about what happened to his friend Yoni.

I told Gavin that I was a detective. Gavin stated detectives help people who are sick, or drowned. I explained I was a police officer and that now I go over the reports of other police officers, or detectives and try to figure out what happened to try to help people.

Gavin stated he went to Roosevelt School and he was in Kindergarten. His teacher was Ms. Jane. Gavin stated he was in room seven. Ms. Haimovitz stated he liked coloring and sports. His favorite sport was "everyone", or all of them. Ms. Haimovitz stated he was "number nine" for soccer and he was on the "Green Gators" team.

Gavin knew his colors. Gavin also knew the difference between right and wrong. Gavin did not reply to my question about what happened if he told a lie at first. Ms. Haimovitz asked Gavin if it was right or wrong to tell a lie and Gavin replied that it was wrong to tell a lie. Gavin stated his mother would give him a "time out" if he told a lie. Gavin stated his mother would be angry if he told a lie.

I told Gavin that I wanted to talk with him about something that happened a long time ago. I told him that he might not remember everything and it was okay if he did not remember things. I just wanted to talk with him about what he did remember.

I asked Gavin to tell me what he did remember about the day when Yoni drowned. Gavin started by saying that Yoni was his best friend. Gavin started pointing on the table to where he was and where Yoni was found. I explained to Gavin that I had seen a photo of the pool and that I would draw the shape of the pool for him to see. (See attachment) I told Gavin that there was a lifeguard at the one end of the pool.⁴ Gavin told me that there was another lifeguard at the other end of the pool and pointed to the deep end of the pool.⁵ I asked Gavin which end of the pool was shallow and which end deep.⁶ Gavin pointed out there were stairs⁷ in the areas of the pool that go further out from the edge of the pool. He pointed out that the steps went into the shallow end of the pool. Gavin first stated Yoni was found in the deeper end of the pool. Gavin was in the shallow end.

Gavin stated at first that he did not recall taking a swimming test. Gavin stated, "If you were six you could go here (deep water) but if you were young you have to stay here (the shallow end)". Gavin thought the pool was just as big as his home pool, but Ms. Haimovitz stated that was not correct. She did say that the pools were shaped the same.

Gavin pointed out he was on the steps on the right side (facing the pool from the shallow end) of the shallow end. Gavin stated he also had raced Yoni all the way across the pool in the shallow end.⁸ He pointed out that they went from the steps on the right to the steps on the left. Gavin stated he

⁴ Marked with a square and my initials PEK

⁵ (Marked with a square and Gavin's initials GH)

⁶ The shallow and deep portions were those words.

⁷ The stairs were also marked with the word "Stairs"

⁸ This could be the swim test.

made it back, but he did not remember Yoni being with him when he got back to the steps. Gavin could not say when that was in relation to Yoni being pulled from the water by the lifeguard. Gavin stated he only knew it was after tennis.

Gavin stated there were two periods of swimming. Gavin stated he had a swim test first and passed. Gavin pointed out that he was in the shallow end of the pool. Gavin did not recall what he had to do for his swim test.

I asked Gavin if he could tell time. Gavin stated he needed numbers on the clock face to tell time and the watch I had did not have numbers. Ms. Haimovitz indicated that Gavin did not know how to tell time.

Gavin said that it was 5 minutes between the time he last saw Yoni swimming with him and the lifeguard pulling him out.

Gavin stated he (himself) made it completely across the pool. Gavin stated they were talking and Yoni had made it across. Gavin confirmed that they both made it across the pool to the steps on the other side of the pool⁹.

Gavin only remembered knowing one other person at the camp. Gavin stated the other camper he knew was "Seth". Gavin stated "Seth" was not as good a swimmer and was "practicing". Gavin stated he thought Seth had been swimming with them.

Gavin pointed out on the diagram of the pool that Yoni was found in the middle of the pool. I drew a stick figure on the diagram where Gavin had pointed.

Gavin stated he did not know the counselors for that day.

Gavin stated he did not know anyone at the camp named Ryan or Anya.

Gavin was confused about when he actually ate his lunch. He knew he had one swim session, they played tennis, and then they did swimming again. He could not express in words when he ate lunch.

⁹ The other side of the pool was used for swim instruction and separated from the area that the Activity Camp children could use by a floating lane line.

SARAGOSA, Nancy

(Mother of Anthony and Johnny. All three were visiting COAC at time of drowning)

SARAGOSA, Anthony DOB: 7/30/1996

(Boy who discovered Yoni was in trouble and summoned assistance)

SARAGOSA, Johnny 7 years old

(He was with Anthony at time of incident, but has not talked about what happened)

Nancy Saragosa contacted me by telephone on 2/7/2006.

DATE: 2/7/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Nancy Saragosa stated she had received word that I wanted to speak with her. Nancy Saragosa stated she was thinking about joining the COAC and had gone there as a participant in the club's offer to try out the facilities for the day. Ms. Saragosa stated she had met with Chauncey at the front desk. She and her sons met Chauncey at about 1 o'clock on the day of the drowning. Ms. Saragosa stated Chauncey gave her and her sons, who were seven and nine years old, a tour of the club. Ms. Saragosa stated when she made the appointment with Chauncey he told her to bring their swim suits and they could swim in the pool and enjoy the club facilities.

After the tour of the club her sons put on their swim suits and she sat on one of the lounge chairs near the pool edge closest to the building. She sent her sons into the men's locker room to change into their swim suits. While her sons were gone she saw the campers come out of the locker rooms and go into the pool. Nancy Saragosa stated the first thing that was done was they gave swim tests. Ms. Saragosa stated she remembered thinking to herself, "That was a really fast swimming test." Ms. Saragosa stated she recalled the counselors telling the different kids where they could go and setting their boundaries.

Ms. Saragosa stated she remembered thinking to herself "that the counselors were really into their job". One, or more, counselor(s) were in the pool with the kids and throwing them into the air. Another counselor was sitting on the stairs looking at kids on the stairs. Ms. Saragosa stated there were two lifeguards with one at each end of the pool.

Ms. Saragosa stated when her sons came out of the locker room they went into the pool with the campers and camp counselors. Ms. Saragosa stated she watched for several minutes. She came to the conclusion that "this was sufficient", or safe for the kids and so she went and changed into her swimsuit and went over to the hot tub. This is where she spoke with the woman named Susan (Schneipp). Ms. Saragosa stated she was in the hot tub maybe ten minutes when she heard all of the commotion and screaming coming from the pool. Ms. Saragosa stated that was when they pulled the boy's body out of the water. Ms. Saragosa described the boy's complexion as being "bright blue". Ms. Saragosa stated "his feet were flopped over" and he was "obviously dead".

Ms. Saragosa described the scene as being "very chaotic". A possible counselor ran up to her and said "Oh shit" repeatedly and then asked "What do we do?" Ms. Saragosa stated the staff acted pretty quickly with the CPR, but there was a lot of screaming and running around in an effort to get the kids away, so they wouldn't have to witness what was going on with the boy. Ms. Saragosa stated she took her kids off to the side. She stated they stayed there until after the ambulance arrived. Ms. Saragosa stated no one asked her any questions, or took down her name as a witness.

Ms. Saragosa stated she felt terrible about what happened.

Ms. Saragosa stated as she drove home her oldest son, Anthony, told her what he had seen. Anthony told her he saw the little boy floating in the pool for "ten minutes". Ms. Saragosa stated Anthony thought the boy was playing "hold your breath" like the family always did. Ms. Saragosa stated Anthony finally swam down and looked at the boy's face. Ms. Saragosa stated Anthony described the boy as choking and "sun screen" (white stuff) was coming out of the boy's mouth. Ms. Saragosa stated Anthony later described this white stuff as "His soul coming out of his mouth". Ms. Saragosa stated Anthony then quickly told the lifeguard that the boy was in trouble. Ms. Saragosa stated her sons were together at the time the boy was found. Ms. Saragosa stated afterwards they had a very intense guilt feeling that they were responsible.

Ms. Saragosa stated the family are swimmers and scuba divers and have traveled around the world. Ms. Saragosa explained that they always play "hold your breath". The boys can swim the length of the pool probably three times. Ms. Saragosa stated she thought her son's estimate of 10 minutes was not accurate, but the actual time might have been 4, 5, maybe 7, or 8 minutes. Ms. Saragosa stated Anthony said the boy's face was blue.

Ms. Saragosa stated she did not recall discussing with her sons about how the boy had been swimming prior to being found underwater.

I asked Ms. Saragosa if it would be possible to speak with her sons about what they recalled. Arrangements were made to interview her oldest son, Anthony, at the District Attorney's Office. Ms. Saragosa stated her younger son had not talked about what happened.

Anthony Saragosa came with his mother to the District Attorney's Office for an interview at my request. Nancy Saragosa was allowed to stay in the room during the interview with Anthony Saragosa.

DATE: 2/10/2006

LOCATION OF INTERVIEW: DA Office, Witness waiting room (Tape available)

I introduced myself and told Anthony that I wanted to talk with him about what happened at the Cathedral Oaks Athletic Club during his visit there during the summer. Anthony confirmed that he had talked with his mother about the drowning and she had told him I needed to talk with him about what he remembered.

I told Anthony that there was no such thing as a wrong answer. I told him that it was okay if he did not remember things and to tell me if he did not remember. Ms. Saragosa reassured Anthony that he was not in trouble for anything that he did. Ms. Saragosa told Anthony that he was being good to talk with me about what he remembered.

I told Anthony that his mother told me she had taken Anthony and his brother out to visit the COAC to see if they wanted to join. Anthony confirmed that he remembered going for the visit.

I asked him what he remembered about his visit. Anthony stated they took a tour and they went in the pool. Anthony stated he and his brother were in the pool for about five minutes. He said he saw this kid floating in the water. Anthony stated he saw the boy was choking and he called a lifeguard.

Anthony confirmed that he and his brother were playing in the pool. He said he did not know anyone else in the pool. Anthony stated he did not remember that his mother had gone away from the pool.

Anthony stated he was maybe ten feet away from the lifeguard at the shallow end. Anthony stated both he and his brother could stand in the area of the pool where they were playing and it was not over their heads. Anthony thought it might have been four feet deep. The water was up to chest height on him.

Anthony stated he did not recall seeing a lane line floating in the pool.

Anthony stated he went into the pool by going down the stairs and indicated the stairs were in the S/E corner of the pool. (I drew a rough diagram of the pool) Anthony stated he swam to the deep end with his brother and then back into the shallow area. Anthony stated he then found the kid.

Anthony confirmed that he and his brother played in the shallow area for five minutes, or longer.

Anthony stated he and his brother were splashing each other and confirmed that was mostly on the surface of the water.

I asked Anthony where the boy was when he first saw him. Anthony pointed out on the diagram where he found the boy in relation to the pool and I drew a stick figure at the location he indicated.

I then asked whether the boy was on the bottom, the surface, or in the middle. Anthony stated half the time he was on the bottom and then he started floating around in the middle between the bottom and surface. Anthony confirmed that the boy was never floating on the surface.

Anthony stated he noticed that the boy looked "kind of purplish and I started seeing him choking, so I told a lifeguard." I asked Anthony what he meant when he said that he saw the boy choking. Anthony stated he could not really explain what he saw. I tried to get Anthony to explain what the boy's body was doing when he saw what he thought was choking. Anthony stated the boy's head was just moving around. Anthony stated there was white stuff coming out of the boy's mouth.

Anthony stated when he saw all this he yelled up to the lifeguard in the chair.

Anthony stated he could not recall seeing the boy swimming in the pool prior to finding him under the water.

Anthony stated they just left afterwards. Anthony stated he only had talked with his parents about what he saw.

I asked Nancy Saragosa if she could think of anything else that I should ask Anthony. Ms. Saragosa stated when Anthony first explained what had happened on the day of the drowning it was in a much more detailed manner.

Anthony then stated he thought the boy was holding his breath when he first saw him. Anthony thought the boy was under water too long, so that was when he dove under water to look at him.

Anthony said the boy's arms were stretched out and "just hanging" as he was floating in the water. Anthony described the boy's body as being "bent" with his arms and legs stretched out with his legs bent a little.

Anthony said he first thought that the boy was underwater for ten minutes, but then he heard it was really eight minutes. Anthony stated he could not recall where he found out the boy was under

water for eight minutes. Anthony said he had not read or heard anything about the drowning in the news, or newspapers.

DARLING, Jeanette "Jennie" CA Op # D1591041
(Camp Counselor)
(Cell) (408) 476-7554

Jeanette Darling was contacted by telephone 1/13/2006. Ms. Darling said she could not speak with me and offered to call me back on 1/17/2006. Ms. Darling did call back at the agreed upon time and was interviewed.

DATE: 1/17/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Jeanette Darling confirmed she was a camp counselor at the time of the drowning. Ms. Darling stated she had been a camp counselor there at COAC during the winter camp session and from the beginning of the summer session. She explained that the incident occurred at the beginning of the ninth week.

Ms. Darling identified her supervisor at the Activity Camp as Elizabeth Heller.

Ms. Darling confirmed that she was attending college in the San Jose area. She stated she did graduate from Cabrillo High School in Lompoc. Ms. Darling stated she was currently in her senior year (Sept. 2005- June 2006) and would have completed her third year of college just prior to the 2005 summer. Ms. Darling stated she was a recreation major and she had a lot of classes on human development. Ms. Darling stated her emphasis is in Leadership and Administration, so she had classes in how to plan programs, and lead games and things needed to run a camp. Ms. Darling stated along with taking the human development classes she had participated in a class(es) where they would go to the university day care and observe the children in that type of setting. Ms. Darling stated she did not know how many units she had completed in those types of classes, but she would be done and graduate from college in May 2006.

Ms. Darling stated she was the Program Director at Camp Whittier which is located near Cachuma Lake during the summer of 2004. As the Program Director she scheduled the cabins, helped with hiring people and "oversaw the program staff" which included the lifeguards, archery, sports and drama staff.

Ms. Darling stated she also was a certified lifeguard although she was not employed at the CAOC in that capacity.

Ms. Darling did not have any state permits for child care, and was not a program director.

Ms. Darling confirmed that she had CPR/First Aid during July 2005. Ms. Darling stated her Lifeguard Certificate was valid from June 2003 through June 2006. She got her lifeguard certification through American Red Cross at Camp Whittier.

Ms. Darling did not recall when she had her last tuberculosis test.

I asked Ms. Darling how the Activity Campers were supervised in the pool. Ms. Darling stated she was sitting on the deck of the pool. She was to the right and behind the lifeguard chair. Ms. Darling said there were three camp counselors, two lifeguards, and parents of club members. One of the counselors was in the water and the other two were on the deck. Ms. Darling stated the campers were not broken up into groups to be watched. She confirmed that the counselors did not watch certain campers. Ms. Darling stated the counselors watched the whole pool. Ms. Darling stated the camper to counselor ratio was 1 counselor to 3 campers. Ms. Darling recalled that there

were 1 or 2 campers outside the pool and 13 campers in the pool. She was not sure of those numbers.

Ms. Darling stated she was the counselor who administered the swim test to Yoni because she was the counselor who was lifeguard certified. She gave the swim test along the shallow end of the pool. Ms. Darling stated Yoni swam the two laps across the pool without stopping. Yoni did not need assistance and he could touch the bottom of the pool in the shallow end. Ms. Darling explained that she decided the area of the pool each camper could swim in according to how well they did on their test. If a camper could only swim one lap then she would tell him that he could not go past the 3 foot mark, or she might limit him to the 4 foot mark. Ms. Darling stated Yoni was tall enough he could stand in the shallow end.

Ms. Darling stated she did see Yoni swimming during the free swim period. She stated Yoni was doing "great".

Ms. Darling estimated that Yoni was floating near the first "T" mark used by lap swimmers. Ms. Darling stated she was not good with estimating measurements, but thought it was 3 feet. She said it might be farther, or closer, she did not know.

I asked Ms. Darling if she recalled whether Yoni was one of the kids who was playing with Sam (Shipley, the counselor). Ms. Darling did not think that Yoni was playing with Sam. She recalled Sam playing with the kids, but did not recall seeing Yoni trying to be involved with them. Ms. Darling stated Sam was pretty perceptive about where the kids are and which kids he can wrestle with and which kids he can't. She did not recall that Yoni was one of the kids with Sam.

Ms. Darling stated she was a paid counselor. Ms. Darling said there was a volunteer who was a Counselor-In-Training, or "CIT", there at the pool also. She said the name of the "CIT" was "Harrison". She did not know the last name of Harrison.¹⁰

Ms. Darling stated Yoni had lunch at noon. Then they played tennis from about 1 o'clock until 2 o'clock. She knew Yoni went to tennis because she had a photo of him playing tennis. Ms. Darling stated they then changed clothes for the free swim session. Ms. Darling stated the group had to wait for the swim tests to be completed before they could go in the water. It was not until 2:15 or so that they all were able to go into the pool. Ms. Darling stated this group changed clothes pretty quickly so she decided to let them stay 5 or 10 minutes longer in the pool.

Ms. Darling explained that the swim tests she gave were separate from any tests that the swim instructors gave to the campers during their swim lessons. She did not watch the swim classes, so she had to give them a test herself.

Ms. Darling explained that when she first saw Yoni underwater she thought he was playing a game with the two other boys who were near him. She thought they were seeing who could hold their breath longer. Ms. Darling stated she looked away to deal with a couple of other campers and looked back. That was when she realized Yoni might not be playing and asked the lifeguard to pull him out. Ms. Darling stated she thought Yoni was floating close to the surface of the water in the prone stretched out position. Ms. Darling stated if Yoni's body was not floating close to the surface then it was in the upper half of the water near the top.

Ms. Darling stated she was not involved in the CPR of Yoni. She did not see what was going on with the CPR, and could not say whether there was vomit, or just foam coming from Yoni's mouth.

¹⁰ After my interview with Elizabeth Heller I was able to locate paperwork that identified this CIT as Harrison Swalley.

Ms. Darling knew the lifeguards only from working with them supervising the pool during the free sessions. Ms. Darling stated they were not best friends, but they had worked together for eight weeks leading up to the day of the drowning. She did not work at COAC as a lifeguard.

Ms. Darling stated she met Mrs. Gottesman when she helped them sign in at the Activity Camp. Ms. Darling did not meet Yoni's father. Ms. Darling stated Elizabeth Heller was in the trailer if a parent needed to know something that Ms. Darling could not answer at the time people signed in. Ms. Darling stated she did not know the Gottesmans other than that brief conversation with the mother.

Ms. Darling stated she did not know anyone at the COAC. She got the job there for the winter Activity Camp because she knew Elizabeth Heller's sister from Camp Whittier. Ms. Darling was not a member of COAC.

Ms. Darling said she wrote out a written statement either on the same day, or possibly the next day.

Ms. Darling did not recall Esther Clark ever telling the camp counselors that they were the first line of defense in preventing a drowning. Ms. Darling stated Elizabeth Heller told the counselors they needed to watch the pool and they could not leave it up to the lifeguards to watch the pool by themselves. Ms. Darling stated she understood that when the kids were in the pool she needed to be more aware than when the kids were on the grass. Ms. Darling stated she was aware that the free swim session was not a time to take a break just because there were lifeguards on duty. She understood that she needed to watch too. Ms. Darling stated she told the other camp counselors that they needed to be more aware when the campers were in the pool.

Ms. Darling stated she did not relax whenever she was with the campers at the pool. Ms. Darling stated she still considered herself a lifeguard even though she did not have the official title. She was still watchful of what was going on, especially if something involved one of the campers.

Ms. Darling stated Elizabeth Heller gave her the title of "Assistant Director Camp Counselor". She did not get paid more for the title. She did get paid more than the other counselors because she had done the Winter Camp.

Ms. Darling stated she did talk with two people about what happened, but she did not know who they were. Ms. Darling stated she also talked with upper staff people.

Mr. Michael Bowen was contacted by telephone on 1/20/2006.

DATE: 1/20/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Michael Bowen called me back after I had left a message on his voice mail. I introduced myself and explained that I was looking into the drowning at the athletic club.

Mr. Bowen confirmed that he was back east going to college. He stated he was attending Harvard University. He was in his second year of college and was studying Biological Anthropology.

Mr. Bowen stated he had not taken any child development classes and he did not have any permits associated with child care from California.

Mr. Bowen confirmed he was one of the lifeguards on duty at the time of the drowning and David Merin was the second lifeguard on duty.

Mr. Bowen was not sure who he had talked with at the athletic club about the drowning. He did not recall talking with a private investigator.

Mr. Bowen stated he was employed as a lifeguard at the athletic club and estimated that he worked 20-25 hours a week. Mr. Bowen stated he started sometime during early June 2005 and had worked the summer of 2004 at the club. He didn't start the summer of 2004 until late June.

Mr. Bowen said he received his lifeguard certification from a swim coach at Dos Pueblos High School. The swim coach held this class for those on the swim team who wanted to be lifeguards after hours. Mr. Bowen was not familiar with the different levels of being a lifeguard. He received his lifeguard certification during the summer of 2003.

Mr. Bowen explained that he had his CPR recertified at COAC during June 2005.

Mr. Bowen confirmed that his boss at COAC was Esther Clark.

Mr. Bowen stated he taught swim lessons and occasionally taught the different age group swim teams. Some of his swim lessons were with the Activity Camp children. Mr. Bowen confirmed that he did teach swim lessons on the day of the drowning to some of the Activity Camp children. He did not have Yoni in the swim class he taught with the campers. He taught the older kids.

Mr. Bowen stated he had probably had a tuberculosis test, but he was not sure when or where he had it.

I asked Mr. Bowen to explain what he watched for when he had a pool full of kids. Mr. Bowen stated he had been taught to keep his eyes moving and to not focus on one person, or spot of the pool. He looked for signs of weaker swimmers, or someone struggling. Mr. Bowen stated he looked generally for things that seemed out of place, or things that were not normal and might indicate someone was in trouble.

Mr. Bowen said he had seen Yoni in the water swimming and he did not see anything that indicated Yoni was having any trouble. He explained that Yoni did not stand out from the others as a bad swimmer. He stated that Yoni was part of a group of children, mostly boys. He did not recall Yoni particularly while in that group.

I asked Mr. Bowen to tell what he recalled the group of boys doing because I could not see what they were doing on the video. Mr. Bowen stated the boys were doing things that normal boys do in a pool, like going underwater to look at each other and swimming around playing in the water. He

did not see anything out of the ordinary happen in the area where Yoni was found that would indicate what happened to Yoni.

I asked Mr. Bowen what he thought happened to Yoni. He stated he really did not know what happened.

I asked Mr. Bowen what he might see that would indicate that a child was struggling. Mr. Bowen replied he would look for splashing, or the person struggling to get to the surface of the water, some unusual movement that would signal distress. He did not see any of those things with Yoni.

I asked Mr. Bowen if he saw Yoni going underwater and he replied that Yoni did not stand out from the other boys.

I asked Mr. Bowen how a lifeguard handled kids that were making a game out of holding their breath underwater the longest. Mr. Bowen stated there is a difference between a kid that is in control and a kid who is not in control. Mr. Bowen admitted that this was difficult to tell and this was a game that lifeguards hate. Mr. Bowen stated occasionally kids would play that game, but he did not recall this group of boys playing that sort of game on the day of the drowning. Mr. Bowen stated with littler kids it is not a situation of the kids staying under water for long periods. It is more about putting their heads under water and picking their head up a few seconds later and looking at each other.

Mr. Bowen said he did not know exactly how tall Yoni was, but he was told that Yoni was tall enough to stand in the area of the pool where he was found.

Mr. Bowen stated he knew very little about the Activity Camp. He knew that some of the kids would come to the pool for swim lessons and then later come to the pool for approximately a half hour for a free swim period.

Mr. Bowen stated he was not aware of any understanding for treating the Activity Camp kids any differently from any of the other swimmers. He said lifeguards were supposed to watch the two pools, the two Jacuzzis and the deck in general.

Mr. Bowen stated he had never before had to jump into the pool and bring anyone out. He had lifted kids out of the pool who were weak swimmers on the wall of the pool and started having trouble. He explained he was able to lift them up from the deck without actually going into the water. He explained that this was the first time he actually had to jump into the pool and pull someone out.

Mr. Bowen confirmed that there were two swim instructors in the pool at the time of the drowning. He said Esther (Clark-the aquatic director) was in her office which was next to the deck, but a little removed from the small pool. The only people he was aware of being near the pool were the camp counselors, swim instructors and the lifeguards.

I asked Mr. Bowen to tell me what he recalled about Yoni's condition when he pulled him out. Mr. Bowen stated Yoni was unconscious, foam coming out of his mouth and unresponsive. Mr. Bowen described Yoni's skin color as pale. He did not recall Yoni's skin color being that different from normal.

I asked about the foam and whether it could have been vomit. Mr. Bowen stated "perhaps it was a little vomit, I am not sure exactly. It was hard to tell."

Mr. Bowen confirmed that Yoni did not respond to any of the CPR efforts.

Mr. Bowen suggested more eyes would be better, but he could not suggest anything else to prevent this from happening again.

KASIMATIS, Gabriela DOB: 9/21/1984 CA Op # D1714042
(Swim Instructor)
1016 Camino Corte #A
Isla Vista, CA 93117
(H) (619) 322-7535

Ms. Gabriela Kasimatis was contacted by telephone on 1/13/2006.

DATE: 1/13/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Ms. Gabriela Kasimatis confirmed that she was a swim instructor at COAC. Ms. Kasimatis stated she was not a Camp Counselor and did not know who wrote Camp Counselor on the bottom of her statement.

I read to her the handwritten statement containing Ms. Kasimatis' name.

Ms. Kasimatis explained that she was on the left side to the pool between the floating lane line and the edge of the pool. Ms. Kasimatis explained there was one buoyant lane line floating on the surface of the water and the others were in the tile on the bottom of the pool. She said the lane line went from shallow to deep and separated one lane from the rest of the pool. Ms. Kasimatis stated the lane line was there to keep the other swimmers away from the area where the instructors were giving a swim lesson.

Ms. Kasimatis stated she was teaching a private swim lesson to a 13 year old boy named Matthew. She did not recall Matthew's last name. She thought his last name might have started with an "S". She said the student's last name would be in the COAC records. Ms. Kasimatis stated Matthew's mother was also there at the pool and she had told Ms. Kasimatis she had seen some things.

Ms. Kasimatis stated she gave an interview that was recorded a few days after the drowning and her recollection of events was a lot better back then.

Ms. Kasimatis stated she did not see Yoni swimming in the pool during the free swim period. She did have Yoni in her class for swim instruction earlier in the day. She had four boys¹¹ who were all about the same age and swimming skill level. These boys were comfortable in the water. Ms. Kasimatis described Yoni as being "overconfident in his swimming abilities". She wondered if Yoni might have had a learning disability or attention deficit issues. She explained that during class she would go to help one of the boys and Yoni would let go of the wall. Ms. Kasimatis stated she had to tell him over and over again to stay by the wall. Ms. Kasimatis stated even though the boys could stand where they were, she still required them to hang onto the wall.

Ms. Kasimatis stated she did not actually see the lifeguard pull Yoni up. The lifeguard was already walking with Yoni in his arms when she first figured out what was happening. When she turned around and saw the lifeguard, he was only two steps away from the wall getting out of the pool.

Ms. Kasimatis did help the lifeguard give CPR to Yoni. She stated she initially thought Yoni had thrown up because of the foam coming from his mouth. She put Yoni on his side and tried to clear an airway with a finger sweep through Yoni's mouth. Ms. Kasimatis stated she did not find anything inside Yoni's mouth. She stated there was just foam, or bubbly froth, more than water coming from his mouth. She described it as "water mixed with stomach acids".

¹¹ Gabriela Kasimatis stated later in the interview that it might have been only three boys.

Ms. Kasimatis stated the AED (Automated External Defibrillator) was brought to the location of Yoni. The pads from the AED were placed on Yoni and CPR was continued as directed by the AED. Esther (Clark) took over the CPR when Ms. Kasimatis became sick.

Ms. Kasimatis stated she was a lifeguard for Santa Barbara City Parks and Recreation at the beach. She was not sure whether her Lifeguard Certification by the city would be accepted by COAC. Her certification was from the United States Lifeguard Association.

Ms. Kasimatis stated she had worked at COAC from May 2004 through January 13, 2006. She said that the day of my interview was actually her last day working there.

Ms. Kasimatis stated she graduated from high school in Spring Valley, CA.

Ms. Kasimatis stated she did have a Water Safety Instructor certification issued by the American Red Cross. She had been teaching swim lessons for 5 years. Ms. Kasimatis stated she also had a Coaches Safety Certificate, but she was not sure of the correct title. Ms. Kasimatis also had a CPR certificate that she had renewed in May 2005. She had a tuberculosis test that was valid.

Ms. Kasimatis stated she did not know much about the Activity Camp. She was only involved with the campers when they came for swim lessons. She stated they came during the morning for their lessons. She did not teach the campers very often. She explained that she was filling in for Stephanie Bows who handled the classes with the campers more often. Ms. Kasimatis stated she was more involved with coaching the swim teams and private lessons.

Ms. Kasimatis stated she did not know anything about the structure of the Activity Camp as far as counselor to camper ratios.

Ms. Kasimatis stated she was not involved with the campers during the free swim time. Ms. Kasimatis stated different people would be at the pool during the Activity Camp free swim period. She stated club members would be there as well as people for swim lessons.

Ms. Kasimatis was not aware of how the counselors supervised the campers while they were in the pool.

Ms. Kasimatis stated her supervisor was Esther Clark.

Ms. Kasimatis said no one had told her what to say to me. She again emphasized that the interview with the private investigator she had a few days after the drowning and documented on tape would be a more accurate recollection of what happened.

SOFINYA, Maryam DOB: 1/5/1986 CA Op # D4226102
(Camp Counselor)
(H) (805) 403-9007

Ms. Maryam Sofinya was contacted by telephone on 1/20/2006.

DATE: 1/20/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

I introduced myself and told Maryam Sofinya I was conducting an investigation into the drowning that occurred at COAC during the summer.

Maryam Sofinya confirmed that she was a camp counselor at COAC on the day of Yoni's drowning. She stated she lived in the Santa Cruz area and attended UC Santa Cruz where her major was sociology. She said she was in her sophomore year of college.

Maryam Sofinya stated she was employed at the COAC from the second week of the summer camp until the camp ended. The only certification she had was CPR. She explained that she received CPR instruction and certification at the Santa Barbara Athletic Club during the same week that she was hired. She was told that CPR certification was required to be a counselor. She did not have any official permits, or certificates associated with day care. However, Ms. Sofinya stated she had worked with children at UCSB Day Camp in the past for a couple of summers.

Maryam Sofinya did not recall if she ever had a tuberculosis test.

Ms. Sofinya stated she was on the right side of the pool near the stairs. She "was observing the water". Jennie, the other counselor, was on the deck also. Counselor Sam (Shipley) was in the water with the children. Ms. Sofinya went to reprimand some of the campers who were screaming on the stairs. As she moved over to the stair area she saw Jennie point to something in the water. Ms. Sofinya stated the lifeguard jumped in, brought Yoni out, and CPR was started immediately. She did not see Yoni until the lifeguard picked him up out of the water.

Ms. Sofinya stated she called 911 and confirmed that she used her cell phone. Ms. Sofinya stated she recalled telling the operator there was a possible drowning at the Cathedral Oaks Club and asking the lifeguards what was going on. She saw that Yoni was blue and "white stuff was coming out of his mouth". She did not recall telling the operator anything about a seizure. Ms. Sofinya stated Yoni was still, his body was limp, and she did not know where the report of a seizure came from. Ms. Sofinya had never seen anyone having a seizure. Ms. Sofinya stated she imagined a seizure would cause shaking and she did not see Yoni moving at all. Ms. Sofinya stated after she called 911 she took the girls from the Activity Camp into the locker room, so she did not see much else. She also went out and met the paramedics and pointed them in the direction where Yoni and the lifeguards were.

Ms. Sofinya could not say whether Yoni had vomited. She saw the foam from his mouth, but could not describe it in any more detail.

Ms. Sofinya did not recall Yoni swimming in the pool specifically. She just recalled that Yoni was in the shallow end of the pool. She was watching the children more at the stairs and he was not one of the children in that area. Ms. Sofinya confirmed that there was no counselor assigned to Yoni.

Ms. Sofinya stated one or two counselors were usually in the water. The other counselors were on the deck of the pool. Sometimes Elizabeth, the director, was also there. Ms. Sofinya stated they

were not assigned a certain area of the pool or certain children to watch, but the counselors watched the whole pool. Initially, she was not sure if the Counselor-In-Training was there on the day of the drowning. Ms. Sofinya stated she only recalled that he came one day, but she was not sure if it was that day. Later in the interview, she recalled someone saying that it was too bad that the CIT had to go through the experience caused by the drowning. She confirmed that "Harrison" might be the name of the CIT, but she just talked with him briefly and was not sure.

Ms. Sofinya said she talked with people at the club afterwards about the drowning, but she was not aware who these people were. She stated she wrote down a statement and gave a tape recorded statement.

Ms. Sofinya did not recall seeing Yoni playing with Sam Shipley.

Ms. Sofinya was a paid employee.

Ms. Sofinya did not have any ideas on how this could have been prevented. She described this as a "freak accident".

Ms. Sofinya did not recall being present at Yoni's swim test. Yoni was in the section of the pool where he was supposed to be. Ms. Sofinya recalled that this was his first day and he was restricted to the shallow end and could go out to the first black "T" in the bottom of the pool.

Ms. Sofinya recalled talking with others about the possibility of Yoni having had a seizure, but there was nothing in his medical history to indicate that he had a seizure. Ms. Sofinya stated there was nothing indicated in any of the paperwork completed by the parents about seizures.

Ms. Sofinya recalled they had tennis class after lunch. They "timed it so the kids got hot" and then went swimming. Tennis was an hour long, they went to change and then they went swimming. Ms. Sofinya stated tennis was from about 1 o'clock until about 2 o'clock. She did not think the drowning had anything to do with food.

Ms. Ellen Bowles called me back after leaving a message with her uncle, SB Sheriff Deputy Kelly Moore. She was interviewed by telephone on 2/1/2006.

DATE: 2/1/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

I explained the reason for wanting to speak with her. Ellen Bowles confirmed that she was a swim instructor at the COAC at the time of the drowning and that she was in the pool. Ellen Bowles identified her students as Christopher and Julia, but she could not recall their last name.¹² She stated that their mother's name was Susan (Schneipp) and they were twins. This was Ms. Bowles only class that day and they were her only students at the time.

Ms. Bowles stated they were on the teaching side of the lane line divider. She thought they were approximately at the 4½ foot mark of the pool because they were doing jumps off the edge, but she could not be sure exactly. Ms. Bowles said her students were taking turns jumping in one at a time.

Ms. Bowles stated she did not know the boy who drowned. She did not know who was in the pool at the time of the drowning. Her focus was on her students. Ms. Bowles said she was not facing the center of the pool because her students were on the wall, or jumping into the pool.

Ms. Bowles had met the counselor named "Sam" (Shiple). She only recalled seeing "Sam" after the boy was brought out of the pool.

Ms. Bowles stated she was a seasonal swim instructor, lifeguard and front desk receptionist. Her primary position was as a swim instructor during the summer of 2005. She had a lifeguard certification from Canada where she lives primarily. I asked Ms. Bowles to tell me about her lifeguard certification. Ms. Bowles stated the certification was a "National Life Saving Society Certificate". She stated the expiration date was 2/6/2006. Ms. Bowles received the certificate on 2/6/2004 indicating that the certification was good for two years. Ms. Bowles stated the certification was from her home town of Maple Ridge, British Columbia, Canada, at the community pool. She worked there as a lifeguard for four years.

Ms. Bowles then explained the system in Canada to certify lifeguards. She explained there were different certificates for the different types of water. Those were issued for waterfront, water park, and pool. Ms. Bowles stated she was in the process of becoming a certification instructor.

Ms. Bowles stated her swim instructor certification was called "Water Safety Instructor" and it was through the Canadian Red Cross. She stated her instructor certification expires May 2006.

Ms. Bowles stated her CPR was valid and was at the Canadian level of "C". She did not know what the equivalent was in the United States. She described it as being the basic course. Her CPR certification was good until December 2006. This course was also taken in Maple Ridge and was through the Canadian Red Cross.

Ms. Bowles stated she was attending University of Northern British Columbia and she is studying Forensic Anthropology. She was completing her fourth year. She had not taken any early child development classes. Ms. Bowles explained that she had been involved with day camps since she was a child there in Canada.

Ms. Bowles did not recall having a tuberculosis test.

¹² The name of the twin's mother was found to be Susan Schneipp.

Ms. Bowles usually was in the pool giving lessons when the Activity Campers came into the pool for the free swim period.

Ms. Bowles had worked there at COAC for the past two years. She explained that the first year she was a lifeguard, and not so much an instructor. She had been a lifeguard when the Activity Camps were in the pool. She was not aware of any agreement or understanding between the lifeguards and the counselors about how they were to watch the Activity Camp kids. Ms. Bowles stated her understanding was that the people who were employed by the Activity Camp were responsible for their kids. The system used by the counselors was to have a counselor at the steps and other people in the deep end. She was not sure how they worked that out. Ms. Bowles stated it was her understanding as a lifeguard that the counselors would be responsible for the kids in their camp.

Ms. Bowles confirmed that she did not know much of anything about the Activity Camp. She did not know if anyone specific was watching Yoni. The only reason she knew "Sam" was in the water was because she recalled seeing him there that day. She did not see "Sam" throwing any of the kids while in the pool. The only time that she really turned around was when "the accident" had been discovered.

Ms. Bowles stated she first saw "Gabi" (Kasimatis-the other swim instructor) put her kids up on the edge. She then saw "Michael" (Bowen-the lifeguard) in the pool with the body. Ms. Bowles yelled "clear the pool" and helped to get everyone out of the pool.

Ms. Bowles did not recall who "Gabi" had as a student.

Ms. Bowles stated she did not know where the idea that Yoni had a seizure came from. She stated someone might assume there was a seizure because there was "vomit" coming from Yoni's mouth. Ms. Bowles described vomit as "any fluid that came out of a person's mouth".

Ms. Bowles stated she had pulled people out of the pool before, but not in such a serious emergency situation as this. Ms. Bowles stated she had pulled out more than a dozen people. Ms. Bowles stated these were called a "drowning non-swimmer" by water safety personnel. Ms. Bowles went on to describe the three types of "drowning non-swimmers". One was someone who was injured and cannot swim any longer because of the injury. This is usually pretty easy to identify and recognize because of distress or associated pain. Ms. Bowles stated another example she had dealt with was the kid (or adult) who was swimming along as best they could and they thought they could touch the bottom, but then realized they could not touch the bottom causing them to panic. Ms. Bowles described the third type of "drowning non-swimmer" as a person falling off a floating device, the rope lines, or a parent letting go of a kid who they thought could swim.

Ms. Bowles stated typically someone who is drowning will have their eyes open wider, a very panicked look to them. There is usually a real big struggle with them using their arms, sometimes rapidly moving their arms in circular motion trying to keep their head above water.

Ms. Bowles asked about the investigation. I explained as part of the investigation I was looking for ideas to prevent this from happening again. Ms. Bowles explained that in British Columbia there was a regulation passed in the late 1990's. It was found that many of the drowning victims were age seven and below. The regulation says that if you are seven years and under then you have to be less than an arms length away from a person who is 16 years old or older at all times while in the water. During the day camps that she was involved with in Canada there was one adult (someone over 16) who would be responsible for up to three children. Ms. Bowles reiterated that she really did not know what the Activity Camp did to supervise the campers while they were in the pool.

Ms. Bowles stated the last time she spoke with anyone about this was the day after the drowning.

Esther Clark was contacted at her office at COAC on 2/15/06. Charlotte Valentine introduced us. Ms. Clark clarified with Ms. Valentine that it was okay to talk with me. They spoke briefly about an e-mail that apparently had been sent around to employees not to talk with anyone about the drowning. Ms. Valentine confirmed for Ms. Clark that it was okay to speak with me.

DATE: 2/15/2006

LOCATION OF INTERVIEW: COAC Aquatic Director's Office (Tape available)

Esther Clark confirmed that she was the Aquatic Director at COAC and had been in that position since June 2002, approximately four years.

Esther Clark stated her supervisor was Charlotte Valentine. She confirmed that Ms. Valentine was not at the facility on the day of the drowning.

I asked Esther Clark how she and her staff were involved with the Activity Camp. Ms. Clark stated she and her staff watched the kids from Activity Camp in the pool during the free swim period and gave some of them swim lessons. Ms. Clark stated the swim lessons for the Activity Camp were from approximately 11:15 to 11:45 A.M. Ms. Clark stated the lesson was a half hour long. The kids would then get dressed and go back to the Activity Camp area. Ms. Clark stated only some of the parents paid for and signed up the campers for the swim lessons. Ms. Clark confirmed that the campers would have a free swim period from approximately 2:00 to 2:45 P.M. Ms. Clark stated the campers would then get dressed and go home.

Ms. Clark confirmed that the kids from the Activity Camp would have to use the restroom next to her office and the pool. The proximity of the restroom to the pool had not been a problem for her staff. Ms. Clark stated the children would always come with a counselor. Ms. Clark explained that there was always an adult with them when they used the bathroom. Even during swim lessons the campers had an adult present during the time of the lesson in case one of them had to use the restroom.

Ms. Clark confirmed that Jennie Darling was a counselor who was lifeguard certified, but she was not part of her staff. Ms. Clark stated Jennie Darling had never worked as a lifeguard there at COAC while Ms. Clark was the Aquatic Director.

Ms. Clark stated she did not recall talking directly with the Activity Camp staff about the swim test that was given. Ms. Clark explained that there had always been a swim test. Ms. Clark stated the swim test could be given to anyone whose swimming ability was questioned by the lifeguard staff. If she saw there was a person clinging to the wall and they were getting out into the deeper water, she or her staff would have that person take the test prior to allowing them to go into the deeper water. Ms. Clark described this swim test as swimming from the wall to the lane line and back. Ms. Clark confirmed that this was the same test that Jennie Darling gave to the Activity Camp kids¹³. Ms. Clark stated this test was always given in the shallow water in case the person had trouble. Ms. Clark stated she would always make sure they could stand in the water where the test was given.

Ms. Clark reiterated that she did not deal with the Activity Camp kids away from the pool.

I asked Ms. Clark if she recalled setting up a policy with a prior Activity Camp Director, or Elizabeth Heller, about who should be watching the Activity Camp kids in the pool. I had to clarify this question and asked who was responsible for the Activity Camp kids in the pool. Ms. Clark

¹³ Jennie Darling told me that she had given Yoni this test and he had passed.

stated the lifeguards were responsible for watching the whole pool and the safety of everyone in the pool. Ms. Clark opined that parents don't watch their kids. She explained that a parent's presence did not mean the parent was watching their kids. Ms. Clark stated it had been her experience that parents will lie down and not watch their kids. Ms. Clark opined that the parent who watched their own kids in the pool was an exception. Ms. Clark stated she always tells the lifeguards that work for her to watch everyone even if a kid is with a parent. Ms. Clark confirmed that would hold true for the counselors also. Ms. Clark explained it was not that the counselors were not watching the kids, but she felt that it should be the lifeguards who are watching over the lives of the kids who are in the COAC water. Ms. Clark stated the counselors are there, and they are supposed to be there, but ultimately it is the lifeguards' job to make sure that everyone stays alive.

Ms. Clark confirmed that she knew the counselor named Sam Shipley. Ms. Clark stated she knew some of the kids who were repeating an Activity Camp session also, however the drowning was on a Monday, so there would be new kids present. Ms. Clark thought Gabi taught Yoni during swim class. Ms. Clark believed she taught the other class herself. She recalled that there were only 5 kids from camp with lessons on the day of the drowning. Ms. Clark recalled Yoni and seeing his name tag from the camp. Ms. Clark stated she recalled the kids being very excited to get into the water.

Ms. Clark explained that she was in her office which is right off the pool deck doing the payroll at the time of the drowning.

Ms. Clark stated she first heard about the drowning when Jennie Darling came into the office and asked for the back board because something had happened. Ms. Clark grabbed the back board and headed outside with it. Ms. Clark asked Jennie Darling what was going on, but Jennie Darling never had a chance to answer. Ms. Clark explained that as she headed out of the office she saw Ellen (Bowles) come around the corner towards them and she saw in Ellen's eyes that something bad had happened. Ellen grabbed the backboard away from Ms. Clark. About that time Ms. Clark heard voices, "one and two and three". Ms. Clark realized that someone was in trouble. Ms. Clark saw that Michael Bowen and Gabi Kasimatis were doing CPR on Yoni.

Ms. Clark stated she approached Michael Bowen, Gabi Kasimatis, and Yoni. Ms. Clark stated Gabi Kasimatis was still in the water giving Yoni air and Michael Bowen was doing the compressions. Ms. Clark stated she moved everything out of the way. Ms. Clark saw that Gabi Kasimatis was shaking. Ms. Clark stated she could tell Gabi Kasimatis was upset and asked her if she wanted to be relieved. Ms. Clark took over giving breaths to Yoni at that point.

Gabi Kasimatis took over again from Ms. Clark giving breaths while Ms. Clark connected the AED (Automated External Defibrillator) sensors. Ms. Clark stated it was at that point that Gabi Kasimatis got sick because Yoni was "puking" and Ms. Clark took over the breaths again from Gabi Kasimatis.

I asked Ms. Clark to describe what she meant when she said "puking". Ms. Clark stated it was a little of both foam and vomit. I asked Ms. Clark if there was food. Ms. Clark replied that there were crumbly things in the foam. Ms. Clark stated there was a lot of foam. Ms. Clark stated the crumbly things were about the size of the small peanuts in chunky peanut butter. Ms. Clark could not say if the crumbly things were hard. Ms. Clark stated there were no big chunks of food.

Ms. Clark stated she did not know where the thought of Yoni having a seizure came from. Ms. Clark stated she never got the impression there was a seizure.

Ms. Clark described Yoni's complexion as "blue-green". Ms. Clark stated Yoni's body was limp. Ms. Clark confirmed that Gabi Kasimatis did a sweep of Yoni's mouth. She said that she also did a sweep of Yoni's mouth. Ms. Clark stated they did not find anything.

I asked Ms. Clark if she thought air was going into Yoni's chest. Ms. Clark replied, "Yes, and no". Yes, because it felt like the air was going in, but yet a lot of foam would come out afterwards. She thought that the air she was blowing in would hit foam inside Yoni's body and then bounce out. Ms. Clark stated she did see Yoni's chest rise when she blew air into Yoni's mouth. Ms. Clark stated she would see the chest rise and it seemed like air was going in, but then everything would come flying out. Ms. Clark stated they rolled him on his side to get the fluids out and then put him back on his back to do further CPR.

I asked Ms. Clark what Michael Bowen and Gabi Kasimatis were saying as they did the CPR. Ms. Clark recalled them saying "It's not working. It's not working."

Ms. Clark stated she recalled both Michael Bowen and David Merlin saying they saw Yoni swimming in the pool, but she could not recall what was said. Ms. Clark stated she kept saying over and over in her head that Yoni was going to be fine. Ms. Clark stated she really did not want to believe that Yoni was not going to be okay. Ms. Clark reiterated that she could not recall what was said by Michael Bowen or David Merlin.

Ms. Clark confirmed the names of the staff on duty under her supervision were Gabi Kasimatis, Ellen Bowles, David Merlin, and Michael Bowen.

I asked Ms. Clark if she knew much about the work history of David Merlin. Ms. Clark thought David Merlin was a brand new lifeguard. She stated David Merlin got three jobs working as a lifeguard. Ms. Clark thought the three places were the Coral Casino, the YMCA, and at the COAC. Ms. Clark reiterated that it was three jobs. I asked her if one of the places might have been Montecito Country Club. Ms. Clark stated it could have been. She said there was one really nice place, the YMCA, and COAC. Ms. Clark stated she had heard from one of the other lifeguards who worked at YMCA that David Merlin had quit working there. Ms. Clark stated she had never heard anything about David Merlin getting fired from Montecito Country Club.

Ms. Clark reiterated that she did not know how the counselors watched the kids while they were in the pool or whether they divided up the group.

I asked Ms. Clark about the different camera angles and what could be seen. She confirmed that the primary camera was the view from the camera near the men's bathroom area. It was then that we discovered that what general manager Charlotte Valentine thought was a camera near the office of Ms. Clark during my earlier tour of the pool area was actually a spot light and not a camera. Ms. Clark stated she had never seen the video shot from the camera on the trestle near the S/E corner of the pool area.¹⁴ Ms. Clark confirmed that there were only five cameras. Ms. Clark stated she watched the video of the drowning once. Ms. Clark stated she did not know very much about the camera system.

Ms. Clark confirmed that she was a Certified Lifeguard and had taken the necessary CPR classes. She showed me her certification cards. Ms. Clark's CPR was valid from February 2005 through February 2007. She stated she took this course at COAC and it was the American Heart Association version. Ms. Clark stated she took her Lifeguard training, First-aid and Safety training

¹⁴ This was later determined to be a camera that was installed after the drowning.

for Swim Coach certification at the Los Banos Santa Barbara City pool. Those three courses were the American Red Cross version. They were valid from 10/30/2002 through 10/30/2005. Ms. Clark explained that swim coaches also needed the Safety training for Swim Coaches even through they might be Lifeguard certified. Ms. Clark stated her Swim Instructor Certification was expired. Ms. Clark explained that Swim Instructor Certification was not required for teaching a swim class. The certification just showed that a particular instructor was teaching according to American Red Cross standards and the seven different levels that the Red Cross wants a swimmer to progress through. Ms. Clark stated there was a dispute with Red Cross over whether she had turned in her record sheets as required. Ms. Clark explained that she had turned over the records as required by Red Cross. Red Cross had told her that they never received them, so Red Cross would not renew her certification. Ms. Clark stated since she did not need the Red Cross swim instructor certification she had not continued to fight with Red Cross about them losing her records.

Ms. Clark stated she had a printout of her certifications and those of Gabi Kasimatis. Please see the following chart. Ms. Clark stated she only had the certification information for her current staff. She no longer had the certification information for David Merlin, Michael Bowen or Ellen Bowles in her data base. Ms. Clark stated she might have that information in their employment file, but that would take time to find. Ms. Clark agreed to provide those documents to me later if necessary.

Aquatics Department

Expiration of Certifications

Esther Clark	American Heart	Red Cross	Red Cross	Red Cross		
	CPR/AED	CPR(Prof. Resc.)	Lifeguard	First Aid		
	Feb. 2007	10/30/2006	10/30/2006	10/30/2006		
Gabi Kasimatis	American Heart	Red Cross	Red Cross	Red Cross		
	CPR/AED	CPR(Prof. Resc.)	Coaches Safety	WSI		
	Feb. 2007	5/21/2006		Dec. 2005		

Ms. Clark stated she was not aware of any state license being required for swim instructors.

Ms. Clark explained the different types of lifeguard certifications. Ms. Clark stated there were definitely different types of lifeguard certifications. One of her staff had a pool lifeguard certification as well as a waterfront certification. Ms. Clark stated waterfront certification was for a lake. She explained that an oceanfront beach certification would be different. Ms. Clark stated she had not heard of any ocean beach lifeguard getting a certification card. Ms. Clark stated the ocean beach lifeguards were trained at the location where they were employed and they get training specific to the beach they are working. Ms. Clark stated the local Red Cross chapter could refer a person to a location where the classes are held. Ms. Clark stated the YMCA has their programs which are associated with the American Safety & Health Institute.

Ms. Clark stated the background check for employees was minimal in the past. She stated she usually just called the person's references to verify that they had worked where the applicant said they did. Ms. Clark stated the primary check was to see if an employee candidate was an effective teacher and gave a fun lesson. Ms. Clark stated they just started doing more in-depth backgrounds within the last few months.

I asked Ms. Clark whether she could think of anything that could have been done differently which might have prevented this drowning. Ms. Clark replied, "I don't know. I am sure there is always

something to do better, to improve, no one is perfect." Ms. Clark stated she would have more training for her staff if the Activity Camp was started again. Ms. Clark stated she would like to see cross training for the aquatic staff and the Activity Camp counselors also. Ms. Clark stated she would like all the counselors to be lifeguard certified like a camp where she had worked in the past. Ms. Clark stated this would be more of a unified effort with the counselors and lifeguard staff watching the water. She explained further that instead of having all the pressure on the lifeguards and one counselor who was lifeguard certified they would all be watching the water as lifeguards.

I asked Ms. Clark if she had ever heard about the idea of having certain kids assigned to a certain counselor. Ms. Clark said she had been involved in that sort of system at a previous camp where she worked. Ms. Clark stated a counselor was responsible for a certain age group. Sometimes it was more than one counselor, but they were responsible for certain kids.

After I had turned off the tape recorder I thought to ask Ms. Clark about whether she had ever told a former director of the Activity Camp that the counselors were responsible for the Activity Camp campers in the pool more than the lifeguards. Ms. Clark stated she might have told a director she knew as "Katrina"¹⁵ (Kujan) that the counselors were responsible because "Katrina" never came to the pool with the campers. Ms. Clark stated the communication with Elizabeth Heller and herself was better than with "Katrina" and herself. "Katrina" never talked with Ms. Clark, or came to the pool area, so Ms. Clark stated she was always reinforcing that the counselors were responsible for the campers. Ms. Clark stated that became a "moot point" because "Katrina" got a group of young Counselors-In-Training to go into the pool with the kids and that did not help with the situation much at all. Ms. Clark opined that Katrina Kujan only came with her own son or daughter to the pool. On the other hand, Elizabeth Heller was always talking with Ms. Clark and she was often at the pool with the campers. Elizabeth Heller felt that her counselors were responsible for watching the campers and Ms. Clark did not have to reinforce that responsibility with her. Elizabeth Heller and Ms. Clark agreed that the counselors should be in the water, on the edge of the pool or, if on the deck sitting in an upright chair watching the campers in the pool. Ms. Clark admitted that this was in contrast to what she told me earlier, that her lifeguards were responsible for the whole pool. Ms. Clark stated while she felt the lifeguards were ultimately responsible for the whole pool, the camp counselors should also be helping to watch the Activity Camp campers just as a parent should be watching their own children.

Ms. Clark reiterated that too many parents did not watch their own children and that was why she held her lifeguards to being responsible for the whole pool. Ms. Clark gave an example of a time when she saw a mother and a three year old sitting on the steps together. The mother turned away from the baby and the baby stepped off the step and was in over its head and grasping for air. Ms. Clark reached over and pulled the baby out from under the water and handed it to the mother. The mother said, "I just looked away for a second." Ms. Clark opined that most people do not understand that it can just take a second for a child to get into trouble and drown.

Ms. Clark stated she was puzzled that no one had spoken with her earlier. Ms. Clark had heard that many of the other employees had spoken with the private investigator for the Gottesman family, but no one had tried to talk with her that she was aware of. Ms. Clark stated this puzzled her because she was in charge of the pool on the day of the drowning and had even helped with the CPR of Yoni.

¹⁵ I had interviewed Katrina Kujan earlier.

HELLER, Elizabeth DOB: 12/21/1980 CA Op # B6952254
(Director of Activity Camp)
2324 State St.
(Cell) (805) 252-0817

Ms. Elizabeth Heller came to the District Attorney's Office at my request for an interview on 2/6/2006.

DATE: 2/6/2006

LOCATION OF INTERVIEW: District Attorney's Office (Tape available)

I introduced myself and told Elizabeth Heller that I was investigating the drowning that occurred at the COAC. I explained that the District Attorney had decided to investigate this because of the allegations that the sheriff's department had not done a thorough investigation and that the COAC owner influenced the outcome because he was a financial contributor to the SB Sheriff's Counsel. I explained that I had interviewed most of the parents of the Activity Camp participants. I had also spoken with the counselors, the lifeguards and the swim instructors.

Ms. Heller provided her California Operator's license and I confirmed her identification.

Ms. Heller stated she was the Activity Camp Director at COAC. She held that position from November 2004 through August 2005. Ms. Heller confirmed that they had not held an Activity Camp since the drowning. Ms. Heller stated no Winter Activity Camp was held.

Ms. Heller identified her supervisor as the General Manager, Charlotte Valentine. Ms. Heller stated Charlotte Valentine reported to Julie Main. Julie Main reported to Richard Berti. Ms. Heller stated Main or Berti never came into the Activity Camp while the children were present. She stated she would just see them around the COAC property. Ms. Heller stated the lifeguards reported to Esther Clark. Ms. Heller identified the tennis instructor as Hugh Stratman. Ms. Heller identified the person in charge of the COAC Child Care as Nancy Hendricks

Ms. Heller explained that the Activity Camp kids did not interact with the Child Care kids. The Activity Camp kids were watched by Activity Camp staff after the 3 P.M. end to the Activity Camp session. Ms. Heller confirmed that one of the counselors would stay with those Activity Camp kids who were staying later until their parent arrived to pick them up.

I asked Ms. Heller to explain her understanding of the state license issue. Ms. Heller stated she now knew that there was no license. She stated she did not think about a license because COAC had run these camps before she was hired, so she assumed that COAC had the proper licenses to run the camp. Ms. Heller said she worked at camps prior to the Activity Camp and she never thought to ask the management if they had the proper licenses.

I asked Ms. Heller to tell me about the Activity Camp. She confirmed that the counselors were Sam (Shipley), Jennie (Darling), and Maryam (Safinya) on the day of the drowning.

Ms. Heller thought there were between 12 and 14 children present. We reviewed the sign-in roster which showed 15 children in attendance. I asked Ms. Heller about the signature of the parent who checked out Ila Delmarsh. Ms. Heller stated she did not recognize the signature and would have to compare it to other days.

Ms. Heller stated she would not always go with the children to the other activities such as swimming and tennis. Ms. Heller stated she had been told by Charlotte (Valentine) that it was not

necessary for her to go with the Activity Camp kids to these activities where other instructors were present. Ms. Heller explained that this came about because she was not getting her paperwork done and had needed to work overtime. Ms. Heller stated she had started to do her paperwork whenever the kids were swimming or at tennis. Ms. Heller stated this was at the direction of Charlotte Valentine.

Ms. Heller stated tennis involved the counselors, the director (Hugh Stratmon) and sometimes another tennis instructor.

Ms. Heller stated there was sometimes a Tae Kwon Do class.

Ms. Heller explained that she did not require that the Activity Camp counselors go into the pool. Ms. Heller stated she encouraged them to go into the water, but there was no requirement. Ms. Heller did require them to be sitting near the pool. Ms. Heller confirmed that Sam (Shipley) was in the pool, and that Maryam (Safinya) and Jennie (Darling) were on the pool deck at the time of the drowning.

Ms. Heller initially stated she did not have a Counselor-In-Training (CIT) present on the day of the drowning. Ms. Heller explained that she had tried to get CIT's, but found that was difficult because they could not get community service credits. Ms. Heller stated the reason there was no community service credits was because COAC was in business to make a profit and was not a non-profit organization.

I asked Ms. Heller if she remembered someone named "Harrison". Ms. Heller then stated "Harrison" was there that day and admitted that she had forgotten about him. Ms. Heller stated "Harrison" had come in that day and was helping out in the role of a Counselor-In-Training because he was older than the other kids. She said "Harrison" was signed up as a camper for the Activity Camp¹⁶. Ms. Heller stated I would have to get further information from Charlotte Valentine. Ms. Heller stated she thought "Harrison" was older than 11 years old and could have been as old as 14, as someone else had suggested to me. I asked Ms. Heller if she recognized any of the three "Harrison's" I had found enrolled in the Santa Barbara County School District that were 14 years old. Ms. Heller did not recognize any of those last names.

Ms. Heller confirmed that the three counselors present were employees for the summer.

Ms. Heller first stated backgrounds were done on the counselors. Ms. Heller stated she did not know if the background included fingerprint checks, but was sure that paperwork was sent through Charlotte Valentine. She did not recall having her fingerprints taken, but did recall having a drug test done. Ms. Heller stated all of the counselors had drug tests done as well. She did not recall any fingerprints from the counselors either. She recalled faxing the application from the counselors to the company who did the background checks.

I asked Ms. Heller about the facility. Ms. Heller said the bathroom that the children used was inside the club area. She stated "the rule of three" was used whenever anyone left the camp area. Ms. Heller explained that this could be 2 kids and a counselor, two counselors and a kid, but there had to be three people that included one of the counselors. Ms. Heller confirmed that a trip to the

¹⁶ I checked the applications filled out by the parents of the kids who attended Activity Camp and found one for Harrison Swalley". In the upper left corner of the application were the letters "CIT". Please see interview of Harrison Swalley for further.

bathroom required the kids to cross the COAC parking lot from the Activity Camp area to the clubhouse¹⁷.

Ms. Heller confirmed that there was no water service at the Activity Camp trailer. Ms. Heller said they had a hose that was used to wash the kids' hands. The hose went across the parking lot to the edge of the Activity Camp area. There was a washing station that had a place for soap and paper towels. She said the washing station drained onto the ground. Ms. Heller stated they also had a large water jug where the kids could get a drink throughout the day. She stated the trailer did not have a sink and confirmed that there was no hot water in the Activity Camp area.

Ms. Heller said there was a canopy that provided shade for lunch and there was shade provided by the trees on the edge the play yard.

Ms. Heller stated there was no climbing equipment in the Activity Camp area.

Ms. Heller stated the kids ate on the benches outside.

Ms. Heller stated there was no nap time during the time of Activity Camp. She explained that sometime there would be quiet time for the kids that stayed after 3 P.M. She said that they would read stories, or maybe put on a movie for them to watch because they were tired by late afternoon.

Ms. Heller stated there was a small refrigerator inside the trailer, but it wasn't used for lunches because no one ever asked to use it that way. Ms. Heller stated most kids used the cafeteria, but those who brought a lunch usually used a cooler pack.

I asked Ms. Heller if the different age groups were treated differently. Ms. Heller stated that depended on what activity the group was doing. If it worked out then the kids were kept together. Ms. Heller stated the kids were separated during tennis. One half hour the younger kids had a lesson and the other half hour the older kids had a lesson. Ms. Heller stated the counselors would play with the group that was not having their tennis lesson. Ms. Heller stated Tae Kwon Do they did as a group together. Ms. Heller stated she thought about splitting up the group daily, but it seemed to work out that they could do most things together as a group. It just depended on the activity.

Ms. Heller stated the fencing was fixed as needed. She estimated that it was three feet tall.

Ms. Heller confirmed that there was a telephone in the trailer and the counselors all had radios that were connected to the club channel.

Ms. Heller stated she was inside the cafeteria at the time Yoni was found. She was getting her lunch and was going to go sit outside in the pool area. Ms. Heller confirmed that the free swim period for the Activity Camp kids was from 2 P.M. to 2:45 P.M., sometimes 2:30 depending on how it was going.

I asked Ms. Heller what she had told her counselors about watching the kids in the pool. Ms. Heller stated she had instructed the counselors to be there at the pool watching the kids and counting them. She did not assign certain counselors to certain kids, or certain counselors to certain areas of the pool. Ms. Heller confirmed that she encouraged the counselors to count the kids. Ms. Heller confirmed that there was no specific counselor assigned to Yoni.

¹⁷ At my tour of the facility the bathroom used by the Activity Camp kids was actually inside the fences of the pool area and not in the main club house of the COAC.

Ms. Heller stated she received information by radio. Ms. Heller stated she came out to the pool area and saw Yoni was down on the board. Ms. Heller went immediately to get the paperwork to call the parents. She stated she did not get close enough to Yoni to tell me a description of him.

Ms. Heller stated she did not know where the idea that Yoni was having a seizure came from. She thought it was just an assumption, but she did not know where it came from.

Ms. Heller did not recall seeing Yoni in the water.

Ms. Heller could not see Yoni's mouth well enough to describe the foam, or vomit.

Ms. Heller confirmed that she was the person who notified the parents. She contacted Yoni's father and told him that there was an emergency down at the pool involving Yoni. Ms. Heller stated she told him to come immediately to COAC. Ms. Heller stated she did not have much further information to tell him at that time. Ms. Heller stated she thought the deputy sheriff met him at the front gate and directed the father to the hospital because the ambulance had already taken Yoni away. Ms. Heller stated she did not see Mr. Gottesman again.

Ms. Heller stated she graduated San Marcos High School in 1999. She went to college at UC Santa Cruz and graduated with a BA. She possibly took 2 courses in Early Childhood Education, or Child Growth and Development, at Santa Barbara City College, but she was not sure. She did not have any classes in Administration.

Ms. Heller stated she had been a camp counselor at Santa Barbara Zoo for 3 years. She did both summer and winter programs.

Ms. Heller did not have any permits from the state for a Child Development Site, or Program.

Ms. Heller does not have a teaching credential.

Ms. Heller stated she was part of the Disaster Relief Team for the local Red Cross.

Ms. Heller stated she did have her CPR and First Aid training. Her CPR was up to date, but she did not know when she took it. She did provide the information and her card to COAC when she applied for employment, or received those certifications.

Ms. Heller stated she had a tuberculosis test in the past, but she was not sure when the last test was taken.

Ms. Heller stated she really did not know what happened. She thought Yoni might have gotten exhausted, but she did not know.

I asked her what could be done to prevent this again. Ms. Heller suggested, "More people watching, looking for signs of a struggle, or.... someone going off into the deep end where they were not supposed to. "

Ms. Heller stated the day of the drowning was not any different than any other day. The counselors were doing the things that they had done all summer with the kids. It was not that one of the counselors was not doing their job, or not where they were supposed to be. There was nothing more dangerous about this day than any other. It was a normal day.

MERIN, David DOB: 9/13/1983 CA Op # D8046800
(Lifeguard)
626 E. Valerio St. (Mailing address/his mother's home)
Santa Barbara, CA 93103
(Cell) (973) 698-6693

Mr. David Merin was contacted by telephone on 1/25/2006 and 3/22/2006.

DATE: 1/25/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

David Merin and I spoke after several exchanges of voice mail messages. I introduced myself and explained that I was investigating the drowning at the athletic club. Mr. Merin confirmed that he was one of the lifeguards on duty at the time of the drowning and that he was getting a drink at the time when Yoni was found in the pool.

Mr. Merin stated he started working at COAC in early July 2005, "give, or take a week or two."

Mr. Merin confirmed that Michael Bowen was the second lifeguard on duty. Mr. Merin stated he was in the deeper end of the pool and Bowen was in the shallow end of the pool.

Mr. Merin stated he received his lifeguard certification at Los Banos Pool at a class that was presented there during June 2005. He was taught CPR, first aid and took classes necessary to get his lifeguard certification. Mr. Merin thought the class was sponsored by the Red Cross and there were approximately 10-15 people enrolled. Mr. Merin stated he had not been hired by COAC prior to taking the class. Mr. Merin had some paperwork regarding the class. He stated the class was called American Red Cross Lifeguard Training. He thought that he attended session 4 which was held from June 6 through June 16, 2005. He stated the lifeguard training and First Aid Training was good for three years. His lifeguard certificate was good through June 2008. He explained further that his CPR certification was good for a year.

Mr. Merin stated he attended high school in Massachusetts. Mr. Merin confirmed that he was back east going to college in Lewisburg, Pennsylvania. He stated he was attending Bucknell University. Mr. Merin stated he was in his senior year of college.

Mr. Merin stated he had little or nothing to do with the Activity Camp children. Toward the end of his employment at COAC his shift was moved around. His best recollection was that he mostly worked during the evenings and on the week days after the campers were gone. He explained that his shift on week-ends did not involve the Activity Camp kids because camp was not in session.

Mr. Merin stated he did not know any of the counselors. He recalled the employees talking after the drowning. Some of the lifeguards and the counselors knew each other, but he did not know any of the counselors. He recalled meeting them afterwards for the first time.

Mr. Merin confirmed that his boss at COAC was Esther Clark.

I asked Mr. Merin if he was told anything about how to handle the campers in the pool. Mr. Merin replied that he might have been told something that morning about the campers coming, but he did not recall what that was. He was not aware of any understanding for treating the Activity Camp campers any differently from any of the other swimmers. He again emphasized he usually was not there during the time when the camp was in session.

Mr. Merin explained that he did not talk with anyone about what had happened except for completing the written statement. He thought he completed that statement immediately after the incident. Mr. Merin stated he left Santa Barbara soon after the incident to go back east for his schooling.

Mr. Merin stated he thought that he had a tuberculosis test, but he was not sure when or where he had it.

I asked Mr. Merin to explain what he watched for when he had a pool full of kids. Mr. Merin stated he did not feel up to date on being a lifeguard at the time of this interview. He explained that he had not been a lifeguard since the incident and would need to refresh his memory. Mr. Merin stated he knew more about being a lifeguard then than he knew at the time of my interview.

Mr. Merin stated he looked for signs of weaker swimmers, kids struggling or engaging in dangerous activities. Mr. Merin said a lifeguard basically made sure that everyone was doing okay.

Mr. Merin confirmed that he was working the deep end of the pool. Mr. Merin asked me to confirm that Yoni was found closer to the shallow end, which I did. He stated he would periodically glance toward the shallow end, but his primary area of responsibility was the deep end and that was where kids tended to have problems anyway. Mr. Merin stated he would pay more attention to the kids in "his region of the pool". Mr. Merin stated he was taught that there were regions of responsibility so he would be paying attention to the area closest to him and just glance at the other area of the pool just in case the other lifeguard got distracted. Mr. Merin stated this was a common understanding and he thought all lifeguards knew about it, but he had not talked with Mike Bowen about it. Mr. Merin stated it was generally understood that if something was happening right below you then you needed to handle it, not the lifeguard from another area.

Mr. Merin did not recall that he specifically saw Yoni in the water. Mr. Merin stated when there is a large group of kids in the pool it is hard to keep track of everyone. He thought he had seen the bunch of kids, but it is hard to recall anything specific about any one of them. Mr. Merin reiterated that he kept his eye on the deep end of the pool where he was assigned. He did not know Yoni, or any of the other kids either. Mr. Merin stated he kept his eye on the people in his section of the pool.

I asked Mr. Merin how he would recognize a kid that was having trouble. Mr. Merin gave me an example of the kids he did have to pull out. Mr. Merin explained that some of the kids would let go of the edge and start to struggle to get back to the edge. Mr. Merin stated he would reach down and pull them out. Mr. Merin stated he generally looked "for some type of signal of distress". Mr. Merin stated a kid might follow the wall out holding on and end up over their head. When they let go of the wall they might start to struggle trying to keep their head above water. Mr. Merin stated he would reach down from the deck and pull them out.

Mr. Merin clarified that he had not had to jump into the water to pull anyone out. Mr. Merin stated this incident was the only incident he had seen where a lifeguard had to jump in and pull anyone out. Mr. Merin stated it is usually safer to stay out of the water yourself if you can pull them to safety. Mr. Merin again stressed that he was better versed in the signals to look for when he was a lifeguard than he was at the time of my interview.

Mr. Merin confirmed that this was the first summer he worked as a lifeguard. He was not on a swim team and stated he used swimming as a form of exercise. He swims a mile a day 4 or 5 times a week.

Mr. Merin stated he did not know any of the counselors. He did not recall a camp counselor named Sam Shipley.

I asked Mr. Merin how a lifeguard handled kids that were making a game out of holding their breath underwater the longest. He did that as a kid and after he became a lifeguard he realized that some of the things he did must have been troubling to the lifeguards. There were several times when he would see swimmers doing something similar and he would have to watch them closely. Mr. Merin stated no one was ever in trouble, they were just "messaging around". He stated if they were near the edge he might touch them to get their attention and they would come up for air. If he saw someone further away from the edge he would hold his own breath. If a swimmer was underwater for longer than Mr. Merin could hold his breath then the swimmer was possibly in trouble and he better go after them.

Mr. Merin stated he knew nothing about the Activity Camp because he was not there when the camp was held. He was pretty sure that this was the only day he was there when the Activity Camp campers were in the pool. He stated there might have been one, or two days before that day, but he could not recall.

Mr. Merin stated he did not talk with the camp counselors much at all. He did not know anyone there before the incident and he has not talked with anyone since. The day of the incident was his last day working at COAC and his leaving had nothing to do with what happened. Mr. Merin explained that he actually had a plane flight scheduled out the next day, but he changed it because of what happened and he needed time to deal with it.

I asked Mr. Merin to tell me what he did recall about the day of the incident. He had tried to put this out of his mind because it was an unpleasant experience. It was a long time ago and he could not give an accurate statement. He thought anything he would say would "be distorted".

I asked Mr. Merin to tell me what he recalled about Yoni's condition when he was pulled out. Mr. Merin stated as soon as he realized what was going on he ran over to Mike (Bowen) and Gabi (Kasimatis) and assisted with whatever they needed.

Mr. Merin stated Yoni had foam coming out of his mouth, and was unresponsive. I asked about the foam and whether it could have been vomit. Mr. Merin stated it seemed like foam, but he probably would not be the best person to say because of where he was watching from. The foam seemed whitish, but might have turned color toward the end before Yoni was transported.

Mr. Merin reiterated that all of his recollections are not the best because they are probably warped by his memory, or loss of memory. He described Yoni as being bluish in the face.

Mr. Merin could not suggest anything to prevent this from happening again. Mr. Merin described it as a terrible tragedy. He stated there were kids playing next to Yoni in the water, some of them were his friends and one would think that one of them would notice. The kids were in a better vantage point to see what was happening with Yoni than even they (the lifeguards) were. Maybe if there had been fewer kids in the pool at the time, one of the adults might have noticed Yoni.

Mr. Merin stated he was just inside the door of the cafeteria when Yoni was pulled out.

I then went over Mr. Merin's written statement. He did not know who told him that Yoni was swimming under water.

Mr. Merin stated he did not know where the mention of seizures came from. Mr. Merin stated no one thought originally that Yoni drowned. We thought he had some medical condition, but this

turned out not to be the case. Mr. Merin mentioned that seizures might have come up in discussions later about how this happened. Because of the foam coming from Yoni's mouth someone might have thought it was a seizure. Mr. Merin stated he would expect the victim to be one of the distressed swimmers he had seen on prior occasions. He was aware that occasionally there were passive drowning victims, but the most common was the active drowning victim. If there was no medical problem, most drowning victims would make a visible struggle that could be seen by others, even if the victim could not call out for help. Mr. Merin stated it appeared that there was no visible struggle by Yoni, which is why no one saw him having trouble and people assumed there might be a medical problem. He had never seen a seizure except on video.

DATE: 3/22/2006

LOCATION OF INTERVIEW: Telephonic

David Merin was contacted a second time to clarify if he had worked at Montecito Country Club as a lifeguard and whether he had been fired from that position. Eric and Jami Vollgaris had stated they had heard that David Merin had been fired as a lifeguard from Montecito Country Club.

Mr. Merin stated he had worked as a lifeguard at Montecito Country Club during the summer of 2005. He stated he worked in that position until the week just prior to the drowning at COAC. Mr. Merin stated he quit that job for the same reason he left COAC. He reiterated that he quit both of these jobs, so he could go back east where he was attending college.

I asked Mr. Merin if he had worked as a lifeguard at the "Y" and he confirmed that was true also. He stated he was working at COAC, Montecito Country Club, and the "Y" for part of the summer. Mr. Merin stated he quit working at the "Y" because it was too hard with the other two jobs, and he was working too many hours. Mr. Merin stated he then worked both the COAC and Montecito Country Club until he left California to come to college.

Mr. Merin was confronted with the rumor that he had been fired from Montecito Country Club and he denied that he was fired from COAC, Montecito Country Club, or the "Y".

SWALLEY, Harrison DOB: 2/23/1994
(Counselor-In-Training)
(Father's Work) 963-6309

Harrison Swalley was identified after the interview of Elizabeth Heller. A review of the Activity Camp records found that Harrison Swalley was registered by his father, Arthur Swalley. In the upper left corner of the application there was a notation "CIT". There was no date on the form.

Harrison Swalley was contacted by telephone and it was confirmed that Harrison Swalley was present in the pool on the day of the drowning at COAC. Arrangements were made to meet with Harrison Swalley at his home for an interview.

DATE: 2/9/2006

LOCATION OF INTERVIEW: 1325 San Antonio Creek (Tape available)

I introduced myself and told him that I wanted to talk with him in regards to the Cathedral Oaks Athletic Club and what he remembered about the day of the drowning.

Harrison Swalley confirmed that he was at the COAC on the day of the drowning. He said that he had read articles in the newspaper about the drowning.

I asked Harrison Swalley if he was a camper or a Counselor-In-Training (CIT). Harrison Swalley replied that he was a Counselor-In-Training and that the day of the drowning was his first day there.

I showed Harrison Swalley the application sheet where I had found his name and address. He confirmed that his father had filled out the application. Harrison Swalley stated he was with his father when the application was completed.

Harrison Swalley stated his understanding was that he was a volunteer and was going to help run the camp and take care of the kids. Harrison Swalley stated one of the jobs he did was take the kids to the bathroom if they needed to go. Harrison Swalley stated if one of the girls needed to use the bathroom then a female counselor would have to go with them.

Harrison Swalley stated he played games and sports with the kids, and had snacks. Harrison Swalley stated the lunches were brought to the Activity Camp area from the cafeteria.

Harrison Swalley stated his parents were members of COAC and that he had gone there often.

Harrison Swalley stated he did not know many of the children participating in the camp. He did recognize some of the kids from when he was a participant. Harrison Swalley stated these were the older kids.

Harrison Swalley stated when the kids went for the free swim period he went into the pool. He thought Sam (Shipley) and Jennie (Darling) were also in the pool. Harrison Swalley stated he was playing in the deeper half of the pool. Harrison Swalley stated he and Sam (Shipley) were moving around the pool, but not together. I drew a rough sketch of the pool. Harrison Swalley pointed to the center of the pool and said he was swimming there.

Harrison Swalley stated he was playing with different kids. He did not recall who he was playing with. Harrison Swalley stated he did not recall playing with Yoni. Harrison Swalley recalled that he only saw Yoni briefly. Harrison Swalley stated Yoni was playing with friends, but he was not sure of their names. Harrison Swalley stated he thought one of the friends was called "Max". Harrison Swalley later stated it wasn't "Max", but "Ryan S". Harrison Swalley recalled this when I

told him that "Ryan S" had a brother. Harrison Swalley confirmed that Ryan (Martin) and Anya were out in the deep part of the pool.

Harrison Swalley stated he thought Yoni was playing with Gavin and Ryan S in the shallow end of the pool.

Harrison Swalley was unsure of who was with whom.

I asked Harrison Swalley if he recalled a time when he was moving across the pool from the shallow end stairs toward the deeper end when he bumped into Sam (Shipley) and the children Sam was playing with. Harrison Swalley stated he did recall this happening. Harrison Swalley thought that it could have been him who bumped into Sam. Harrison Swalley did not recall seeing Yoni in the area when they all collided. Harrison Swalley stated he did not recall seeing Yoni around at the time of the collision between Sam (Shipley) and himself. Harrison Swalley stated he definitely remembered that Yoni was not the kid he was playing with.

Harrison Swalley stated he helped evacuate the pool area and take the kids into the locker room.

Harrison Swalley stated he did not recall watching the swim tests, or seeing Yoni do his swim test.

Harrison Swalley stated he did not recall seeing many of the other kids in the pool.

Harrison Swalley stated he just heard someone yell for everyone to get out of the pool. He stated as he started to get out of the pool he realize that a kid was down. Harrison Swalley stated he could not identify the child that was down at first.

SCHNIEPP, Susan
(Club member in pool area while her 3½ year old twins in swim class)

Ms. Susan Schniepp was contacted by telephone on 2/3/2006.

DATE: 2/3/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Susan Schniepp confirmed that she was at the COAC on the day of the drowning. She confirmed that her twins were in a swim class with Swim Instructor Ellen Bowles at the time. Ms. Schniepp stated she had been swimming laps in the other pool. It was about 2:25 P.M. and she went into the Jacuzzi. She kept looking over at the area where her children were taking class. Ms. Schniepp stated she saw the body of the boy be pulled out of the water.

Ms. Schniepp stated she did not know Yoni and admitted that she did not see him swimming in the pool.

Ms. Schniepp stated she got to the COAC a little before two o'clock. She opined that the pool was not crowded because she recalled it being a foggy day.

Ms. Schniepp first thought it was her son because he also had a blue bathing suit. She then realized that her children were sitting on the side and that the drowning victim was not her son. Ms. Schniepp stated Ellen (Bowles), the swim instructor, told her to go to her children as Ellen went to assist the other staff.

Ms. Schniepp explained that her twins were only 3½ years old at the time. They did not understand that the little boy was in trouble. They just understood that they loved swimming lessons, the teacher got them out of the water, and told them she would be right back. She explained that her kids did not want to leave. Rather than make a scene dragging them away, the three of them waited for the teacher to come back and tell them it was okay for them to go.

Ms. Schniepp stated they watched most of the resuscitation efforts. After the paramedics got there the teacher came back and told them they could go. She explained the twins then understood it was okay to leave and they left the pool area.

Ms. Schniepp stated she could not see the children's pool very well from her position in the Jacuzzi. She confirmed her children were on the instruction side of the lane line near the stairs.

Ms. Schniepp stated when she got into the Jacuzzi there was another woman who was there that she spoke with. This other woman also had children in the pool. She did not recall her name¹⁸. This woman owned the unfinished furniture store on State Street. She knew the lady's sister, Ms. Etchingham. This woman was not a member of COAC and visiting for the day. She contacted the lady that night through Ms. Etchingham. The woman had a very detailed story about what her son saw. This lady's son claimed to have been in the water and saw Yoni under water for a long time and thought the boy was playing a game. Ms. Schniepp opined that this woman was very dramatic and Ms. Schniepp did not know whether to believe her story.

Ms. Schniepp reiterated that she did not see Yoni in the pool. She stated she thought about it afterwards and wondered what difference she could have made if she went back to the pool instead of the Jacuzzi.

¹⁸ This woman later called me and identified herself as Nancy Saragosa.

Ms. Schniepp stated there was another club member named Mindy Sofra who was also in the area of the pool at the time of the drowning. She sent Mr. Gottesman the e-mail address for Ms. Sofra, but she did not know whether anyone had spoken with her.

Ms. Schniepp stated she had been a member of COAC since 1996 or 1997. Ms. Schniepp stated she had a 10 year son as well as her twins. He did go to the Activity Camp when he was approximately 4 or 5 years old, about 5 to 6 years prior to my interview. Ms. Schniepp stated he went for the day. Ms. Schniepp stated she did not like what she saw and they never went back. Ms. Schniepp stated it was in the trailer in the back of the club. Ms. Schniepp opined that the kids did not seem to be well supervised. Ms. Schniepp stated when she went to pick him up he was playing a computer game, or something. Ms. Schniepp stated she just formed the opinion that this was not a camp and was not a good environment for her son.

Ms. Schniepp stated all of her kids have done swim lessons and her older son had participated on the swim team at COAC.

Ms. Schniepp stated the COAC Child Care had young girls caring for the children. She had not been particularly impressed with the child care providers. She was recently in spinning class and saw the child care employee pull out homework. Ms. Schniepp told someone about it and they immediately did something about it.

She was not afraid of the child care room and yard being so close to the pool because the gate is double latched.

The only thing that Ms. Schniepp had seen with the lifeguards was them correcting people. Ms. Schniepp stated she had twins and it was scary for her in the pool at times. She really depended on having those extra eyes on the pool. She had been in the pool when the parents were not watching their kids in the pool and had seen parents just leave their kids at the pool. She had gone at least twice to Esther (the Aquatic Director) and told her that she did not want to be in the pool with these unsupervised children. Ms. Schniepp stated Esther immediately sent someone out to watch the pool. Ms. Schniepp stated she never wanted to be in the pool again when a kid drowned.

Ms. Schniepp stated she cannot understand how Yoni drowned. There were not that many people in the pool and there were "so many adults" around that day. It just did not make sense to her and seemed to her that "there should have been enough people watching".

Ms. Schniepp confirmed that she had been there at the pool on other days when the Activity Camp campers came to the pool. She described some of those days as bedlam because the pool was crowded with other swimmers before the campers arrived. She opined that a lot of the COAC members try to avoid swimming at the time when the Activity Campers have their free swim period.

Ms. Schniepp stated once the COAC staff pulled Yoni out they did everything they could to revive him. She opined that when they were trying to revive him it was too late. She based that on the way he looked. She saw white stuff coming out of the boy's mouth. Ms. Schniepp stated her parents were medical professionals and when she mentioned that there was white stuff coming out of the boy's mouth they said that happened when a person is dead. They informed her that they thought the boy would not make it. Ms. Schniepp stated the boy's shoulder did not move with the rest of his body. She reiterated the employees were trying to do stuff, but it was too late.

Ms. Schniepp had spoken with some expert who said these people were not properly trained.

Ms. Schniepp had spoken with another investigator prior to my interview.

SOFRA, Mindy
(Club member in pool)
4620 Via Saladita
Santa Barbara, CA 93111
(H) 967-4504

Ms. Mindy Sofra was contacted by telephone on 1/27/2006.

DATE: 1/27/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Mindy Sofra called me after I had left a voicemail message and sent an e-mail requesting a call. I introduced myself and explained that I had been told she was at the COAC pool at the time of the drowning. Ms. Sofra confirmed she was at the pool with her three year old daughter at the time Yoni was brought out of the pool, unconscious.

Ms. Sofra estimated that she was at the pool only 15 minutes when Yoni was noticed and brought out of the pool. Her husband had been in the pool with their daughter prior to that. She came down from her workout and went in the pool. Her husband left the area and went to do his workout.

Ms. Sofra stated she and her daughter were in the shallow end of the pool on the steps "Closest to the Jacuzzi." She stated that would be on the right side of the pool when standing on the shallow end facing the pool. (S/E corner of the pool)

Ms. Sofra stated she really did not see much.

Ms. Sofra did not recognize Yoni as anyone she had seen swimming. She stated she did notice some of the kids in the water. She remembered seeing the male counselor in the pool. Ms. Sofra stated she noticed the other two counselors sitting on chairs. She recalled thinking to herself that was not right.

Ms. Sofra stated she was paying attention to her daughter because she was learning to swim underwater and it was a big deal for them.

Ms. Sofra stated the male counselor was close to her at times and seemed to be paying attention to all of the kids.

Ms. Sofra stated there were also boys close to her that were being rowdy. She estimated that those boys were 8 or 9 years old. She did not recall noticing anything else.

Ms. Sofra stated it seemed like all the kids from the camp were in a small area.

Ms. Sofra stated she did not see Yoni until they pulled him out of the pool. She got her daughter out, helped get the other kids out of the pool, and then tried to get out of the way. She described the atmosphere as being chaotic for a minute or two, while they got the kids together.

Ms. Sofra recalled Ellen Bowles, one of the swim teachers, yelling to get everyone out of the water. She recalled seeing Ellen's face and realizing "that something was definitely not right". She grabbed her daughter and climbed out of the water. Ms. Sofra then saw them pull Yoni out of the water. She assisted the male counselor guide the children that were still in the pool out of the water.

Ms. Sofra stated she realized that her son was about to come from "tennis camp" where he was enrolled that week. She realized that tennis campers were about to come over to the pool at 2:30.

She said that she went to meet the tennis camp counselors on the path and she told them there had been an accident and not to go to the pool

Ms. Sofra stated her son is Jake and he was six years old.

Ms. Sofra and her husband have talked about the incident. She stated her husband had seen the counselors give the swim test to the campers. Her husband told her that the counselor would tell each child where in the pool they could swim and the restrictions for them.

Ms. Sofra stated she did not recall any collisions of people in the pool. She did opine that there were too many kids in the area of the pool right under the lifeguard.

Ms. Sofra confirmed that she was in the pool and her daughter was on the stairs. She was standing next to the bottom step. She explained that her daughter was swimming out to her and swimming back. Ms. Sofra confirmed that her back was actually to the area of the pool with the kids, but there were a group of boys that she could see playing. She recalled looking over toward the boys and wondering what was going on because it looked crowded. She did not think much more about it.

Ms. Sofra stated the male counselor was playing with the kids including the boys. Ms. Sofra did not recognize many of the kids in the pool. The only people she knew were the swim teacher, Ellen, and a girl in camp named Anya who is in school with her son. Ms. Sofra stated she did not pay any further attention to Anya. She just recalled seeing her there in the pool.

It seemed to Ms. Sofra that all of the kids from the camp were in the same concentrated space.

Ms. Sofra confirmed that Anya was 6 and turning 7 soon at the time of my interview.

Ms. Sofra stated she received an e-mail from Oded (Gottesman) asking if anyone had seen anything. She felt she did not see anything of significance.

Ms. Sofra stated her opinion was that there should be more than one supervisor (counselor) in the pool with thirteen kids.

Ms. Sofra stated the two female counselors were sitting on the chairs on the deck. One of the counselors (Jennie Darling) would get up and was walking back and forth, checking on the kids in the pool. Ms. Sofra was not sure of what the second counselor was doing. That counselor might have been getting up and checking on the kids, but she only noticed the one counselor. The counselor who she saw walking back and forth seemed to be concerned with the kids in front of the lifeguard. Ms. Sofra stated the counselor would walk between the lifeguard and a chair. Ms. Sofra stated she was not sure of what the counselors looked like. Ms. Sofra's best recollection was that the counselor sitting down most of the time had darker hair, possibly brown, in a pony tail. The other female counselor had blond hair and was a little bit heavier. Ms. Sofra thought the darker haired counselor was the person who called 911. (Maryam Sofinya)

Ms. Sofra stated she had been member of COAC for a year and half to two years. She did not know the Gottesman family. Ms. Sofra explained a mutual friend of the Gottesman family and her family had heard she was at the pool and asked if she could give her name to the Gottesman family. That was how Mr. Gottesman received her name.

Ms. Sofra stated her husband had seen them pull Yoni out of the water. Her husband saw this from the workout area above the pool. Her husband did not recognize Yoni as a boy he had seen swimming in the pool during the time he was with their daughter in the pool.

Ms. Sofra stated the pool was not crowded except for the camp kids. She stated there were not a lot of adults swimming. She thought that usually there would have been more people there at that time of the day.

GREEN Tom (Santa Barbara County Deputy Sheriff)
(W) 568-3399

I contacted **Deputy Tom Green** on 3/1/2006.

DATE: 3/1/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Deputy Tom Green was contacted at his home telephone number on his day off. I introduced myself and explained that I was investigating the drowning at the COAC.

Deputy Green explained that he was the initial responding officer to COAC on the day of the drowning. Eventually he wrote a report to document what he recalled about the drowning. Deputy Green explained his understanding for generating that report. He said that the coroner's sergeant (Court Williams) had asked that Deputy Green's sergeant tell Deputy Green to write a report and document what he recalled about his response to the drowning.

Deputy Green stated typically sheriff's deputies do not respond to fire and medic calls like this one. The call first came out as a seizure, then it was a seizure in a pool. Deputy Green stated he was then asked to respond to the scene by his sergeant. When he responded he found that the child was being worked on by the paramedics and fire personnel. As far as he could tell the child was still alive. Because he thought this was a seizure he considered the situation to be medical related and not one involving a criminal matter.

Deputy Green stated he spoke with one of the lifeguards who was helping the paramedics by holding an intravenous bag. Deputy Green stated this lifeguard identified himself as the person who had taken the boy out of the water. (Michael Bowen)

Deputy Green stated he was not aware of any Santa Barbara Sheriff Department policy requiring documentation for the drowning of a child.

Deputy Green explained further that he did not see that there could be any criminal activity because it was just a group of children playing in a swimming pool. He stated he did not see anything to indicate that there was any criminal activity, and the child was still alive when the ambulance left the COAC.

Deputy Green stated he did not follow-up at the hospital. He did not find out that the child had died until two hours later and then the coroner investigator and his sergeant had gone to the hospital. He identified his sergeant as Brian Thielst. Deputy Green stated he did not attend the autopsy.

I told Deputy Green that I was also looking into whether the owner of the club had influenced the investigation by the sheriff's department. Deputy Green replied that he was not directed by anyone at the time of his response to COAC about what to do there.

Deputy Green stated he did not know that the owner of COAC was a member of the Sheriff's Council until approximately a week prior to my interview. Deputy Green confirmed it was late February when he learned this. Deputy Green stated he did not know Mr. Berti. He stated he never met him, or heard of him.

Deputy Green stated he had not been to COAC prior to the drowning incident.

Deputy Green stated he had not been contacted by anyone from the Sheriff's Council and stated he had never met anyone on the Sheriff's Council.

NILSSON, Johan
(EMT for AMR)
(W) 688-6550

EMT-Johan Nilsson called me back regarding the message that I had left with his supervisor.

DATE: 3/15/2006

LOCATION OF INTERVIEW: Telephone (Tape available)

I introduced myself and explained that I was conducting an investigation into the drowning at COAC. I asked EMT-Johan Nilsson to tell me about what he found when he got on scene for the call to respond there.

EMT-Nilsson stated the original call came out as a seizure. This call was supposed to be a call that EMT-Robert Lauderdale handled, but because the ex-wife of EMT- Lauderdale worked at COAC they decided to have EMT-Nilsson handle the call.

EMT-Nilsson stated they were met by someone in a bathing suit who told them "He's not breathing". EMT-Nilsson stated as he entered the pool area he saw what he thought were two lifeguards performing mouth to mask CPR with an "Automated External Defibrillator" (AED) attached.

EMT-Nilsson stated the female lifeguard had a mask over the boy's face and she was ventilating. EMT-Nilsson stated the male lifeguard was doing compressions.

As EMT-Nilsson and his partner got to the location of the lifeguards and the boy, the lifeguards stepped back and said "Do something, do something." EMT-Nilsson stated the fire department had not arrived yet. EMT-Nilsson stated he looked at both of them and asked if they had both been certified and trained in CPR, and they both confirmed they were. EMT-Nilsson stated the lifeguards were then told to continue with the CPR until he and EMT-Robert Lauderdale could set up their equipment.

EMT-Nilsson stated the AED was saying "No shock advised".

EMT-Nilsson stated the two lifeguards continued with CPR until the fire department employees arrived and took over for them.

EMT-Nilsson stated the lifeguards did seem to be performing CPR effectively. One thing that caused him some concern was that they were not holding spinal precautions properly for a spinal injury. He asked if the boy had fallen, and whether a diving injury had been ruled out. He was told that these had not occurred and then he was okay with the CPR methods they were using.

EMT-Nilsson stated the seal on the mask seemed to be good and the compressions seemed to be good. The AED was hooked up appropriately. I told EMT-Nilsson that one of the concerns was that an adult mask was used on the boy. I asked EMT-Nilsson what he recalled about the mask that was used. EMT-Nilsson thought the mask used was an adult mask. He further explained the mask that was used can be used on a pediatric patient. The most important thing about using a mask is that there is a good seal between the skin and the mask. An adult mask goes upside down and covers the whole face with a pediatric patient. EMT-Nilsson confirmed that he thought air was getting into the boy.

EMT-Nilsson did not recall going back to the scene after the call. There was a possibility they had gone back to COAC, but he did not know for sure. EMT-Nilsson had gone to COAC to talk with the ex-wife of EMT-Robert Lauderdale, but he could not recall going to COAC to view the scene. EMT-Nilsson stated another ambulance unit stopped by as they were getting ready to leave. One of those EMT's actually assisted with suction of the boy's face at one point.

EMT-Nilsson stated they received some bad information about how long the boy was down from the witnesses to the incident. One of the lifeguards said, "No more than a minute". EMT-Nilsson found this to be strange. EMT-Nilsson explained he thought that kids generally "crash a lot quicker than adults", lose their heart rate faster and go unconscious, but they are also easier to get back. The boy's eyes were fixed and dilated which indicated to EMT-Nilsson that this boy was unconscious for longer than the lifeguard said. EMT-Nilsson stated that was something we all know to be true now.

EMT-Nilsson stated he had never noticed any delay in calling "911" for the calls where he had responded to COAC.

LAUDERDALE, Robert
(EMT for AMR)
(W) 688-6550

EMT-Robert Lauderdale called me back regarding the message I had left with his supervisor. The interview was interrupted as EMT-Lauderdale was working and had to respond to a call.

DATE: 3/15/2006

LOCATION OF INTERVIEW: Telephone (Tape available)

I introduced myself and explained that I needed to talk with him regarding the drowning call that he responded to at COAC. I asked EMT-Robert Lauderdale to tell me what he found when he got there.

EMT-Lauderdale first stated the call came out as a "fall victim". (Later in the interview I told EMT-Lauderdale that the call actually came out as a seizure and he then stated that was correct and that he had been mistaken saying that it was a fall victim.) He explained that it was not uncommon for the wrong information to be broadcast, or the wrong information to be dispatched.

EMT-Lauderdale stated they were real close to COAC when the call came out.

EMT-Lauderdale stated as they approached it appeared to him that there were "pretty frantic people in the parking lot" for the type of call that it was.

EMT-Lauderdale stated they were greeted in the parking lot by a female in a bathing suit who told them there was a four year old who was not breathing and had no pulse. This was the first information to confirm that they had more than the type of call dispatched. They started thinking this was a pediatric cardiac arrest.

EMT-Lauderdale stated he noticed the boy down with lifeguards doing CPR as he entered the pool area. The boy was on a wooden back board about three to four feet from the edge of the pool. There was water beneath the back board. This was important to notice because they do not want to be putting someone on the monitor and possibly shock them while standing in a puddle of water. EMT-Lauderdale and EMT-Johan Nilsson slid the back board over onto dry concrete.

EMT-Lauderdale stated the boy was hooked up to an AED monitor.

EMT-Lauderdale stated about that time the lifeguards stopped doing CPR. EMT-Lauderdale stated EMT-Johan Nilsson told the lifeguards to continue with CPR until the EMT's got their equipment hooked up and working.

EMT-Lauderdale stated the lifeguards seemed to be doing CPR adequately.

EMT-Lauderdale stated EMT-Johan Nilsson asked how long the kid had been down. One of the lifeguards responded, "No more than about a minute". This was important because a kid that has been under for a minute is much more viable than a kid who has been underwater for fifteen minutes.

EMT-Lauderdale stated he noticed that the AED was saying "No shock advised". That usually means that the person's heart is not in a rhythm that was shockable. In this case, it turned out there was no rhythm. EMT-Lauderdale immediately started questioning himself as to how long this kid had really been under water and whether he had been under longer.

EMT-Lauderdale stated about that time the fire department personnel arrived and took over the CPR from the lifeguards.

EMT-Lauderdale stated he did not recall anything that the lifeguards were doing that was incorrect, or negligent. He worked as a lifeguard for the city in the past. He stated while he worked as a lifeguard he always feared the fact that he did not really know how he would react if there was an emergency on his watch. It was not until he started working as an EMT and had done CPR routinely that the fear of how he would react subsided.

EMT-Lauderdale stated the CPR seemed to be effective and he could not recall anything that the lifeguards were doing that was incorrect, or negligent. The monitor that he and EMT-Johan Nilsson connected to replace the COAC AED would record what was happening with the CPR and the charts could possibly be reviewed to see if the CPR was effective.

EMT-Lauderdale confirmed that the pulse of the boy did not come back while he was caring for him. EMT-Lauderdale opined that if they had been told the boy had been under water for longer than "a minute, or less" they would have evaluated the situation differently and would have had a better understanding that the boy, or any person, was not going to be revived.

EMT-Lauderdale stated there were secretions that had to be suctioned out of the boy's mouth, but he could not say what those secretions were, or whether they were any different from any other person who had not been breathing, or underwater. This was a common problem they needed to deal with on people who were not breathing. EMT-Lauderdale opined that the secretions could be a combination of vomit and water from the belly and water and other fluids from the lungs. When doing CPR air goes into the stomach and will come back up from the stomach as the stomach becomes over full with air. EMT-Lauderdale recalled several times when the lifeguards or fire fighters were doing CPR, that someone thought that the boy was starting to breathe because he was trying to cough up something". At one point this happened three times and people started getting excited. EMT-Lauderdale had to tell those involved that the monitor still showed that there was no heart beat. EMT-Lauderdale had to explain that a person without a pulse was not going to start breathing.

EMT-Lauderdale stated he had never seen or heard that COAC delayed calling "911" on emergencies at their facilities.

VALENTINE, Charlotte DOB: 9/13/1949 CA Op # R0494680
(COAC General Manager)
(805) 964-7762 Ext 22

MAIN, Julie DOB: 4/9/1956 CA Op # N2108143
(Over site Manager and President of Corporation)

INVESTIGATION

Charlotte Valentine and **Julie Main** were interviewed at COAC on 2/15/2006. Charlotte Valentine and Julie Main first gave me a tour of the pool area and the yard where the Activity Camp was held. I took 13 photos of these areas during this tour.

Ms. Valentine pointed out what she thought were 6 different cameras in the pool area. One camera (1) was on a trellis near the shallow end of the small pool pointed in an approximate N/W direction at the pools. The second camera (2) was mounted on the wall of the club house at the N/E corner of the building and pointed in an approximate N/E direction at the pools¹⁹. The third camera (3) was mounted on the club house wall near the N/W corner of the pool area and pointed in a more Eastern direction at the larger Jacuzzi. The fourth camera (4) was mounted on the trellis above the Jacuzzi and pointed in an N/E direction toward the pools. The fifth camera (5) was mounted on the East wall of the child care building and pointed in a Northern direction along the wall of the building. Later, during my interview with Esther Clark I determined that what Ms. Valentine thought was a sixth camera mounted on the N/E corner of the kids locker room and child care building facing the pools was actually a white spot light and not a camera. This meant that there were only five cameras. (Please see interview of Stefan Ornelaz for further information regarding these cameras.)

There were two pools and two Jacuzzis in the pool area. At the time of my investigation the smaller pool was roped off. Both Ms. Valentine and Ms. Main identified this smaller pool as being the pool where the drowning had occurred. Ms. Main explained that the smaller pool was roped off because there had been problems with the water PH just prior to my interview. The larger pool was divided into lanes by floating lines. Ms. Valentine pointed out a small Jacuzzi pool with boards over it between the shallow end of the small pool and the east wall of the pool area. Ms. Valentine explained that this Jacuzzi was closed for winter, but had been open at the time of the drowning. The second Jacuzzi was open for use and had what appeared to be a five foot fence around it and covered with a trellis.

Ms. Main and Ms. Valentine explained that the building on the west side of the pool area was the child care building. They explained the locker rooms and bathrooms the Activity Campers used were in that same building.

Ms. Valentine and Ms. Main took me to the Activity Camp area. This area was out the main entrance of the club house and across the parking lot. As we walked, Ms. Valentine explained that the restrooms that the campers used were across the club parking lot, through the main entrance,

¹⁹ This appeared to be the camera angle provided to the District Attorney's Office by the Gottesman attorneys at the time this investigation was started.

through the lobby, through the café, across the pool area and then into the restrooms of the kid's locker room.

Ms. Valentine brought me to the Activity Camp area which was at the north end of the parking lot. I saw that there was an approximate 3-4 foot tall chain link fence and gate between the parking lot and the Activity Camp play yard. The chain link fence continued around the east side of the yard to a trailer. North of the trailer between the trailer and a chain link fence at the north end of the yard there was green plastic construction type fencing that was in disrepair. Sections were on the ground and bent. Near this area of the fence there was an area of the yard with railroad ties. At the north end of the yard there was another chain link fence approximately four to five feet tall. This fence turned at a right angle and continued a few feet south on the west side of the yard, but then stopped. There was no fence on the west side of the yard which went down, according to Ms. Valentine, to a seasonal creek. Ms. Valentine stated when they ran the Activity Camp they had a chain link fence installed by one of the "Rent-a fence" companies.

Ms. Valentine confirmed that the camera that I saw mounted on a post near the S/W corner of the Activity Camp yard was active when the camp was in session.

I told Ms. Valentine that I had heard there was no water out at the Activity Camp area. Ms. Valentine explained that they brought out an igloo container with drinking water for the children. She explained that there was no water connection for the trailer classroom that was there. Ms. Valentine stated the custodian staff hooked up a portable sink to a hose and the children used that to wash their hands. Ms. Valentine confirmed that there was no hot water out at the Activity Camp area.

I asked about shade for the children while at the camp. Ms. Valentine replied that the staff put up umbrellas and shade canopies over the picnic tables. Ms. Valentine thought there was one, or two canopies and one or two umbrellas. Ms. Valentine clarified that the canopy over the table at the north side of the trailer was not what she was talking about. She said that canopy area was used for arts and crafts.

Ms. Valentine stated there was no playground equipment set-up for the Activity Camp.

Ms. Valentine and Ms. Main stated it was their understanding that most of the children ate lunch at the café in the club house. Ms. Valentine stated there was a refrigerator inside the trailer for the kids' lunches if they brought a lunch. I did not inspect the interior of the trailer.

Ms. Valentine stated there was a telephone inside the trailer of the Activity Camp. She explained that the counselors also carried walkie-talkie radios while working.

After a tour of the pool area and Activity Camp area we returned to the administrative offices for an interview.

INTERVIEW SUMMARY

DATE: 2/15/2006

LOCATION OF INTERVIEW: COAC Administrative Office (Tape available)

Charlotte Valentine and Julie Main brought me back to the Administrative offices of the COAC. It was agreed that the interview could be done at this office. Both Ms. Valentine and Ms. Main asked if they could be interviewed at the same time. I asked if either of them had an objection to being interviewed at the same time and they both indicated that they preferred to be interviewed together. I told them that I thought it would be fine to interview them together because they both had knowledge about different parts of the investigation.

Both Ms. Valentine and Ms. Main provided their identifications to me as asked.

Ms. Valentine stated she was the General Manager of the COAC. Ms. Valentine stated she had worked at OCAC for ten years. She had been General Manager for 8 years.

Ms. Main stated she was the Over-site Manager and President for the Corporation. Ms. Main stated she had been employed as the Over site Manager for 12 years and estimated she had been the President of the corporation for approximately 5 years.

Ms. Valentine confirmed that Ms. Main was her supervisor.

Ms. Main confirmed that she reported to the owners. Ms. Main identified the owners of COAC as Richard Berti and Richard Ortale.

I then went over the Organization Chart of COAC as I understood it and confirmed that the attached chart was correct. I asked Ms. Valentine whether the Child Care Director was involved with the Activity Camp Children at all. Ms. Valentine stated the Activity Camp counselors would stay if any campers remained after the usual 3 P.M. end of camp. Ms. Valentine stated the COAC Child Care was not involved in caring for any of the campers.

Ms. Main said the organizational chart that I had reviewed had not changed since the drowning. Ms. Main said there had not been changes in the corporate structure, or name, since the drowning. Ms. Main confirmed that everything was the same.

Ms. Valentine did state that the Activity Camp Director Elizabeth Heller no longer worked for the COAC.

I asked Ms. Valentine and Ms. Main to explain the club's position regarding the licensing issues in regards to the child care and camp. Ms. Main replied that the Child Care facility is exempt from licensing because the parents stay on site while the children are there. Ms. Main stated the COAC Activity Camp was exempt from licensing because it operated only a short period of time and was under the amount of time necessary to require a license. Ms. Main thought that a camp had to operate over 16 weeks a year to require a license, but she was not positive about that amount.

Ms. Main at first thought that she was the Over-site manager of COAC when Rachel Steidl²⁰ started the Activity Camp. I pointed out that the Activity Camp was started in 1988²¹. Ms. Main

²⁰ Rachel Steidl had given a declaration that was included with the COAC appeal to the Child Care license hearings held by the California Department of Social Services.

²¹ I found this was an error on my part after the interview. The Activity Camp was actually started in 1992 according to Ms. Steidl's declaration provided to the California Department of Social Services and dated 12/13/2005.

acknowledged that she must be mistaken about being the over-site manager then because she did not start as the over-site manager until 1994. Ms. Main stated her confusion might be because Rachel Steidl worked at both SBAC and COAC at the same time and worked under the direct supervision of Ms. Main.

Ms. Main had not read the declaration of Rachel Steidl. I asked Ms. Main for her understanding of why the COAC did not have a Child Care License. Ms. Main again reiterated that the Activity Camp was not a year round program and was under the number of weeks per year that would necessitate COAC getting a license for the program.

Ms. Valentine stated she had never discussed whether a license was required for the Activity Camp with anyone.

I asked Ms. Valentine what type of background checks were done on employees of the Activity Camp. Ms. Valentine replied that COAC used VERICON (Resources, Inc.)²², a private company. Ms. Main stated they also did drug screening on all of their employees and VERICON screening on all of their employees who work with children. Neither, Ms. Valentine, or Ms. Main, thought that the background included a criminal record check using the fingerprints of an applicant. Ms. Main stated the background check was based on a person's name, birth date and social security number. Ms. Main stated Child Care employees were checked by VERICON, but not the tennis instructors.

Ms. Valentine stated the Personal Trainers of the club were not involved with any of the children from the Activity Camp.

Ms. Valentine explained that since the incident all staff members at the COAC were having VERICON background checks and drug testing. Ms. Main clarified that these background checks were not because of the incident, but because of legislation that had been proposed in 2005 to require a background on all employees who work in health clubs. Ms. Main stated the legislation was eventually defeated. She explained further that the corporation decided to go ahead with the background checks on all employees voluntarily even though the legislation had been defeated.

I asked Ms. Valentine about the ratio of child to adult. Ms. Valentine stated she was not that involved with Activity Camp. She stated they had an average of 20-25 children in the Activity Camps and at least 5 to 6 counselors. She stated definitely 5, but sometimes 6 counselors. Ms. Valentine confirmed that the tennis instructor was not counted as a counselor. Ms. Valentine stated once a week the Tae Kwon Do instructor would teach the Activity Camp campers.

Ms. Valentine and Ms. Main confirmed that neither of them was on the COAC facilities at the time of the drowning. Ms. Main stated she arrived just as the ambulance was leaving. Ms. Main stated she passed the ambulance on Cathedral Oaks Blvd. Ms. Valentine stated she arrived at COAC at approximately 5 P.M

Ms. Valentine confirmed that her understanding was that the three counselors present were Jenny Darling, Sam Shipley, Maryam (Sofinya), as well as Elizabeth Heller. Ms. Valentine stated she was not aware that any Counselor-In-Training (CIT) was participating on the day of the drowning. Ms. Valentine did not know a CIT-Harrison Swalley. Ms. Valentine stated it was possible that there was a CIT without her knowledge because it was up to Elizabeth (Heller). Ms. Valentine reiterated that she was not familiar with Harrison Swalley nor aware that he was at COAC on the day of the drowning. Later in the interview, Ms. Valentine explained the CIT program further. Ms. Valentine

²² Further information about this company can be found at <http://www.vericon.com/home.htm>

stated Elizabeth had a program where the parents of the CIT would pay \$25 a week which would pay for lunch at the COAC cafeteria. Ms. Valentine stated these older kids would play with the younger ones and learn organizational skills at a young age. Ms. Valentine stated she did not know if Harrison Swalley was one of those CIT's.

Ms. Valentine stated there was no nap time for the Activity Camp campers.

I asked Ms. Valentine about whether there was a difference between how the different ages were handled in the Activity Camp. Ms. Valentine said the different ages were handled differently. The older kids were involved in their own activities separate from the younger kids. Ms. Valentine explained further that they would be together for singing time. Ms. Valentine confirmed that there was no physical divider or fence between the different age groups.

I asked Ms. Valentine to explain the way the Activity Camp children were supervised at the pool. Ms. Valentine stated when the campers came to the pool there was always a lifeguard present. She stated the counselors were also present with the children. There was always one counselor on deck and the rest were in the pool. Ms. Valentine stated the counselors were to be with the campers, play with them, and "to never leave them alone." Ms. Valentine stated she did not know whether the campers were assigned to a certain counselor or whether Yoni was assigned a certain counselor.

Ms. Valentine confirmed that all of the Activity Camp Counselors were paid employees.

Ms. Valentine stated she had an Associate Arts degree. She had not taken any Childhood Education, Administration, Staff Relations or Child Growth and Development college courses. Ms. Valentine stated she had attended Administration and Staff Relations conferences sponsored by the health club industry. Ms. Valentine stated she does not have a Child Development Site Supervisor, or Program Director permits. She does not have a teaching credential.

Ms. Main stated she had her BA in political science and did have courses in staff relations and administration. Ms. Main stated she had not taken any Child Development college courses.

Ms. Valentine stated she did have CPR certification from a course 2 ½ years prior to my interview. Ms. Valentine stated CPR would be renewed the following week after my interview. Ms. Main stated her CPR was certified two years prior to my interview.

Ms. Valentine and Ms. Main stated neither of them had tuberculosis tests.

I asked if the other clubs associated with COAC and owned by Mr. Berti had Activity Camps. Ms. Main stated SBAC did not have an Activity Camp. She explained while she was the oversight manager for all of the associated clubs, Mr. Berti was not considered an owner of the other clubs. Ms. Main explained that Mr. Berti was only an investor in those other clubs. Ms. Main stated "Ojai"²³ and "The Hills"²⁴ do have Activity Camp programs. Ms. Main explained those clubs do not have licenses for any of those programs. Ms. Main explained they were all operated under the same premise as the COAC Activity Camp, that a license was not necessary. Ms. Main stated every other health club and many other camps are run with that same understanding. She estimated that 80 to 90 percent of the camps in the Santa Barbara area are run just as the Activity Camp was without a license from the state.

²³ According to CAL WEST Group web-site "Ojai" is Ojai Valley Athletic Club at 409 South Fox St. Ojai, CA 93023 Telephone - (805) 646-7213.

²⁴ According to CAL WEST Group web-site "The Hills" is The Hills Swim and Tennis Club Oakland, California at 2400 Manzanita Dr. Oakland, CA 94611 Telephone - (510) 339-0234.

Ms. Main confirmed that COAC was still appealing the California Department of Social Service's position that a Child Care License was required for the Activity Camp through their administrative process. Ms. Main thought they were at the second appeal level. Ms. Main reiterated that this was regarding Child Care Licensing and not Camp Licensing because there was no such thing as camp licensing. Ms. Main stated camp required a permit from another state department, not a license from the Dept. of Social Services.

I asked Ms. Main whether the COAC would get a license if the appeal failed through the Dept. of Social Services process. Ms. Main stated she did not know what would happen if the appeal failed because what is needed for Child Care licensing is not appropriate for a camp type situation.

I asked Ms. Valentine and Ms. Main what could have been done to prevent this incident. Ms. Valentine first replied that she could not answer that and then stated "I have full confidence in my staff." Ms. Valentine stated that was all she could tell me was that she has 100% confidence in her staff.

Ms. Main explained that this was like any accident. In hindsight you can find something that would have prevented it, but she did not know that anything that staff could have done would have prevented it. Ms. Main stated "they have talked about the 'what ifs' and she could have a million 'what ifs', but they didn't happen."

Ms. Main stated she had watched the video and she did not understand why the other children or counselors had not seen Yoni was in trouble. Ms. Main stated he didn't wander off

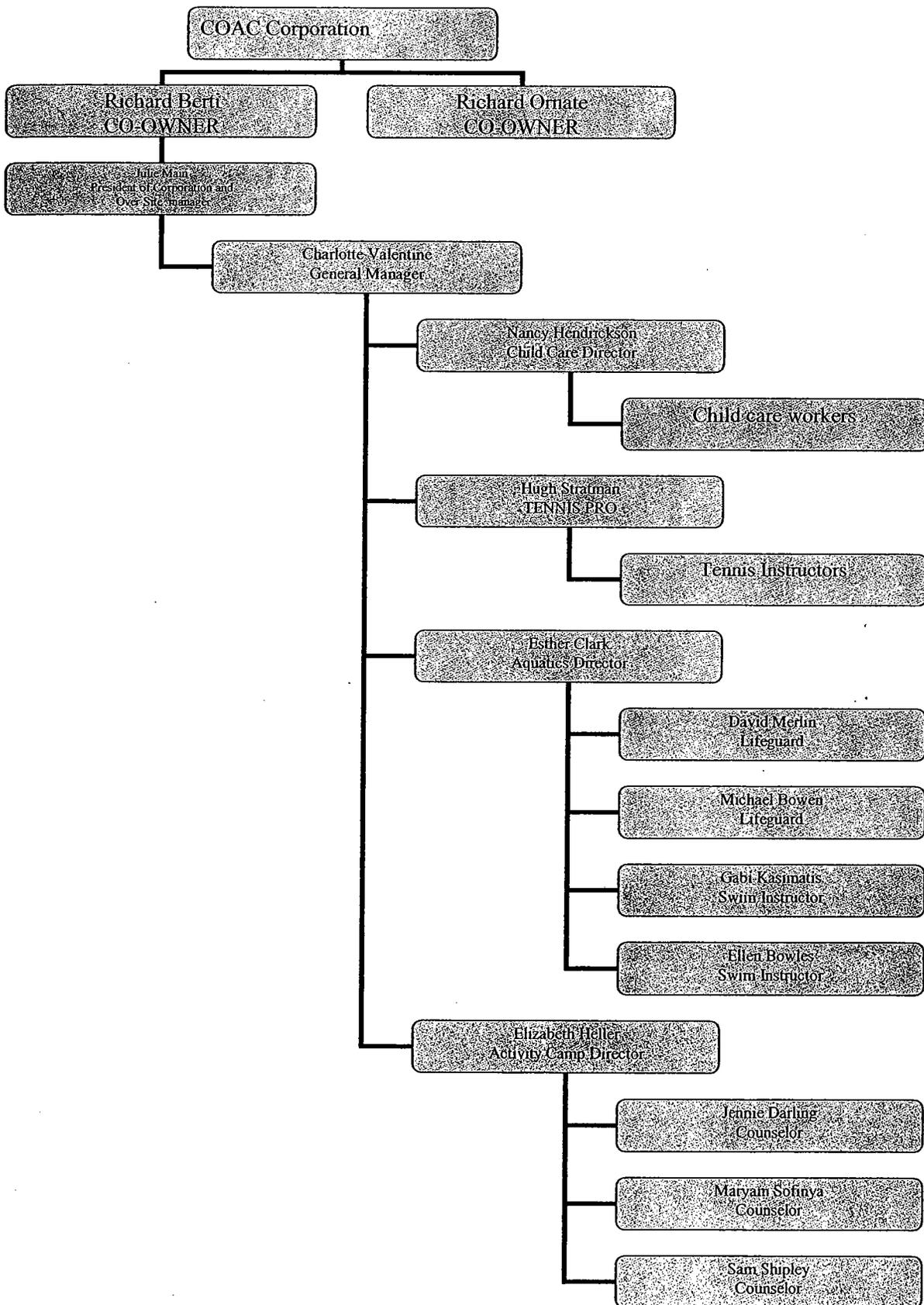
I asked Ms. Valentine and Ms. Main if there were any questions for me. They wanted to know who I had talked with and whether there were other people they needed to let know I would be talking with them. I told Ms. Valentine that I would like to talk with Esther Clark who was the last employee that I probably would need to interview. Ms. Valentine stated she could arrange for me to interview Esther Clark prior to leaving that day.

Ms. Main asked about the District Attorney's office involvement. I explained that the Santa Barbara Sheriff's Department had done a minimal investigation. I told them that the Coroner's Investigator, who was a part of the sheriff's department, had only determined that the death of Yoni was an accident and had not referred the case over to the detectives for a more in-depth investigation. I told them that if Yoni had drowned at a private home where his parents were responsible I thought that there would have been an investigation to see if there had been any negligence on the part of the parents. I was asked whether there was criminal negligence. I replied that was what the investigation would be into, but that there was a high standard to reach to prove criminal negligence. I told them that I did not understand why there had not been more of an investigation into the death of Yoni just because the drowning occurred at a health club under the responsibility of someone other than his parents.

Ms. Main asked whether COAC was being investigated, or was the sheriff's department being investigated? I replied that my investigation involved an investigation into the both COAC and the sheriff's department. I reminded Ms. Main that there was also the fact that Mr. Berti was involved with the Santa Barbara Sheriff's Council and whether that influenced the sheriff's department response to this incident. Ms. Main stated none of the sheriff's department employees who came out to the COAC to investigate ever asked who owned COAC. Ms. Main stated there was no way for the deputies to make the connection between COAC, Mr. Berti or the Sheriff's Council because no one mentioned any of those connections.

Ms. Main then asked about when the investigation would be complete and whether they would be notified. I told her that my investigation would be a matter of public record and I am sure they would find out about it as soon as it was made public.

Ms. Main stated many clubs or other organizations that are not listed as being exempt with the DSS regulations, do hold camps that are similar to the Activity Camp COAC held. She gave examples such as tennis camp, computer camp, dance camp, zoo camp, among others.



MOORE, Kelly
(Santa Barbara County Deputy Sheriff)
(W) 681-4279

Deputy Kelly Moore first contacted me on 2/1/2006 in regards to my request to interview his niece, Swim Instructor Ellen Bowles. Deputy Moore stated he had gone to the COAC to support his niece a short time after the drowning had occurred. He overheard the staff talking that they did not know what happened. He asked if the cameras he saw mounted around the pool area actually recorded, or if they were just part of a closed circuit system. He was told that the cameras did record and he told the staff the video might show what happened. I did not interview Deputy Moore further at that time.

I re-contacted Deputy Moore on 3/1/2006.

DATE: 3/1/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

I reminded Deputy Moore that we had spoken about the COAC drowning in reference to his niece. I asked him to tell me more about what he did and saw.

Deputy Moore asked me when the drowning had occurred. I explained that the drowning had occurred on August 15th at approximately 2:30 P.M. Deputy Moore stated he took off the remainder of his work shift to be with his niece. The victim had been removed from the COAC property by ambulance and was already at the hospital when Deputy Moore arrived at COAC. Deputy Moore stated the victim had not yet been pronounced dead officially. Deputy Moore estimated that he arrived between 3:30 and 4 o'clock.

Deputy Moore said his niece had called his wife, who called him. He went out to the COAC to be with his niece.

I asked Deputy Moore what was going on when he got there. Deputy Moore stated the COAC was closed. There was an employee at the gate turning people away. The staff was in a meeting, or sequestered. He let his niece know that he was there and he sat down on one of the chairs in the pool area.

Deputy Moore stated Julie Main was there. She came over to talk with him because they knew each other from previous contacts. Deputy Moore stated his niece, Ellen, then came and talked with him. She was visibly upset.

Deputy Moore stated everyone was saying that nobody knows what happened. Deputy Moore stated he pointed out the cameras in the area of the pools. He asked if the cameras were recorded, or just closed circuit. His niece stated the cameras were recorded. Deputy Moore pointed out that the whole incident was probably recorded on tape. Deputy Moore stated his niece then went and told Julie Main to pull the tape.

Deputy Moore stated he sat and waited for his niece to finish. She was asked to write a statement about the incident and her involvement. Deputy Moore did not read anything or conduct any investigation in an official capacity. Deputy Moore stated anything he did was done as a comfort factor for his niece.

Deputy Moore stated he did make a couple of contacts with the supervising sergeant, Courtney Williams, who worked with the Coroner's Bureau. Deputy Moore explained this further. He said at one point a rumor surfaced that the boy had survived. Deputy Moore found out that was incorrect

information and that the boy had actually not survived, but had not been pronounced dead officially. Deputy Moore stated the survival rumor came from someone who knew someone who worked at Cottage Hospital and was an example of the old telephone rumor where the information gets changed as it gets passed from one person to another.

Deputy Moore stated the only mention of a seizure was in conversations searching for how this happened because no one knew what happened. Someone mentioned that maybe Yoni had a seizure. Deputy Moore stated he did not hear anyone say they saw him having a seizure, or he had problems with seizures, or anything like that. Deputy Moore reiterated that this was just from people searching for how this happened.

Deputy Moore has never seen the video.

Deputy Moore made another call to Sgt. Williams to tell him that the video existed and that someone should take custody of it. Deputy Moore did not know if anyone from the Sheriff's Department ever took custody of the video from those cameras.

Deputy Moore confirmed that Deputy Tom Green, the responding deputy, was not at COAC when he arrived to support his niece.

I asked Deputy Moore about whether anyone had pointed out that Richard Berti owned the COAC and that he was on the Sheriff's Council. Deputy Moore said he knew that Mr. Berti owned the COAC and SBAC from prior dealings with those businesses. I asked Deputy Moore if Mr. Berti had ever pushed for a certain result on any of the investigations he had been involved in. Deputy Moore stated he had never spoken with Mr. Berti. Deputy Moore stated Julie Main had never pushed him for a certain result on anything he had been involved with in the past.

Deputy Moore stated what he observed at the scene when he got there seemed very appropriate. He saw that people were separated and each staff member was writing his or her own statement. He did not see people talking about what they had done. Most of the staff were separated, given paper, and told to write what ever they did. Deputy Moore thought that either Esther (Clark) the aquatics director, or Julie Main, were telling the staff to write these statements. Deputy Moore stated he sat next to his niece for part of the time he was there while she was writing her statement.

KOLBERT, John
(Santa Barbara County Sheriff Coroner Investigator)

Deputy John Kolbert was contacted by telephone.

DATE: 3/6/2006

LOCATION OF INTERVIEW: Telephone (Tape available)

I introduced myself and told Deputy John Kolbert that I needed to talk with him regarding the Cathedral Oaks Athletic Club drowning.

Deputy John Kolbert stated he was assigned the case. He stated no one told him how to investigate this drowning. I asked him if anyone from the sheriff's department told him to make this case an accident. Deputy Kolbert stated no one told him to do that. He would not have done that if someone had tried to tell him to do something like that.

Deputy Kolbert stated he did not know Richard Berti, or even heard of him. Deputy Kolbert stated he was not aware that Mr. Berti was on the sheriff's council and stated someone's position with the sheriff's council would never influence his investigation in any way.

Deputy Kolbert reiterated that no one from COAC had tried to influence his investigation nor outcome of his investigation. He stated no one had even mentioned the sheriff's council in his dealing with the COAC staff during this investigation.

Deputy Kolbert stated there were no problems with Dr. Anthony during this autopsy and he did it in his own professional way.

I asked Deputy Kolbert about the video and the camera angle that he had viewed. Deputy Kolbert stated he viewed only one camera angle. He described this as being the camera behind the lifeguard and toward the lifeguard's left side. Deputy Kolbert stated he was not aware there was a second camera angle and he was not shown a second video.

ANTHONY, Robert Dr.
(Santa Barbara County Forensic Pathologist)
(W) 681-1729

WILLIAMS, Court
(Santa Barbara Sheriff Deputy, Sergeant in charge of Coroner Bureau)
(W) 681-4146

Dr. Robert Anthony was interviewed at the Santa Barbara County Coroner's Office on 3/7/2006. **Sgt. Court Williams** and **Assistant District Attorney Patrick McKinley** were also present and participated in the interview.

DATE: 3/7/2006

LOCATION OF INTERVIEW: County Coroner's Office

Assistant DA Patrick McKinley and I introduced ourselves. We explained that we were searching for information about drowning and how that information might relate to the drowning of Jonathon (Yoni) Gottesman.

Dr. Anthony explained that he had been involved in forensic pathology since 1984, and conducted autopsies on "dozens and dozens" of drowning victims and reviewed hundreds of drowning cases over those years. Dr. Anthony explained that many of victims were children. He was the chairperson of the Sacramento County Child Death Review Team for ten years. Sacramento County has a large number of rivers, creeks, pools, ponds and other types of water bodies where people, including children, drowned. He has been exposed to a large variety of drowning deaths over his career.

Dr. Anthony said that it can be difficult to retrieve evidence of what happened from drowning autopsies. He explained that CPR and other efforts to save the person's life by EMT and ER staff can, and does, actually destroy evidence of what happened to the person.

Dr. Anthony was asked how long it takes a person to become drowned. Dr. Anthony stated no one knows how long it takes a person to drown. It has never been proven that there is a certain amount of time that it takes. He explained that the reason for lack of knowledge in this area is because of the nature of a drowning death, itself. Experiments can not be done to gain this knowledge because it would require the drowning of a lot of people under controlled circumstances. Society does not allow that type of research. Dr. Anthony explained that medical science does know that a person's brain requires oxygen. It has been proven that if the brain is deprived of oxygen, as in a drowning, for longer than four minutes there will be brain damage, or death. Dr. Anthony explained that whether Yoni was submerged 6, or 8 minutes, it would not make much of a difference. After four minutes, Yoni was most likely already deceased. Dr. Anthony stated there have been cases of people being submerged in very cold water for longer periods of time and surviving, but those cases are exceptional and that was clearly not the case with Yoni.

Dr. Anthony explained there are no hard and fast rules in drowning deaths. He explained that there are very few drownings that have eyewitnesses. The statements of those who were with the person before and after have to be used in any effort to establish what happened.

Dr. Anthony explained that the human lungs require fluids to function. Because of the lungs having fluids naturally, there is very little damage seen within the lungs of a drowning victim such as Yoni.

He explained further that there are "wet" drownings, where water had entered the lungs and "dry" drownings, where there is no water in the lungs.

Basically, a "dry" drowning was when a person's body has reacted to the drowning situation in such a way that it prevented water from entering the lungs by shutting the person's airways tightly. The person still drowned because of lack of oxygen, but the water was prevented from entering the lungs. Dr. Anthony explained further.

Theoretically, when the amount of oxygen gets too low, or carbon dioxide gets too high, a person gets an involuntary reflex to gasp for air. Because it is involuntary the person will take in water even though they do not want to. Dr. Anthony gave the example of people having a contest challenging each other as to who can hold his/her breath the longest. Cases have been documented where one of the contestants takes a deep breath, goes under water, and never comes up. There is no struggle, nothing to indicate anything was wrong, the person just stopped swimming and needed to be rescued.

Dr. Anthony stated the collision of people in a pool is different from on dry land. The fluid environment might soften the accidental blow between two people. Dr. Anthony stated he found no marks, or bruising on Yoni's body, or scalp.

I told Dr. Anthony that people who tried to help Yoni described the substance coming out of Yoni's mouth as foam, and others vomit. Dr. Anthony explained that Yoni's body's efforts to survive plus the CPR efforts caused a violent mixing of water and air in the lungs and airways which created foam. Dr. Anthony found no food through the pulmonary system to indicate that Yoni vomited. Dr. Anthony stated if Yoni had choked he would have found food in the airways during the autopsy. He stated he did not find any food in the airways nor any evidence to indicate Yoni had choked.

I asked Dr. Anthony what he would look for if a person had a seizure and whether he found any evidence that Yoni had a seizure. Dr. Anthony stated he always looked for a history of seizures or epilepsy. Dr. Anthony stated without a history of seizures then the appearance of a seizure could be associated with drowning. Dr. Anthony explained further that a person might misconstrue the involuntary muscle movements caused by oxygen deprivation as a seizure. Dr. Anthony said the human body has reflexes that react to pain, or the lack of oxygen such as the reflex to gasp for breath when the level of oxygen, or carbon dioxide, reaches a certain level. People sometimes see these sudden movements of a person as they struggle to survive and interpret them as the person having a seizure. Dr. Anthony reiterated that "the person had a seizure" was a common statement of witnesses to a person's death and one that is heard often by his office.

I asked Sgt. Court Williams to explain the protocol in a case like this. Sgt. Williams explained that when he received the call about the drowning victim being at the hospital he and Detective Kolbert responded. Sgt. Williams said they reviewed the ambulance records, the medical records, spoke with the parents and examined the body of the victim. They did not have any indication that this boy died from a deliberate criminal act at the time. Detective Kolbert went out to the scene the next day to talk with witnesses, view the video and examine the scene. Detective Kolbert still did not find anything to indicate that a criminal act was involved in the drowning of the victim.

Sgt. Williams explained he would have notified the sheriff's detectives to take over the investigation immediately if they had seen anything to indicate a criminal act was associated with the death of the victim.

Sgt. Williams and Dr. Anthony stated their job is to classify the deaths of people. The five categories are: Accidental, Homicide, Suicide, Natural and Undetermined.

Dr. Anthony stated he did not find anything during his autopsy that indicated this was anything other than an accidental drowning. The history he was given was that the boy was found submerged and unresponsive in a pool while playing with friends. Dr. Anthony stated he did not find anything during his examination of this boy's body to indicate otherwise.

Sgt. Williams stated he would like to address the allegation that Mr. Berti was on the Santa Barbara Sheriff's Council and trying to influence the Sheriff's Department investigation into this matter. Sgt. Williams stated there was no truth to this allegation. Sgt. Williams stated he did not know Mr. Berti was the owner of COAC nor that he was on the Sheriff's Council, until Mr. Gottesman told him during a meeting they had at the coroner's office after the investigation had been concluded. Sgt. Williams reiterated that Mr. Berti did not influence this investigation or its outcome in any way.



SANTA BARBARA COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF INVESTIGATION

INVESTIGATION REPORT

DATE: April 21, 2006
TO: District Attorney Thomas Sneddon
FROM: David A. Tonello, Senior Criminal Investigator
SUBJECT: People vs. Cathedral Oaks Athletic Club

Synopsis:

I was assigned to assist with the investigation of a drowning at the Cathedral Oaks Athletic Club (COAC). My specific assignment was to search for evidence of deleted video files on the Digital Video Recorder (DVR) from COAC. I found no evidence of deleted files of any type on that DVR after an extensive examination.

Report:

I was told that the DVR was currently located at the law offices of Soltman, Levitt and Flaherty in Westlake Village. I was further instructed that I would not be allowed to remove the DVR from the premises of the law office until exact, bit-for-bit duplicates were made of the original DVR hard drives.

I began the duplication process at about 11:00 AM on Friday 02/10/06 at the law offices located at 2535 Townsgate Road, Suite 307, Westlake Village. Attorney John Levitt escorted me to an office in which the DVR was located.

The DVR was an Accel Kodiak A2-16-24CNKDM / A04020455. I disassembled the DVR and found that it contained two hard drives.

The master drive was a Western Digital Caviar 120 GB, s/n WMA8C305984, P/N WD1200BB-22CAA1

The slave drive was a Maxtor Diamond Max Plus 9, 120GB ATA/133 HDD, Code YAR41VW0, s/n Y40AHC3E.

I used the SBSO Image MASSter SOLO hard drive duplicator to make the exact duplicates of the hard drives. I began with the Maxtor slave drive, copying it to a Seagate Barracuda 120GB hard drive, Model ST3120026A, p/n 9W2083-371, s/n Y4JTOWFNX. The transfer rate was about 289 bps and it became clear that the process would not be completed before the law office closed for the day. I made

Cathedral Oaks Athletic Club Investigation Report

arrangements with Attorney Levitt to secure the office and that I would return on Sunday to start the second hard drive.

Mr. Levitt was unavailable on Sunday and arrangements were made for me to return on Tuesday 02/14/06 (Monday was a holiday).

When I returned to Levitt's office on 02/14/06 the duplication process had been successfully completed and at about 9:00AM I began the duplication of the Western Digital slave drive to a Seagate Barracuda 120GB hard drive, Model ST3120026A, p/n 9W2083-371, s/n Y4JTOWF47. When I returned at 4:20 PM the drive had been successfully duplicated.

I left the duplicate hard drives with Mr. Levitt and took the original hard drives, the DVR and the keyboard back to the Santa Maria office of the District Attorney.

I made two more duplicate copies of both drives with the Imagemaster. I retained one set and the second set was provided to the law office of Barry Capello.

I then acquired an Encase image of the Western Digital master drive and the Maxtor slave drive utilizing Encase Version 4.17b and the Fastblock hardware writeblocker.

After the Encase images were made I installed my two duplicate hard drives into the DVR and attempted to view the videos unsuccessfully. The computer kept freezing while attempting to load the Accel program. I contacted the vendor for the DVR for assistance and I tried several different potential solutions. Eventually I was able to get the DVR working.

There were video files for 08/03/05 through 08/26/05; consistent with the amount of storage that Accel Security had advised would be retained on the DVR at any given time. There were files for five different cameras.

The five cameras had views of the following:

- The adult pool
- The small pool
- The child care area
- The lobby
- A view of fencing and pipes

I watched the videos during the time period of the drowning but was unable to see anything of evidentiary value. I contacted Investigator Kimes and arrangements were made for him to come watch the videos the next day. I did not turn off the DVR due to the possibility that it might not start up correctly again.

After watching the videos, Investigator Kimes said that they were the same as those that had been provided to him on DVD but of somewhat better quality. Refer to Investigator Kimes' report regarding the content of the videos.

Cathedral Oaks Athletic Club Investigation Report

Investigator Kimes said that there did appear to be a camera at the athletic club for which there was no video file on the DVR. He later told me that the camera in question was not yet installed at the time of the drowning.

On Friday 03/17/06 I turned off the DVR and removed the hard drives. It was then that I discovered that I had mistakenly placed the original Western Digital master drive into the DVR but the slave drive was the duplicate and not the original. I made another Imagemaster copy of the Western Digital master drive. When it was completed I attempted to start the DVR with that master drive and the slave copy. I experienced the same problems as I did with the first copy.

I partially reassembled the DVR with the duplicate hard drives and placed it in the evidence room. I placed each of the original hard drives in protective packaging and placed them in the evidence room as well.

I then began examining the Encase images of the original hard drives utilizing Encase Version V. I used the Encase Recover Folders function to search for deleted files and folders on each of the drive partitions. None were found at all.

I also used the Timeline function to search for deleted files. None were found utilizing that method either.

I also used the timeline function to search for accessed files, looking for files that may have been access and altered. I did not find any files that appeared to have been altered.

The timeline function indicated hat the DVR was taken off line on 08/26/05 at about 12:31PM and that is when the video files stop being recorded. .

The timeline function shows that the DVR was restarted on several subsequent occasions with the last event being on 01/30/06; however I found no evidence of files being deleted or overwritten during any of those events.

The files with .box and .bix extensions are the actual video files. The oldest video file located was 00000369.bix written at 07:36:19PM on 08/03/05. The video files continue numerically up to 00000402 written at 03:53:30AM on 08/04/05. The next .box or .bix file is 00000001.bix written at 04:19:29AM on 08/04/05. The last video file written on 08/26/05 was 00000360.box at 12:31:02PM.

I checked for missing .bix or .box files from 12 noon until 5PM but found none missing. I did note that some of those files had last been accessed at a date and time after the files were written, indicating that they were viewed. 00000018 through 00000026 were last accessed at about 12:53PM and 00000027 and 00000028 were last accessed at about 3:23PM on that date. 00000029 through 00000031 were last accessed on 08/29/05 at about 10:12A; 00000032 was last accessed on 08/19/05 at about 10:36am and 00000033 through 00000035 were last accessed at about 10:53AM.

I used GREP expressions to search in slack and/or unallocated space for any .bin or .box files (the type of files used to record the video). Only one such file was found and it was located in the pagefile.sys of the C drive. A pagefile.sys file is a file used by the Windows operating system to temporarily hold

Cathedral Oaks Athletic Club Investigation Report

data that is being swapped into and out of memory. This file was written and last accessed on 08/29/2005 at 9:36:31AM when the DVR computer was started up. It has no evidentiary value to the case.

I repeated each of the search methods at least twice to insure that nothing had been missed on earlier searches. Although I spent many hours utilizing different methods I found no evidence that any files had been deleted or altered.

Following will be documentation of the examination results:

COAC DVR Computer Hard Drive Encase Information

Device: Western Digital Master Drive

Name: WD Master
Actual Date: 02/24/06 01:41:22PM
Target Date: 02/24/06 01:41:22PM
File Path: H:\COAC 2005-336-002\Western Digital\WDmaster.E01
Case Number: COAC 2005-336-002
Evidence Number: WD Master
Examiner Name: Tonello
Drive Type: Fixed
File Integrity: Completely Verified, 0 Errors
Acquisition Hash: b3d98f269f7c52e9d8a96bd0e50a58fe
Verify Hash: b3d98f269f7c52e9d8a96bd0e50a58fe
EnCase Version: 4.17b
System Version: Windows 2000
Fastblocced: •
Is Physical: •
Compression: None
Total Size: 120,034,123,776 bytes (111.8GB)
Total Sectors: 234,441,648

Partitions

Code	Type	Start Sector	Total Sectors	Size
07	NTFS	0	8,209,215	3.9GB
0B	FAT32	8,209,215	8,209,215	3.9GB
07	NTFS	16,418,430	54,283,635	25.9GB
07	NTFS	70,702,065	54,283,635	25.9GB
07	NTFS	124,985,700	54,267,570	25.9GB

Cathedral Oaks Athletic Club Investigation Report

07	NTFS	179,253,270	55,183,275	26.3GB
----	------	-------------	------------	--------

Device: Maxtor Slave Drive

Name: Maxtor Slave
Actual Date: 03/22/06 06:51:10PM
Target Date: 03/22/06 06:51:10PM
File Path: H:\COAC 2005-336-002\Maxtor Slave\Maxtor Slave.E01
Case Number: COAC 2005-336-002
Evidence Number: Maxtor Slave
Examiner Name: Tonello
Drive Type: Fixed
File Integrity: Completely Verified, 1 Errors
Acquisition Hash: 1039eae3daa58cfb65de5548078390b7
Verify Hash: a4896526b10227695f7d3ac5a256d309
EnCase Version: 4.17b
System Version: Windows 2000
Fastblocced: •
Is Physical: •
CRC Errors: 1
Compression: None
CRC Errors

Start	Count
6,183,61664	

Total Size: 122,942,324,736 bytes (114.5GB)
Total Sectors: 240,121,728

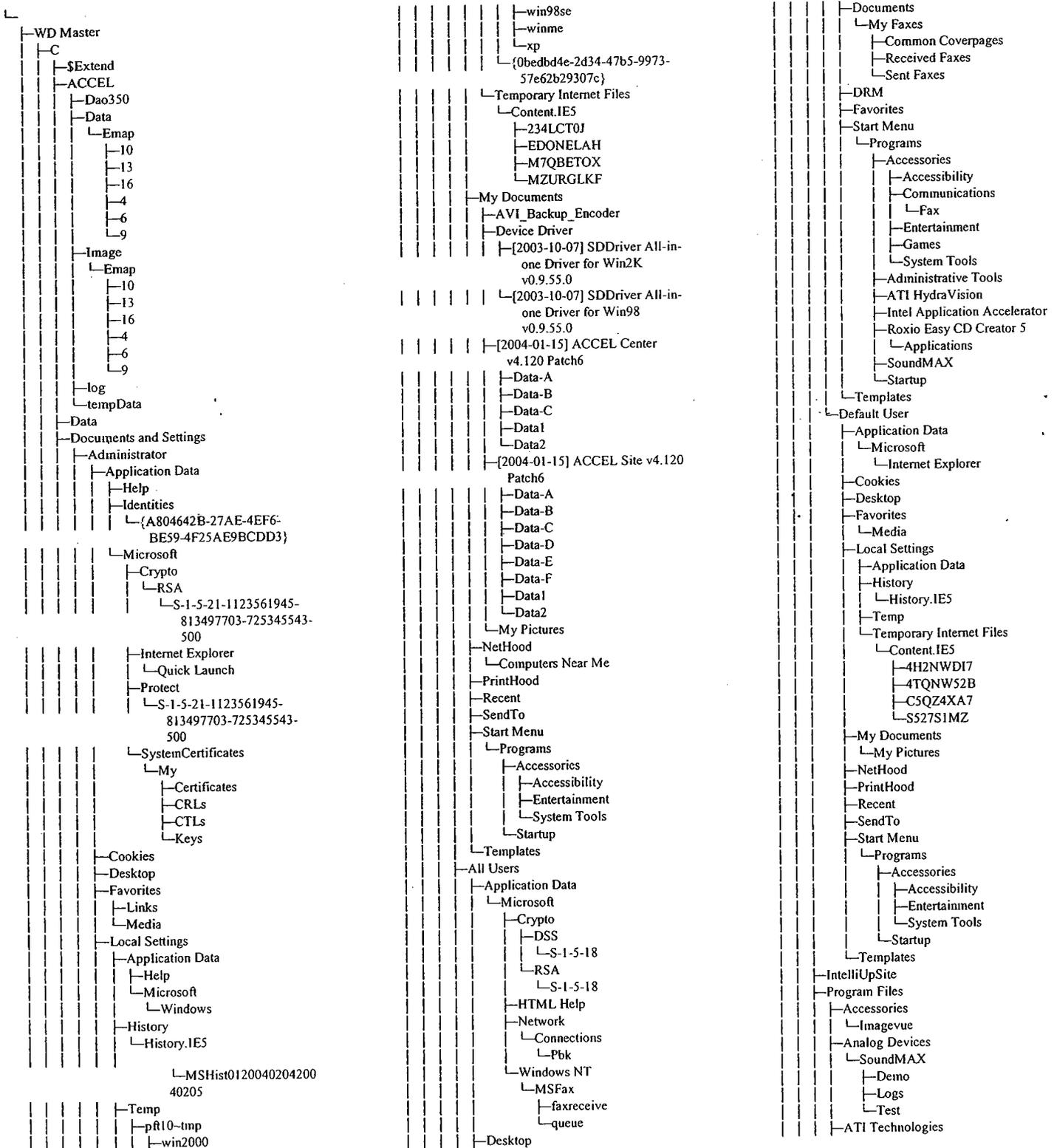
Partitions

Code	Type	Start Sector	Total Sectors	Size
07	NTFS	16,065	60,002,775	28.6GB
07	NTFS	60,018,840	60,002,775	28.6GB
07	NTFS	120,021,615	60,002,775	28.6GB
07	NTFS	180,024,390	60,083,100	28.6GB

The integrity of the following sector groups could not be verified
6183616-6183679

Cathedral Oaks Athletic Club Investigation Report

COAC DVR Computer File Structure

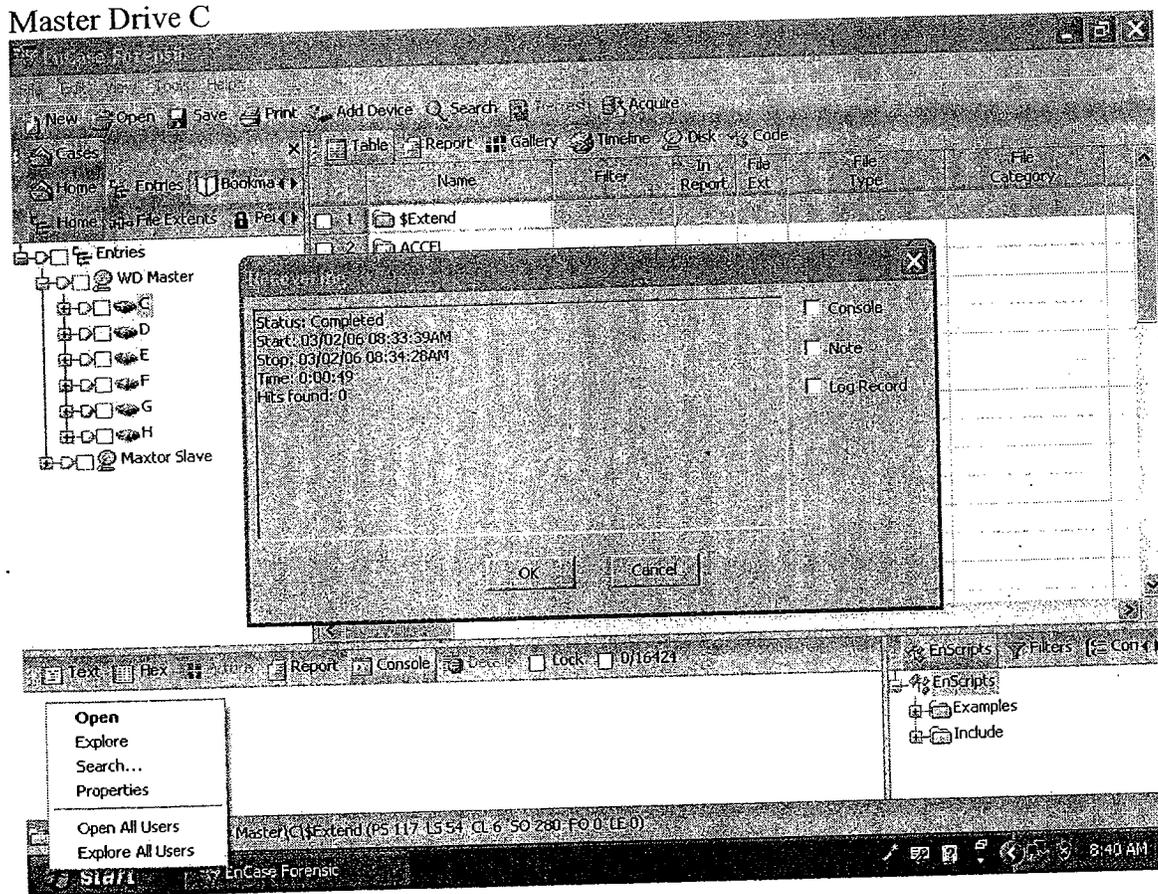


Cathedral Oaks Athletic Club Investigation Report

<ul style="list-style-type: none"> ATI Control Panel ATI HydraVision UninstallAll Common Files <ul style="list-style-type: none"> Adaptec Shared <ul style="list-style-type: none"> CDEngine CreateCD <ul style="list-style-type: none"> Images CreatorAPI Migration Support <ul style="list-style-type: none"> Images System Upgrade <ul style="list-style-type: none"> imgs InstallShield <ul style="list-style-type: none"> engine <ul style="list-style-type: none"> 6 <ul style="list-style-type: none"> Intel 32 IScript Microsoft Shared <ul style="list-style-type: none"> DAO MSInfo SpeechEngines <ul style="list-style-type: none"> TTS Stationery TextConv Triedit VGX Web Folders web server extensions <ul style="list-style-type: none"> 40 <ul style="list-style-type: none"> admcgi <ul style="list-style-type: none"> scripts admisapi <ul style="list-style-type: none"> scripts bin <ul style="list-style-type: none"> 1033 bots <ul style="list-style-type: none"> vinavbar servsupp <ul style="list-style-type: none"> vti_bin <ul style="list-style-type: none"> vti_adm vti_aut isapi <ul style="list-style-type: none"> vti_adm vti_aut ODBC <ul style="list-style-type: none"> Data Sources Services System <ul style="list-style-type: none"> ado msadc Ole DB ComPlus Applications InstallShield Installation Information <ul style="list-style-type: none"> {0BEDBD4E-2D34-47B5-9973-57E62B29307C} {3EA9D975-BFDC-4E8E-B88B-0446FBC8CA66} {43801800-CFEE-11D2-A41B-006097B55AD3} {7C21EEE0-E6FD-11D4-BD19-00D0B702AEC0} {9984DF60-1C5B-11D3-ACA1-908A4FC10801} {9B94BE6F-7CA3-4C40-A266-62667FF746CC} {FOA37341-D692-11D4-A984-009027EC0A9C} Intel <ul style="list-style-type: none"> InfInst Intel Application Accelerator <ul style="list-style-type: none"> Driver Internet Explorer <ul style="list-style-type: none"> Connection Wizard PLUGINS SIGNUP 	<ul style="list-style-type: none"> microsoft frontpage <ul style="list-style-type: none"> version3.0 <ul style="list-style-type: none"> bin NetMeeting Outlook Express Roxio <ul style="list-style-type: none"> Easy CD Creator 5 <ul style="list-style-type: none"> DirectCD <ul style="list-style-type: none"> MRW Easy CD Creator <ul style="list-style-type: none"> CreatorImages Windows Media Player Windows NT <ul style="list-style-type: none"> Accessories <ul style="list-style-type: none"> ImageVue Pinball RECYCLER <ul style="list-style-type: none"> S-1-5-21-1123561945-813497703-725345543-500 System Volume Information WINNT <ul style="list-style-type: none"> addins AppPatch Config Connection Wizard CSC <ul style="list-style-type: none"> d1 d2 d3 d4 d5 d6 d7 d8 Cursors Debug <ul style="list-style-type: none"> UserMode Downloaded Program Files Driver Cache <ul style="list-style-type: none"> 386 Fonts Help ime <ul style="list-style-type: none"> imejp inf Installer <ul style="list-style-type: none"> {609F7AC8-C510-11D4-A788-009027ABASD0} {6F716D8C-398F-11D3-85E1-005004838609} java <ul style="list-style-type: none"> classes Packages <ul style="list-style-type: none"> Data trustlib <ul style="list-style-type: none"> com <ul style="list-style-type: none"> ms <ul style="list-style-type: none"> mtx Media msagent <ul style="list-style-type: none"> chars intl msapps <ul style="list-style-type: none"> msinfo mww32 <ul style="list-style-type: none"> manager modem Offline Web Pages RegisteredPackages <ul style="list-style-type: none"> {44BBA855-CC51-11CF-AAFA-00AA00B6015C} {AA936DF4-2B08-4B1F-B071-72192E287704} Registration repair security Database 	<ul style="list-style-type: none"> logs templates Speech system system32 <ul style="list-style-type: none"> CatRoot <ul style="list-style-type: none"> {F750E6C3-38EE-11D1-85E5-00C04FC295EE} Com config dhcp DirectX <ul style="list-style-type: none"> Dinput dllcache drivers <ul style="list-style-type: none"> disdn etc DTCLLog export GroupPolicy <ul style="list-style-type: none"> Machine User ias inetsrv Microsoft <ul style="list-style-type: none"> Crypto <ul style="list-style-type: none"> DSS <ul style="list-style-type: none"> S-1-5-18 RSA <ul style="list-style-type: none"> S-1-5-18 mui <ul style="list-style-type: none"> 0009 dispspec npp NunsData os2 <ul style="list-style-type: none"> dll ras rocket rpeproxy Setup ShellExt spool <ul style="list-style-type: none"> drivers <ul style="list-style-type: none"> color w32x86 <ul style="list-style-type: none"> 3 PRINTERS <ul style="list-style-type: none"> prtprocs <ul style="list-style-type: none"> w32x86 wbem <ul style="list-style-type: none"> Logs mof <ul style="list-style-type: none"> bad good Repository wins Tasks Temp <ul style="list-style-type: none"> apache <ul style="list-style-type: none"> bin cgi-bin conf htdocs <ul style="list-style-type: none"> images img icons <ul style="list-style-type: none"> small include <ul style="list-style-type: none"> regex sdbm xml lib libexec logs modules WMFA
---	--	--

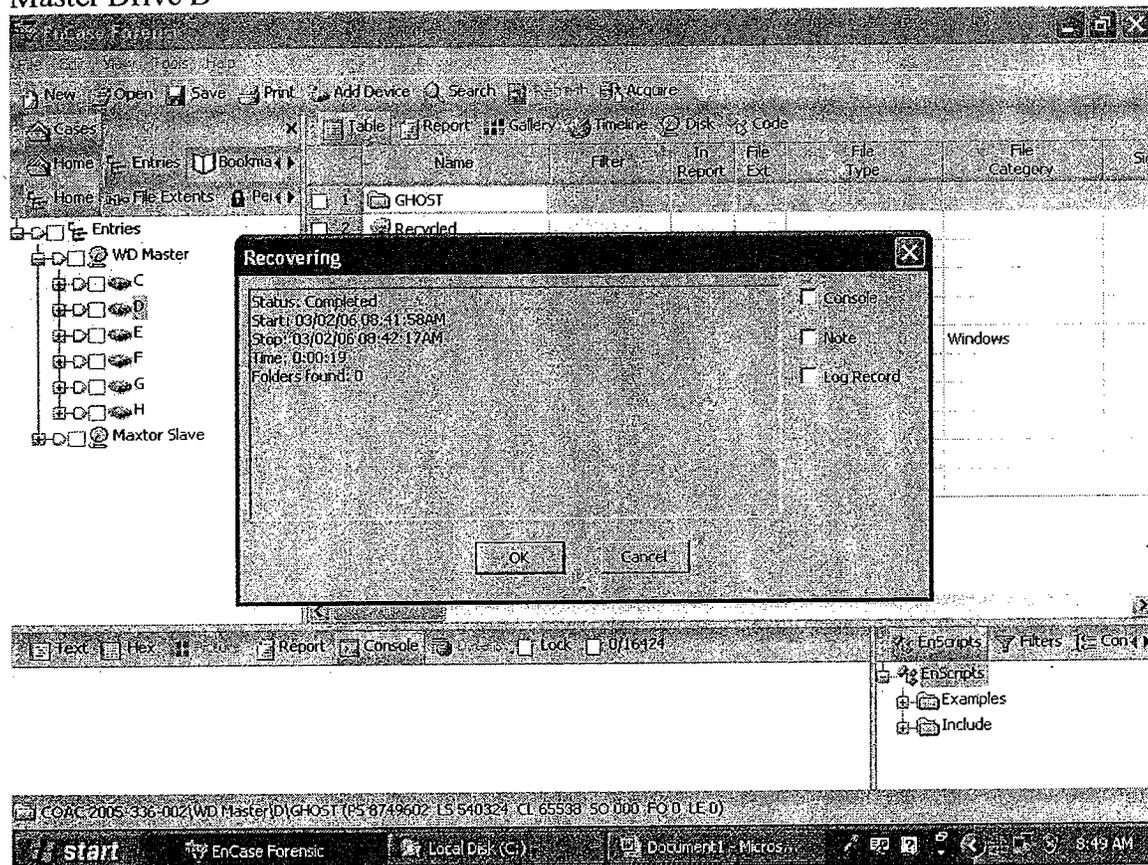
Cathedral Oaks Athletic Club Investigation Report

COAC Deleted Folders Searches



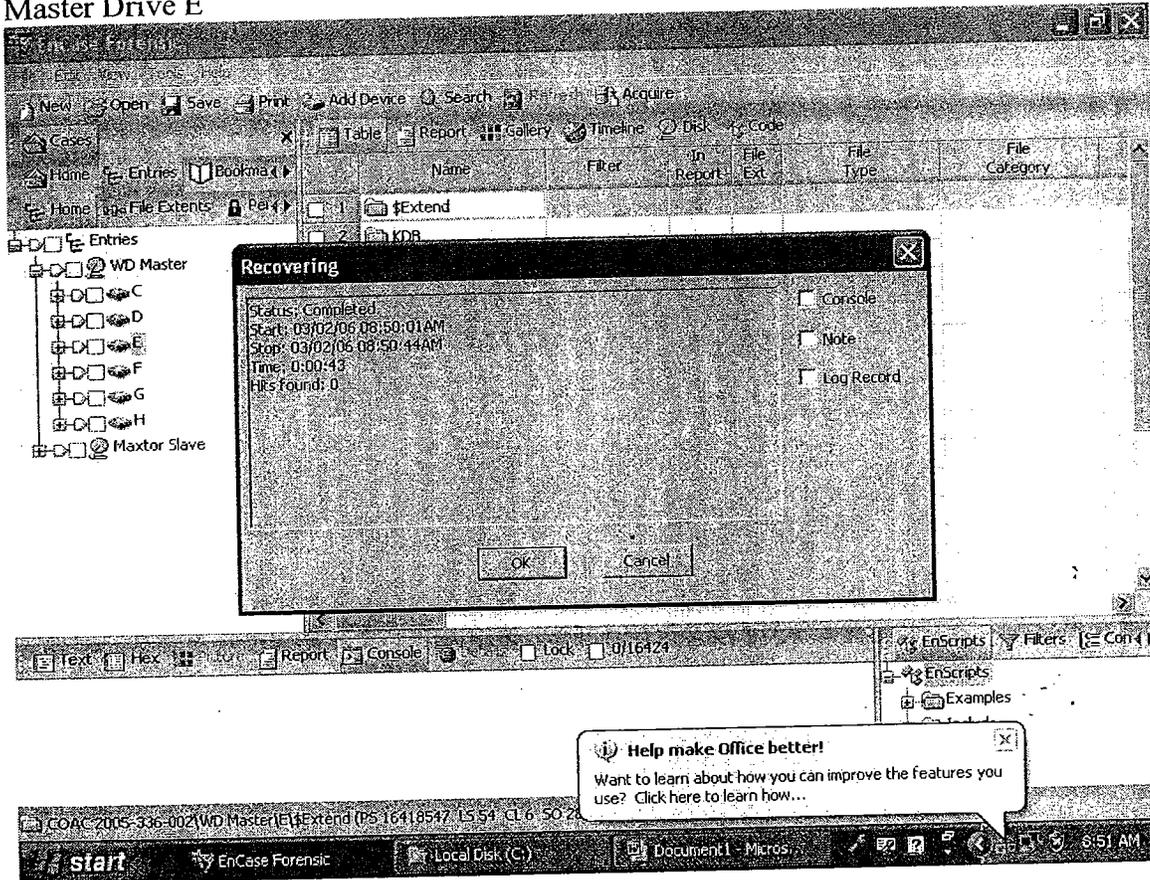
Cathedral Oaks Athletic Club Investigation Report

Master Drive D



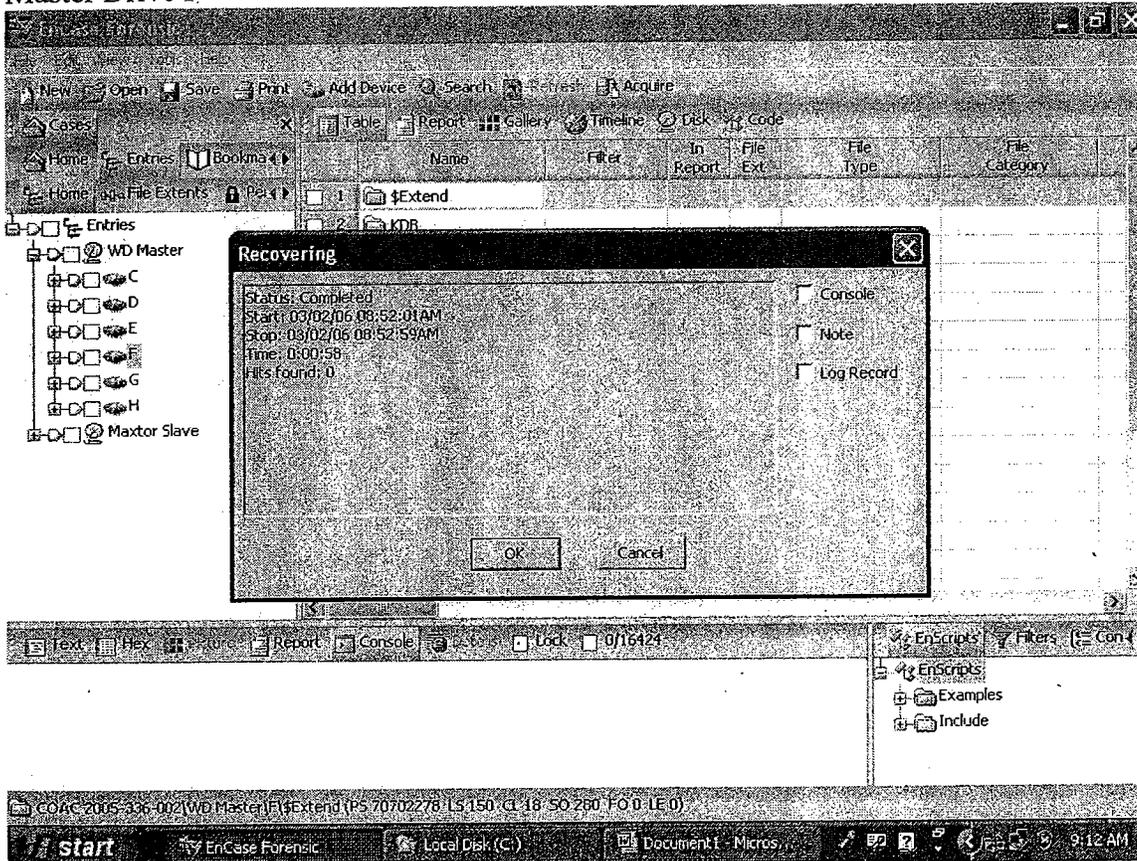
Cathedral Oaks Athletic Club Investigation Report

Master Drive E



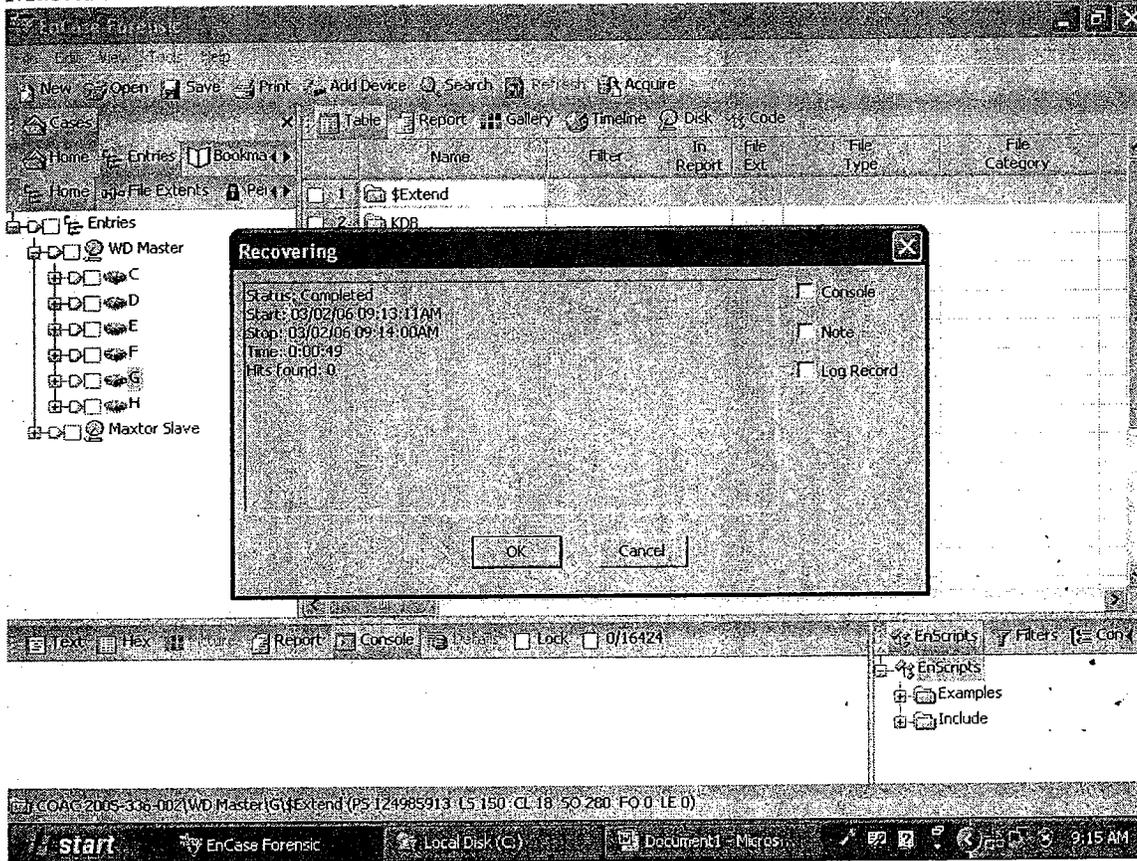
Cathedral Oaks Athletic Club Investigation Report

Master Drive F



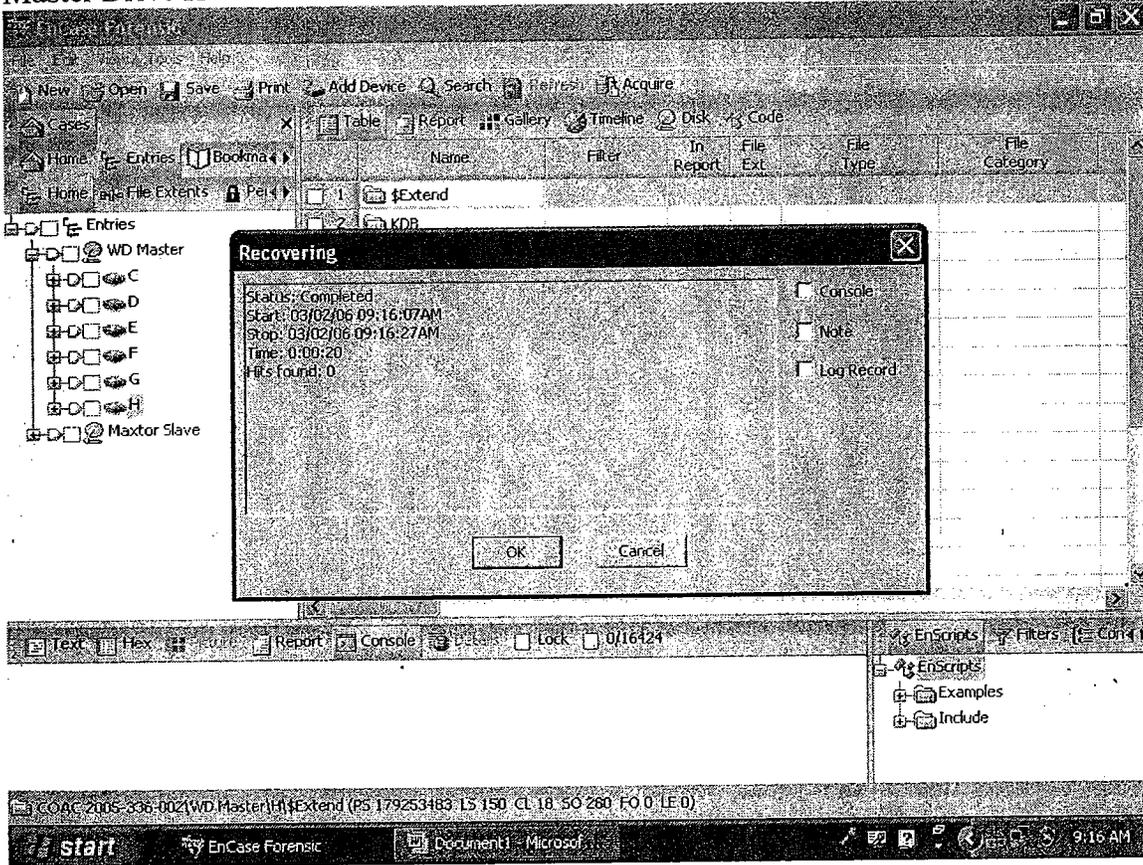
Cathedral Oaks Athletic Club Investigation Report

Master Drive G



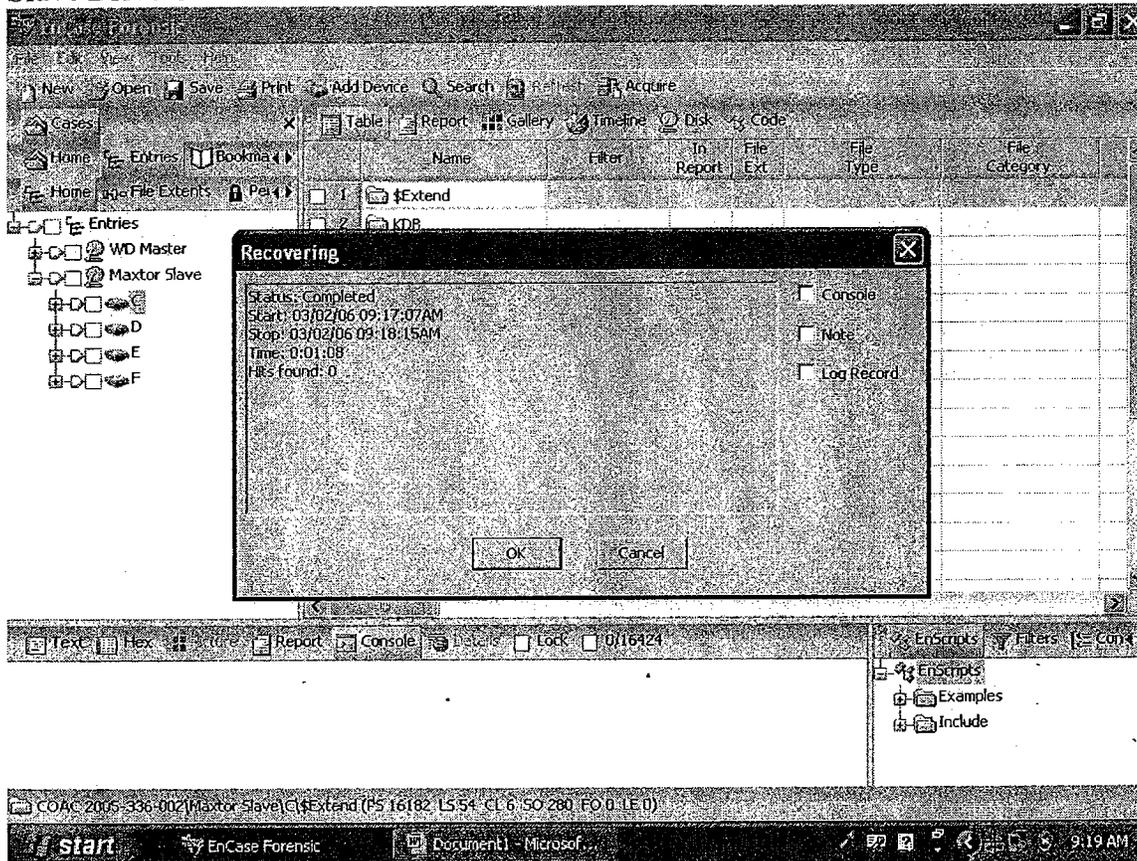
Cathedral Oaks Athletic Club Investigation Report

Master Drive H



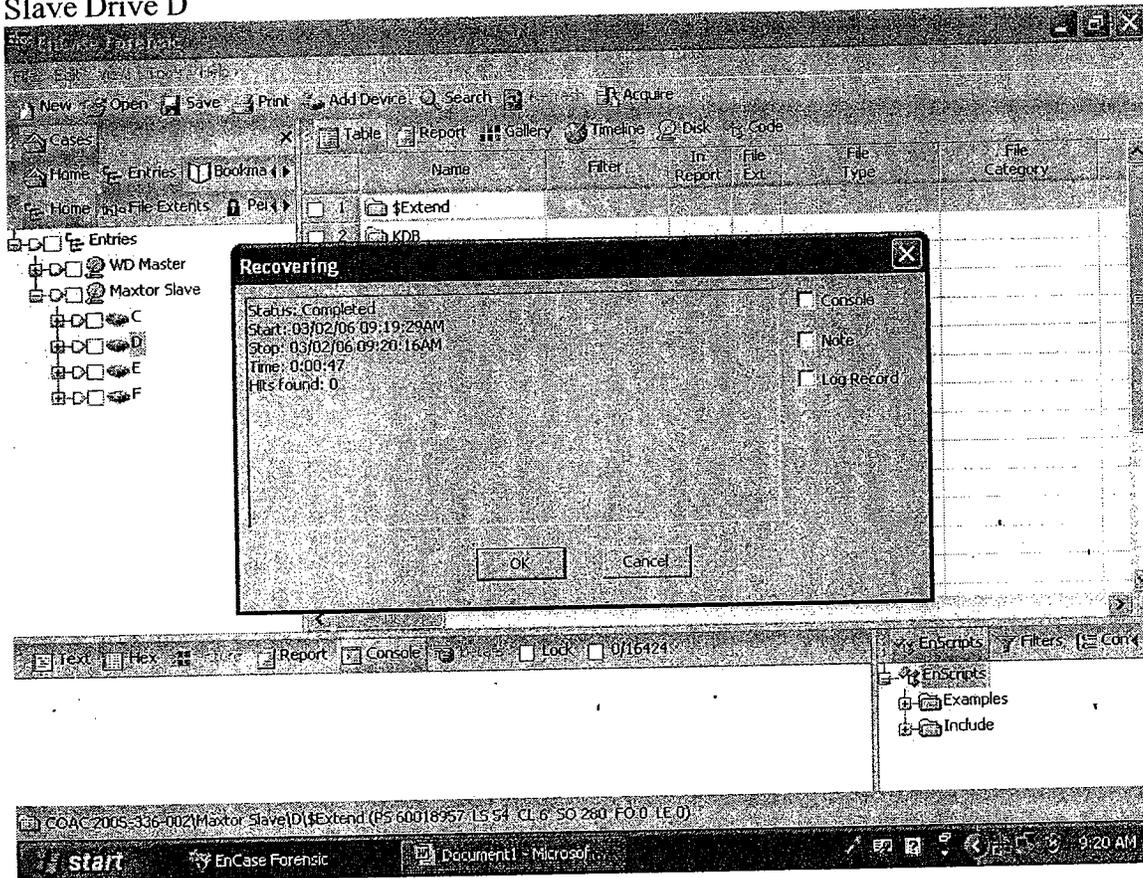
Cathedral Oaks Athletic Club Investigation Report

Slave Drive C



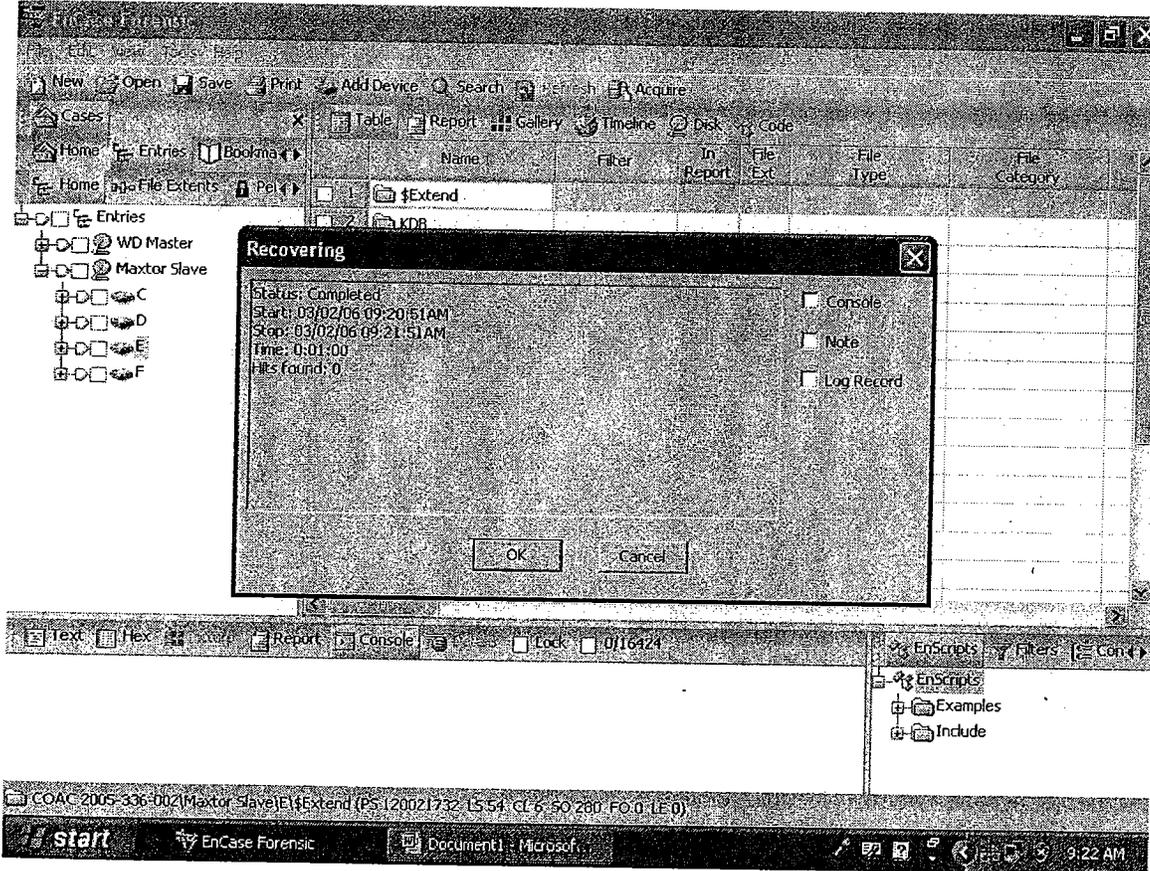
Cathedral Oaks Athletic Club Investigation Report

Slave Drive D



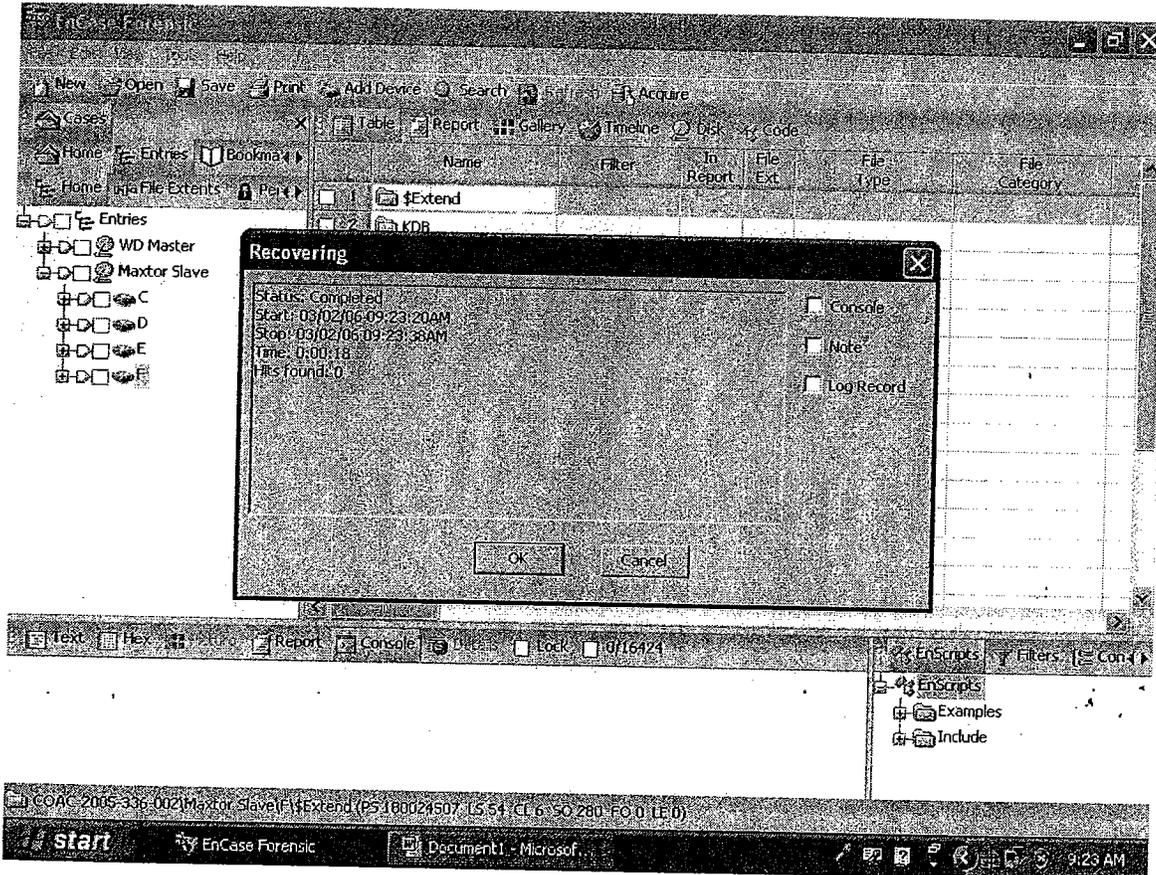
Cathedral Oaks Athletic Club Investigation Report

Slave Drive E



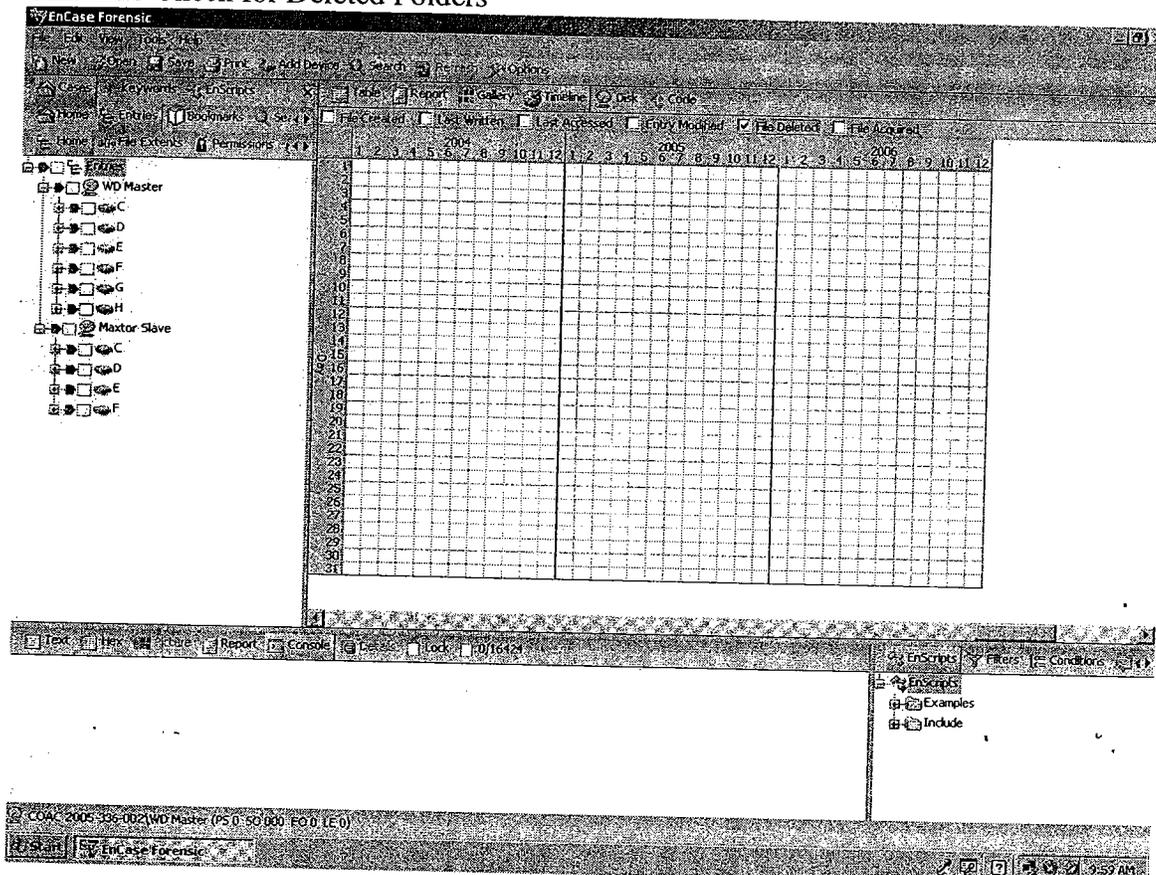
Cathedral Oaks Athletic Club Investigation Report

Slave Drive F



Cathedral Oaks Athletic Club Investigation Report

Timeline Check for Deleted Folders



End of Tonello report.

On 3/21/2005 I spoke with Stefan Ornelaz by telephone and received the following e-mail with attached photos of the cameras and whether they were operational on the day of drowning.

From: ornelaz stefan [coacmaintenance@yahoo.com]
Sent: Tuesday, March 21, 2006 12:28 PM
To: pkimes@co.santa.barbaraca.us
Subject: Re:COAC Photos

Attachments: 1534218594-IMG_0009.JPG; 2294077018-IMG_0010.JPG;
3093683048-IMG_0011.JPG; 1097052375-IMG_0012.JPG; 12054754-IMG_0013.JPG;
1337762594-IMG_0015.JPG; 4249936095-IMG_0016.JPG

Any further Questions Mr.Kimes feel free to contact me here at the club or my cell phone.My number is 895-7303.

Stefan Ornelaz

Image#0009-Maintenance area \ No camera \ Housing only
²⁵***(Not on diagram)***

Image#10-Childcare \ No camera \ Housing only
(Camera 5 on diagram)

Image#11-Same camera as #10 Different angle \ No camera \ Housing only
(Camera 5 on diagram)

Image#12-Childcare trellis \Operational now and day of accident
(Camera 4 on diagram)

Image#13-Next to Childcare building \Operational now and day of accident
(Captures Jacuzzi and waterpipes)
(Camera 3 on diagram)

Image#15-Corner camera that captured accident
(Camera 2 on diagram)

Image#16-Attached to small pool trellis \No camera \Housing only
(Camera 1 on diagram)

Maintenance Director
Stefan Ornelaz
5800 Cathedral Oaks road
Goleta, ca.93117
964-7762

²⁵ *I added the bolded italics text to this e-mail.*

BELLETTI, Lorrie (Mother of Amber)

BELLETTI, Amber DOB: 4/6/2000 Grade = Pre-K 5 years old
(Camper)
123 Lassen Drive
SB, CA 93111
(H) 403-0943

Ms. Lorrie Belletti was contacted by telephone on 1/31/2006.

DATE: 1/31/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

I introduced myself and informed Lorrie Belletti that I was conducting an investigation into the drowning at COAC. Ms. Belletti confirmed that her daughter Amber had attended the COAC Activity Club on the day of the drowning. I told Ms. Belletti that I was contacting the parents to find out what the kids might have told their parents at the time of the drowning.

I asked Ms. Belletti what she recalled Amber saying about the events on the day of the drowning. Ms. Belletti first stated Amber described what she saw on the deck after Yoni was pulled out of the water. Amber said that they kept pushing on Yoni and he didn't breathe. The next day Amber asked if they could go to the graveyard to see her friend. Ms. Belletti said Amber was young, 5 years old, and that needed to be considered.

Amber had attended the Activity Camp most of the summer since June.

Ms. Belletti stated she did not know the Gottesman family.

Ms. Belletti stated Amber was with one of the counselors at the time. Ms. Belletti described Amber as a very outgoing child who clings to older children. She thought Amber was with a female counselor.²⁶

Ms. Belletti has been a member of the COAC "off and on" her whole life. Ms. Belletti confirmed that they had gone to the pool lots of times over the years.

I asked Ms. Belletti if she had ever seen anything at the pool that would be alarmed her. She could not recall seeing anything that was unsafe. Ms. Belletti said it was hard for her to get Amber to go by the rules because they (the staff) are constantly on the kids. Ms. Belletti stated she was a swimmer and most of her family swim and they grew up swimming there.

Ms. Belletti described the lifeguards as being "very hard on the kids". The drowning was a shock to her. Ms. Belletti stated COAC was a place that she allowed Amber to go into the pool. Ms. Belletti stated Amber goes to the "Y" after school and she does not allow her in the pool at the "Y" because she is not comfortable with it there. Ms. Belletti stated she is not comfortable with day camps that go to the beach. She put Amber specifically in COAC Activity Camp because she felt she was safe there. The lifeguards are on the kids about not running, about any hanging on the lane lines, etc. Ms. Belletti stated what happened was unbelievable to her. Ms. Belletti stated she would not let Amber go into a pool, or water, without being with her except at COAC.

²⁶ After my interview of Lorrie Belletti I found that Counselor Sam Shipley had told me that Amber was one of the campers with him at the time of the drowning.

Ms. Belletti had never seen the way the camp kids were supervised during the free time period. Ms. Belletti stated she would check with her family members to see if any of them had ever been at the pool when the camp kids were there and have them contact me.

Amber had attended the camp only during the summer of 2005.

Ms. Belletti stated she never talked with COAC staff about having a license because there was a day care at the club and she had used that in the past. She didn't think to ask about a license. Ms. Belletti compared it to asking the "Y" if they had a license.

Ms. Belletti did not know how the campers were supervised in the pool. Ms. Belletti had signed Amber up for swim lessons which were separate from the free swim period. It was her impression that whenever the campers went anywhere else they were assigned a counselor, but she was not aware if that was the case in the pool.

Ms. Belletti stated she assumed that there were lifeguards as well as the counselors in the pool at the time of the drowning.

Amber had told her she was in the shallow end of the swimming pool. She did not know if Amber had passed a swimming test during the summer of 2005 sessions of Activity Camp. Ms. Belletti thought Amber would have passed the swimming test and could go into the deeper end of the pool because they were teaching her strokes including the butterfly. She had taken Amber into the pool "practically since she was born". Amber swims in the ocean and has surfed with Ms. Belletti.

Ms. Belletti reiterated that Amber had said "she was messing around with one of the counselors." Ms. Belletti started that Amber did not say specifically if they were in the pool, or if they were throwing things to her in the pool.

Ms. Belletti stated most of the things that Amber talked about had to do with the CPR and aid to Yoni after he was pulled out of the water.

Amber did tell Ms. Belletti that Yoni could not swim. Ms. Belletti expressed that she did not know how Amber came to that conclusion. Ms. Belletti did not know if Amber was saying this because Yoni had drowned, or if Amber had actually seen Yoni swim.

Ms. Belletti saw 4 or 5 counselors there at Activity Camp. Ms. Belletti did not recognize that any counselors were younger. She only saw one male counselor. Amber connected best with the blond haired female counselor named "Jennie" (Darling). Ms. Belletti thought that maybe this was the counselor Amber was with at the time of the drowning.

Ms. Belletti never had any problems with the way the Activity Camp was run. Ms. Belletti expressed the opinion that the staff had more problems with Amber because she was one of the "wild ones". She stated the staff was really good with Amber and she had not seen any faults with the staff.

BRADBURY, Mark (Father of Megan)

BRADBURY, Megan DOB: Unknown Grade = Unknown 9 years old
(Camper)

31 Calaveras Ave.

Goleta, CA 93117

(H) 685-2700 © 895-2877

Mr. Mark Bradbury was contacted by telephone on 1/4/2006.

DATE: 1/4/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Mark Bradbury confirmed that he was the father of Megan Bradbury. He confirmed that Megan had attended the Activity Camp at COAC several weeks during the summer. He, at first, stated Megan was not at the Activity Camp on the day of the drowning, but was at a friend's house. I pointed out that she was signed in on the roster for the day. He then stated Megan had gone to the morning session, but he had picked her up around noon. Mr. Bradbury stated he took her out to lunch and then over to the friend's house. He knew she was not at the camp during the time when the drowning had occurred.

Mr. Bradbury stated Megan seemed to enjoy going there to the camps. Mr. Bradbury stated Megan had gone the year before.

Mr. Bradbury stated Megan had never mentioned to him about seeing anything that she recognized as being unsafe while at the COAC Activity Camp.

BURR, Jennifer (Mother of Hunter)

BURR, Neil (Father of Hunter)

(W) 368-8377

BURR, Hunter DOB: 8/10/1998 Grade = 2 7 years old
(Camper)

2524 Castillo St. #C

SB, CA 93103

(C) 351-2271 (H) 689-2479

Ms. Jennifer Burr and Mr. Neil Burr were contacted by telephone on 1/5/2006.

DATE: 1/5/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Jennifer Burr answered the telephone when I called the family home. Ms. Burr confirmed that she was the mother of Hunter Burr. She confirmed that Hunter was in the pool on the day of the drowning.

Ms. Burr stated Hunter had spoken very little about what happened on the day of the drowning. Hunter had told her that someone had drowned. Ms. Burr stated he was swimming in the deep end of the pool. Hunter did not know Yoni. She did not press Hunter for information because she did not want to upset him emotionally. She just listened to him if he mentioned something about it. She asked Hunter at one point if he saw anything and he replied "Not really".

Ms. Burr confirmed that Hunter had gone to at least two weeks of camp. The first week as indicated by the COAC Registration Form was 6/27-7/1/2005 and the week of the accident (8/15-8/19).

Ms. Burr stated she used to be a member of the club when she was young, back in the 1970's. She no longer belonged to COAC. She did not know any of the people who worked there now.

Ms. Burr stated Hunter had gone to the Activity Camp this summer (2005) and also had attended the Activity Camp during the summer of 2004. Hunter had never gone to the winter Activity Camp.

Ms. Burr stated she did not know the Gottesman family.

Ms. Burr had never talked with anyone at COAC about any licensing for the Activity Camp. She did not think to ask about a license because this was one of the nicer clubs and she just would not think about checking into a license.

Ms. Burr was not aware that Hunter had ever been assigned a counselor.

Ms. Burr stated she did not go to the Activity Camp during this summer sessions. She was working and could not even pick Hunter up much. She explained that her husband, mother-in-law or father-in-law were picking Hunter up.

Ms. Burr stated her husband, Neil Burr, had expressed some concern to her about the way the counselors were lax at the pool and that I should speak with him about that. Ms. Burr stated she did not recall if this was this past summer (2005) or the summer prior (2004).

Ms. Burr referred me to talk with the Pelonis family. Christian Pelonis was the same age as Hunter.

Ms. Burr stated Hunter did not tell her anything about meeting Yoni nor seeing him in the pool.

Ms. Burr had not seen anything out of the ordinary during a visit to the pool with the Pelonis family, nor during the few times she had been there with Hunter.

Ms. Burr did not have any knowledge about how the camp was managed with the counselors.

On the day of drowning, she was met by security at the front gate who asked her what she was doing there. Ms. Burr told them that she was there to pick up her son. She was then told "there had been an unfortunate accident".

Ms. Burr stated Hunter told her what had happened later.

Neil Burr was contacted by telephone next. Neil Burr confirmed that he knew I was an investigator with the District Attorney's Office. I told him that Ms. Burr had told me that he had mentioned seeing something that he was concerned about at the COAC pool.

Mr. Burr stated it might be more about being a paranoid parent and looking at situations more intensely than the counselors do.

Mr. Burr stated one afternoon when he picked up Hunter he saw that the counselors looked exhausted. Mr. Burr stated if Hunter was not a good swimmer he probably would have addressed it at the time. Mr. Burr admitted that this was speculation on his part and he could not tell me specifically what he saw that made him be so concerned.

Mr. Burr stated this was not lack of attention. He was actually impressed with "how in tune the counselors were" with the kids walking them through the parking lot. Mr. Burr stated they were making sure the kids were sticking together and staying to one side of the parking lot. Mr. Burr stated that made him feel more comfortable.

Mr. Burr stated he considered himself to be a reactionary type person. Mr. Burr stated the time when he saw the counselors who seemed to be tired was during the summer of 2004.

Mr. Burr estimated that he had been to the pool twice at the end of the free swim session and saw Hunter swimming. Mr. Burr could not say if any of these times were during this past summer. Mr. Burr stated he worked out of town, had a hectic schedule and could not be sure of when those times he visited the pool occurred.

Mr. Burr stated they brought Hunter back to the Activity Camp the day after the drowning. He said that showed that he and his wife were not concerned about Hunter's safety, or the care that he received there, or they would not have brought him back.

COHEN, Elaine (Mother of Seth)

COHEN, Seth DOB: 6/23/2000 Grade = Pre-K 5 years old
(Camper and friend of Yoni)
935 Weldon Rd
SB, CA 93109
(Parents are COHEN, Elaine and Bill)
(H) 965-4336
(Cell) 689-0708 Mom
(Cell) 689-0709 Dad

Ms. Elaine Cohen called back at my request.

DATE: 12/13/2005

LOCATION OF INTERVIEW: Telephonic (Tape available)

Elaine Cohen stated Seth and Yoni were pre-school students together. Her family knew the Gottesman family through school and they participated in activities at the same temple. Ms. Cohen estimated that they knew each other for approximately 3 years. Seth was approximately 2½ years old when they first met the Gottesman family.

Ms. Cohen stated she had been a member of an athletic club in the past, but never had been a member at Cathedral Oaks. She did not know any employees of COAC personally. She knew Julie Main by sight, but Ms. Main would not know her if they saw each other.

Ms. Cohen confirmed that Seth had been at the Jewish camp with Yoni and that this was their first day at the COAC Activity Camp.

Ms. Cohen did not question anyone about the licensing of the camp.

Ms. Cohen had heard from a lot of different mothers "what a great camp it was". Ms. Cohen stated that she and the mothers of Gavin and Yoni wanted the boys to go to camp for another week. Ms. Cohen stated they had not been impressed at the "Y". She went to COAC the Friday before and talked with them about bringing Seth. She was told to just bring him on Monday and they could sign him up.

She did not think about asking anyone about whether the club had a license for child care.

There was a "girl in charge" that she spoke with, but she did not know how the camp was organized. Ms. Cohen had been told that each kid would be given a swimming test to determine if they would be allowed to swim. She also paid for Seth to have a swim lesson and thought Gavin's mother also paid for the swim lesson. Ms. Cohen stated it was her understanding they had the swim lesson at 11:00 o'clock on that day. She did not know if Yoni had signed up for the swim lesson. She thought that Gavin and Yoni swam well, but she always worried about Seth.

Ms. Cohen stated she went to COAC to pick up Seth and Gavin. She was met up front and told the club was closed, but she could go pick up her children. There was a counselor outside the Activity Camp area who met her. Ms. Cohen asked if everything was okay and the counselor said everything was fine. Ms. Cohen told her who she was picking up. Seth and Gavin came out of the trailer and told Ms. Cohen that "Yoni was killed". Ms. Cohen offered to call Yoni's parents, but was told that was not necessary. Ms. Cohen stated she then called her husband and Gavin's parents.

Ms. Cohen stated Gavin was more articulate than Seth. They were saying that Yoni was killed, Yoni was killed in the pool. Ms. Cohen stated she has heard varying stories and she still does not understand what the boys actually saw. Gavin told her that they were in the locker room when it happened, or they were taken into the locker room after it happened. Ms. Cohen stated she never really got a good explanation for what happened, or what they had seen. Seth told her that he was playing with Gavin in the pool just before Yoni was found.

Ms. Cohen has heard many versions of what happened and has talked with Oded Gottesman about what happened and he told her what the tape showed. She expressed concern that she did not want to give me the wrong information, or confuse what Oded Gottesman had told her with her recollections. Ms. Cohen stated the director of the preschool had her own son, "Ryan" (Martin), at the camp also. Ms. Cohen stated she e-mailed "Ryan's" mother because Ms. Cohen wanted to know what "Ryan" had seen because he was older and might be able to give more information about what happened. Ms. Cohen was hoping to get more information and see what she might need to deal with as far as what Seth might have seen. Ms. Cohen stated she spoke with "Ryan's" mother later.

Ms. Cohen did not recall Seth telling her he was having trouble swimming because of rough water or activity in the pool. Seth never identified his counselor at the Activity Camp.

Ms. Cohen went back with Tina Haimovitz the following day to get Yoni's things. While they were there they tried to figure out what happened. A young man identified himself as one of counselors for the camp and told her that he was in the pool with some of the kids when it happened. She got the idea from him that he was paying attention to those kids who could not swim as well. Ms. Cohen described him as a big kid, light complexion with freckles and red hair (Sam Shipley). Ms. Cohen stated he was a bulky kid. She described him as visibly shaken by what had happened.

Ms. Cohen stated she relied on friends that were members or COAC, or had sent their kids there, so she did not question the director. She never worried about Seth's safety until this occurred.

Ms. Cohen talked with Keith Miller (the Gottesman private investigator) for 2½ -3 hours and exchanged numerous e-mails.

Ms. Cohen reiterated she had heard several stories about what happened. One story was that Yoni was playing with Ryan Martin and they were getting in the pool at the shallow end swimming to the deeper end, getting out and running down the pool and jumping in. Ryan swam off to the deep end and the next thing he knew Yoni was floating. The second story was from the counselor she spoke with. He said he was in the pool with three or four children. He was picking them up and throwing them in the air. The counselor did not see anything happen and then suddenly the lifeguard was telling everyone to get out of the pool. The counselor looked over and he saw Yoni floating, Yoni was blue and foam was coming out of his mouth. The last story was that the kids were just playing in the pool and Ryan jumped in the pool and Yoni was there at the same time, but she did not know what happened. I asked Ms. Cohen if she was saying that Ryan might have jumped on top of Yoni and she replied that she did not think that was the case. She stated the information exchange with Ryan's mother was "very touchy". Ms. Cohen stated Ms. Martin did not respond to her e-mail and they did not talk until a week or so later.

CROSSLAND, Joan (Mother of Parker)

CROSSLAND, Parker DOB: 10/26/1999 Grade = K 5 years old
(Camper)
5323 Orchard Park Ln.
Santa Barbara, CA 93111
(H) 683-4484 © 689-3977

Ms. Joan Crossland was contacted by telephone on 1/4/2006.

DATE: 1/4/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Joan Crossland called me in response to a voice mail I had left on her home telephone number requesting a call. She confirmed that she was the mother of Parker Crossland.

Ms. Crossland explained that Parker was only 5½ years old so his ability to tell her what had happened was limited. Ms. Crossland stated it was hard to tell between what he actually saw and what he was told, or “guesstimated”.

Ms. Crossland stated Parker was not swimming during the free swim period on the day of the drowning. She stated he did not bring his swim suit that day. Parker had told her “he was sitting on the side of the pool and a boy drowned”. Parker told her that “a little boy was floating in the pool and that the lifeguard was with the boy.” Ms. Crossland stated afterwards the kids were taken back to the Activity Camp area. Ms. Crossland stated when she spoke to Parker about what happened it appeared that he did not see what happened.

Ms. Crossland did not think that Parker knew Yoni because this was the first day that Yoni had attended the Activity Camp. She did not think that Yoni attended the after school math and reading tutorial that Parker attended. When Parker spoke of the drowning he called Yoni “a new boy”.

Ms. Crossland confirmed that Parker had attended the COAC Activity Camp during the three weeks indicated on his COAC registration form²⁷. Parker had also attended Activity Camp during the summer of 2004 and the Winter Activity Camp between Christmas and New Years in 2004. She had gone and watched swim lessons that Parker took at COAC in the past, but not the most recent classes.

Ms. Crossland stated her family had been members of COAC for the past 3½ years. She took her children to use the pools at COAC at least “a couple times” a week during the summer months. She had never seen any safety issues that concerned her while at the pool. She stated lifeguards would tell the children if they were splashing, jumping in the shallow end or other unsafe things that one would expect them to take action on.

Ms. Crossland stated she did not know how the Activity Camp was set up to supervise the campers. She knew they used a buddy system when they went to the main club house to use the bathroom. She did not know if any buddy system was used during the pool time. They seemed to cluster the kids into group(s) to get changed for different events and they tried not to leave stragglers anywhere.

²⁷ Those three weeks were: 6/20-24, 8/8-12, and 8/15-19/2005.

Ms. Crossland did not recognize the name Gottesman. She did not know either parent personally. She said she might have seen them from the math and reading tutorial program that Parker attended, but she was not sure.

Ms. Crossland stated she never asked about the licensing of the Activity Camp. She always used the day care at the club. She just considered the camp an extension of the day care that the club members used to watch their children.

She remembered the primary person whom she dealt with as being a female counselor named "Jennie" (Darling). Ms. Crossland did not recall "Jennie's" last name.

Ms. Crossland explained that she received a voice mail message from "Jennie" to come get Parker because there had been an incident there at COAC. Ms. Crossland stated Parker had been scheduled to stay for the extended day care. The message she received was that extended care had been canceled. When she received the message she went to COAC to pick up Parker. When she got to COAC there was someone at the front and she had to state that she was there to pick up her son. She asked what had happened and was told, "They were not able to say at this time." She went to the Activity Camp area and got Parker. Ms. Crossland stated she just assumed that there had been a gas leak, or a bomb threat, or something like that. Parker was the one who told her that a boy had drowned. She thought Parker told her this as they were walking back to her car. Ms. Crossland stated what Parker told her was pretty simple, "He sat on the side and a little boy drowned." Because of Parker's age she thought that Parker did not understand the seriousness, or that the boy died. She spoke with some of her neighbors later and they figured out that it had been one of the campers who drowned.

Ms. Crossland stated all of her children had swim classes with a private instructor known as "Coach Tom.... the swim Nazi". She explained that this is a survival type of swim lesson where if you are thrown off the side of a pool you figure out a way to get back to the side. Ms. Crossland stated she had watched Parker and her twin girls who were just 3 years old, in the pool there at COAC many times. Parker did not have a problem keeping his head above the water in the shallow end. She thought he was 48 inches and could stand with his feet on the bottom of the pool and keep his nose above the water line. Even her 3 year old daughters, who were tall for their age, could bounce on their feet off the bottom to get their head above the water and move around the shallow end of the pool. She estimated that the girls could go out four feet from the end of the shallow portion of the pool and move all the way across the pool.

Ms. Crossland does not understand why Yoni could not bounce himself out of the water absent some type of other trauma, or getting tangled up in someone else's legs, or something else happening. Ms. Crossland stated she probably would not have put Parker in the free swim portion of the camp without her being there, or him having "the swim Nazi lessons". Ms. Crossland explained that it was more than just learning how to stroke. It is learning to be water safe, get yourself over to the side, stay away from clusters of people and other things like that. Ms. Crossland stated it is Coach Tom's opinion that there are no good swimmers at age 4. There are no good swimmers at age 5 either. The kids need to know more than how to swim a distance. They need to be water safe.

Ms. Crossland stated she did not know how the children were supervised during the free swim time. She stated she knew there were always lifeguards and counselors swimming with the kids, but did not know specifically how the campers were supervised. Ms. Crossland stated she was not aware that there was a buddy system, or assigned counselors, during this time.

DELMARSH, Kit
(Father of Ila & Eri)

DELMARSH, Ila	DOB: 1/9/1998	Grade = ???	7 years old
DELMARSH, Eri	DOB: 4/1/2000	Grade = ???	5 years old

6624 Sueno Rd
Isla Vista, CA 93117
(H) 968-2203

Mr. Kit Delmarsh was contacted by telephone on 1/31/2006. Mr. Delmarsh's cell phone number was answered by a male who stated he was Mr. Delmarsh's attorney. I explained that I needed to speak with Mr. Delmarsh because he was listed as the person who had picked up the children from the Activity Camp. Mr. Delmarsh called me back later in the day.

DATE: 1/31/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

I introduced myself and informed Kit Delmarsh that I was conducting an investigation into the drowning at COAC. I told Mr. Delmarsh that I was contacting the parents to find out what the kids who were in the pool might have told their parents at the time of the drowning. Mr. Delmarsh confirmed that his children, Eri and Ila were on the premises of COAC on the day of the drowning. He explained that his daughter, Ila, had attended the COAC Activity Club, but his son, Eri, must have attended the tennis camp if he was not signed in on the Activity Camp roster.

Mr. Delmarsh claimed that Ila did not say anything to him about what happened.

Mr. Delmarsh stated no one had told him about anything happening at the COAC on the day of the drowning. He did not recall anyone meeting him at the gate of COAC. Mr. Delmarsh thought he had heard about the drowning the next day by reading it in the newspaper.

Mr. Delmarsh confirmed that he did pick up Ila at the COAC Activity Camp center, not the pool.

Mr. Delmarsh confirmed that Ila was in the pool at the time of the drowning.

Mr. Delmarsh stated Ila said nothing to him about what had happened, but he did not ask her anything about it. Mr. Delmarsh stated he just signed her out. He did not recall that he saw anything unusual or out of the ordinary. Mr. Delmarsh stated he did not recall being stopped at the gate when he came into the COAC property. No one said anything to him at all.

Mr. Delmarsh stated Ila usually stayed for after care at the day care center. He did not recall anyone calling him and telling him to come early to get her. Mr. Delmarsh confirmed that he did pick her up at the Activity Camp trailer.

Mr. Delmarsh stated he did not talk with Ila about knowing Yoni. Mr. Delmarsh stated he asked his older son who also went to the camp occasionally and that son told Mr. Delmarsh that they knew Yoni.²⁸ Mr. Delmarsh stated Ila knew Yoni. Mr. Delmarsh stated he did not think that Ila knew that Yoni drowned and was dead. Mr. Delmarsh stated he thought the children, including Ila were taken away before they realized Yoni was dead.

Mr. Delmarsh reiterated that Ila did not say anything to him about what happened.

²⁸ This was Yoni's first day, so if Mr. Kit Delmarsh's older son knew Yoni it was from somewhere else.

Mr. Delmarsh stated he had never talked with Ila about whether she had been playing with Yoni that day. Mr. Delmarsh stated he did not think that Ila realized Yoni had drowned.

Mr. Delmarsh offered to talk with Ila whether she was playing with Yoni before he drowned. He stated if she recalled anything he would call me back.

EARLE, Serena (Mother of Natani)

EARLE, Natani DOB: 1/9/2001 Grade = Pre-K 5 years old
(Camper)
(H) 896-6431

Ms. Serena Earle was contacted by telephone on 2/1/2006.

DATE: 2/1/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Serena Earle called me back after I had left a message requesting a call. I introduced myself and explained that I was conducting an investigation into what happened at the COAC. I told her that I was interviewing the parents of children who were enrolled in the Activity Camp and asking them what they recalled their children telling them happened on the day of the drowning.

Ms. Earle confirmed that her daughter, Natani, had been at the Activity Camp on the day of the drowning. However, Ms. Earle stated the staff had called her and requested that she pick up Natani early because Natani was feeling ill. Ms. Earle stated she picked up Natani after tennis as the group was going to the pool for free swim time.

She did not know the Gottesman family and she was not a member of the COAC.

Ms. Earle stated Natani had been attending the camp throughout the summer. Ms. Earle stated she extended Natani's enrollment because Natani enjoyed participating in the camp. Ms. Earle confirmed that COAC records that Natani had attended the weeks of 7/11, 7/18, 7/25 and 8/8. Ms. Earle explained that Natani was supposed to go to a different camp during the week of 8/15, but they canceled that so Natani could continue attending the Activity Camp at COAC.

Natani was only 4 years old at the time she attended the camp in August.

Ms. Earle found out about the Activity Camp through SBParent.com which was just a listing of camps in the Santa Barbara area. The camp was listed as a swim and tennis camp and that was what Ms. Earle wanted for her daughter.

She did not know anyone who worked there at the club.

Ms. Earle did not ask about the licensing of the Activity Camp. She did work at the front desk there at COAC for a few months about six years prior to my interview. She knew about the camp only because she saw the parents drop off their children. She assumed that they were licensed because they had been operating the camp since that time.

She did not know how the Activity Camp was run, or the kids supervised. She stated Natani by nature would be with the counselors a lot.

Ms. Earle stated she did watch the tennis session for a short when she arrived. Ms. Earle explained that the campers were playing as a group together and did not seem to be separated by any means. Ms. Earle stated there were three counselors on the side and one on the court. The counselor on the court might have been the tennis instructor.

Ms. Earle stated she did recall a younger boy with dark hair talking with counselors, but she did not know what his position was in relation to the camp.

Ms. Earle stated she had never seen the campers in the swimming pool for the free swim period.

I asked Ms. Earle about Natani's swimming abilities. Ms. Earle replied that she has had discussions about the situation with a lot of people since the drowning. Ms. Earle explained that Natani had been taking swim lessons since she was four months old and Ms. Earle stated she felt confident enough to allow her to go to this type of camp. Ms. Earle stated it didn't matter how many swim lessons a four year old had, she would not necessarily be a good swimmer.

MADHOW Uramanyu (Father of Sunil)

FOLGUERA, Alejandra (Mother of Sunil)
(W) 455-1906

MADHOW, Sunil DOB: 7/22/2001 Grade = Pre-K 4 years old
(Camper)
2515 Burton Dr.
SB, CA 93109
(c) 455-9051 (H) 884-5102 (W) 893-5210

Mr. Uramanyu Madhow and Ms. Alejandra Folguera were contacted by telephone on 12/15/2005.

DATE: 12/15/2005

LOCATION OF INTERVIEW: Telephonic (Tape available)

Ms. Folguera answered the telephone when I called the family home. Ms. Folguera confirmed that she was the mother of Sunil. She had heard about the District Attorney's Office investigating the COAC. Ms. Folguera stated Sunil had known Yoni from school where they attended together. Sunil had refused to believe that Yoni had died. It was not until he saw Yoni's photo in the paper that he had began to understand that Yoni had died.

Ms. Folguera had told the people at the camp that Sunil was afraid of the water and that they should not "push him" during the swim classes, or let him participate in the free swim period. She later found out from Sunil that he had been "very pushed in the (swim) class and put under water when he didn't want to and became terrified." He was even invited to go into the free swim period, but he chose not to participate. Ms. Folguera stated Sunil "was outside the pool and hanging around the deck". She did not think that Sunil saw what happened to Yoni. She thought Sunil knows only what he was told, or what was discussed among the kids after Yoni was pulled out of the pool. She stated Sunil said, "Yoni went underwater and didn't come out for a long time to breathe."

Ms. Folguera stated Sunil was 5 months younger than Yoni.

Ms. Folguera asked if her husband could talk with me because he was actually the person who picked up their son, Sunil, at the club that day.

Mr. Madhow then came on the line. Mr. Madhow confirmed that he had picked up Sunil from the camp on the day of the drowning and Sunil did talk with him first.

Mr. Madhow did sign up Sunil for a swim class because Sunil does not know how to swim. Mr. Madhow found out that Sunil had actually been asked if he wanted to go into the pool during the free swim period. Mr. Madhow stated he did not understand this. He asked me: Why would anyone ask a child who does not know how to swim to participate in the free swim? He did not think he needed to tell anyone not to allow his son to participate in the free swim period. Mr. Madhow opined that this was irresponsible. He said, it was lucky that Sunil declined.

Mr. Madhow said the only thing Sunil told him was that Yoni had drowned. Mr. Madhow stated Sunil had been sitting on the side of the pool, but he was not sure exactly where Sunil was at the time of the drowning.

Mr. Madhow stated Sunil did not explain further what he was doing at the time of the drowning.

Mr. Madhow knew Mr. Gottesman's name professionally, but they had never met in person. Mr. Madhow stated he was employed at UCSB and is a faculty member there. Mr. Gottesman was a graduate student there and that was how he knew the name. Mr. Madhow stated he did not know Yoni.

Mr. Madhow did not know many people associated with COAC and did not have an association with COAC himself. Mr. Madhow admitted that he had attended a few functions at the COAC. He said he did not have a good feeling about the club.

Mr. Madhow stated no one had spoken with him, or his son, about the drowning incident.

Mr. Madhow took Sunil and dropped him off at the camp on the day of the incident. He did not ask about the licensing of the camp. He did not recall the name of any of the counselors at the camp. Mr. Madhow recalled that there were several teenagers around, but he did not know if Sunil was assigned to a particular counselor.

He confirmed that Sunil knew Yoni from Montessori School where they both attended.

Mr. Madhow first heard about the drowning when he went to pick up Sunil after the camp was over. There was a guy up front of the COAC who asked why Mr. Madhow was coming to the club. When the guy heard he was there to pick up his son he was allowed to go onto the property.

Mr. Madhow noticed that the counselors had "very grim faces" and Sunil came to him looking tired, but not too upset.

Mr. Madhow asked the counselors what had happened and told them that if something had happened then he needed to know about it. He was told that there had been an accident at the pool with one of the campers. Mr. Madhow stated he got a bad feeling about what had happened because the counselors were looking "so grim". Mr. Madhow stated he figured out that one of the children had drowned and later found out that was what happened.

Mr. Madhow stated Sunil had told him that Yoni did not really know how to swim. He did not know why Sunil was saying this. He did not know that Sunil had ever seen Yoni swim. Sunil could be just inferring Yoni's being a poor swimmer from the fact that he drowned. Mr. Madhow did not know how Sunil would know how good a swimmer Yoni was. He then checked with Ms. Folguera and they thought that Yoni and Sunil were in the same swim class on the day of the camp.

Mr. Madhow did not check into the camp staff, or how it was administered. They received a recommendation from another mother from the Montessori school where Sunil attended.

Mr. Madhow opined that the problem that he saw with what happened "was not assessing the risk of the water properly as far as young kids go". Mr. Madhow explained while the children are on land there is only so much that can go wrong, on the other hand water is very dangerous. Mr. Madhow did not talk with the counselor in the morning about the supervision of the children while at the pool. He did not speak with anyone about the pool other than to sign him up for a swim lesson. He assumed that free swim was for much older children. Mr. Madhow was "shocked and outraged" that Sunil was even asked to participate in the free swim session.

Mr. Madhow stated he saw the children playing with Lego-like toys with each other inside the trailer. Mr. Madhow admitted he did not like the looks of all the counselors who were there, but there were also counselors that were okay looking. Mr. Madhow thought it was "an okay situation, not the best possible situation, but an okay situation."

Mr. Madhow stated the only thing he recalled about the person who helped him with the paperwork was that she was a girl.

Mr. Madhow stated the main thing was that "They (COAC staff) had no clue what the water means."

MARTIN, Greg (father of Ryan)

MARTIN, Ryan DOB: 4/14/1999 Grade = 1st 6 years old
(Camper and friend of Yoni)
5218 Calle Barquero
SB, CA 93111
(Parents are MARTIN, Greg and Michele)
(H) 965-4336

Greg Martin was contacted by telephone.

DATE: 12/15/2005

LOCATION OF INTERVIEW: Telephonic (Tape available)

Greg Martin confirmed who he was, that his son was Ryan, and that Ryan had attended the COAC day camp on the day Yoni drowned.

Mr. Martin stated he did not know the Gottesman family very well. He stated his wife, Michele, was the pre-school director and knew the Gottesman family better. Ryan also knew Yoni from the pre-school. Mr. Martin stated he did not know Yoni. He estimated that Ryan and his wife would have met the Gottesman family over a year prior to my interview.

Mr. Martin confirmed that he had taken Ryan to the Activity Camp in the morning and signed him up. He also confirmed that he had picked up Ryan at the end of the camp day.

Mr. Martin got to the COAC a little early to pick up Ryan. He knew that the kids would be at the pool so he had planned to go see Ryan there. When he got to COAC he was met by someone in the parking lot who told him to park and he saw there were emergency vehicles blocking the area. As he entered the pool area he saw emergency personnel doing CPR on Yoni. Mr. Martin stated he first thought it was his own son. Mr. Martin stated he was blocked from approaching the emergency personnel and the child that was down. Mr. Martin stated he asked if the child's name who was down was Ryan and he was told that it was not Ryan. Mr. Martin also recognized that the swim suit of the child who was down was different from the suit he had given his son Ryan to wear that morning. Mr. Martin stated he was directed over to the locker room to get his son. When he first met his son, Ryan said "Dad, somebody drowned." Mr. Martin called one of the mothers for one of the girls at the camp and told her what was happening.

Ryan told Mr. Martin that he was swimming from the deeper end of the pool toward the shallow end when Yoni was discovered. As Ryan came upon a couple of kids he heard them say that this kid had been under water for a long time. Ryan told Mr. Martin that about the same time a counselor saw Yoni, or heard the boys tell Ryan. The counselor told the lifeguard and the lifeguard went into the water and pulled out Yoni.

Mr. Martin confirmed that he and his wife had spoken with the private investigator for the Gottesman in September 2005.

Ryan had not been playing with Yoni at the time. Ryan was playing with someone else when Yoni was found. Mr. Martin confirmed that Ryan had told him that the other person was "Anya."

Mr. Martin confirmed again that his wife and Ryan knew the Gottesman family from the pre-school.

Mr. Martin stated his family also knew the owners of COAC, Richard Ortale and Richard Berti, through a relationship with his wife's parents.

Ryan had attended the Activity Camp on prior occasions, but the camp was missing the prior registration paperwork when he showed up on the day of the drowning. This was the first day Ryan had been there for that session of camp.

Mr. Martin stated he had never asked about a license for the camp, about the counselors, or how the camp was run.

Ryan had not mentioned being with Yoni during the day of camp.

Mr. Martin stated Ryan had not complained about having trouble swimming, or seeing any of the other campers who had trouble swimming.

Mr. Martin recalled that he had dropped off Ryan and spoke with the "head counselor", but he did not recall her name. He spoke with her about not having the paperwork from the last time Ryan had been to the camp. Mr. Martin stated the head counselor was a young girl.

SCHMITZ, Ingrid
(Mother of Anya)
SCHMITZ, Anya
5520 San Patricio
SB, CA 93111
(H) 681-0018

DOB: 2/1/1999

Grade = 1st

6 years old

Ms. Ingrid Schmitz was contacted by telephone on 1/31/2006. Ms. Schmitz refused to talk with me at the time of my first call. Ms. Schmitz told me that her husband worked at the Santa Barbara Athletic Club (a club associated with COAC) and "it would be a conflict of interest" if she gave a statement to me. I told Ms. Schmitz that I had spoken with Charlotte Valentine, the general manager of COAC, about this because some of the employees had contacted her about whether to talk with me. Ms. Valentine had told those employees it was okay to speak with me. I requested that Ms. Schmitz contact her husband and clarify whether or not she should talk with me.

Ms. Schmitz called me back approximately an hour after my first call and said she would talk with me. During my interview I learned that her husband had been a Fitness Director at the SBAC and became the General Manager of SBAC on January 1, 2006.

DATE: 1/31/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Ms. Schmitz confirmed that her daughter, Anya, was in attendance on the day of the drowning. Anya told her that she was in the deep end of the pool with her friend, Ryan (Martin). Anya told Ms. Schmitz that she was swimming from the deeper end toward the shallow end when someone pointed out Yoni underwater. At the same time Anya heard someone say something like, "Look, that boy has been underwater for awhile", or "Look, that boy drowned." Anya said the counselor on the deck notified the lifeguard and the lifeguard jumped in.

Anya did not know Yoni. Ms. Schmitz stated she thought it was Yoni's first day, so she did not think that Anya knew him. Anya did not go to school with Yoni.

Anya did not mention seeing Yoni in the pool. The only thing Anya had mentioned was that they had been at tennis and Yoni was throwing tennis balls before they went to the pool.

Ms. Schmitz did not think that Anya had made a connection with Yoni because her friend Ryan was there at camp and she had been going all summer to camp. Anya and Ryan were good friends.

Ms. Schmitz had been sending her kids to Activity Camp there at COAC for many years. She stated her oldest daughter was 12 years old. Ms. Schmitz had different exposure to different directors and counselors involved over the years.

I asked Ms. Schmitz if she ever went to watch the free swim time at the Activity Camp. Ms. Schmitz considered herself "a paranoid mom". She had a policy with her children that until they were "water educated" they were not allowed to enter a pool until she got there. When her children were younger and in camp they would have to wait until she arrived from home before they could go into the water. This policy was based on her knowledge of the water environment and had nothing to do with COAC. Ms. Schmitz stated she did not do that with Anya this year because she felt that her daughter was, "not water safe, but water educated". This was the first summer that she did not force Anya to wait until she could be there at the pool. I asked Ms. Schmitz if she considered Anya more than "water safe". Ms. Schmitz explained that she did not think that anyone

was ever "water safe". Ms. Schmitz confirmed she had not gone during the Activity Camp swim period through the whole summer. Ms. Schmitz stated it was her understanding that two lifeguards were there and one other (Jennie Darling) was present.

Ms. Schmitz stated her husband had been the Fitness Director, but on January 1, 2006 had taken over a general Manager of the Santa Barbara Athletic Club.

Ms. Schmitz stated she has been a member of the COAC since the late 70's. She taught tennis there a long time ago. Her family first joined the COAC when she was in high school.

She never talked with anyone about the licensing because she had been associated with the club for so long.

Ms. Schmitz did not think that the counselors were assigned specific kids to watch. The counselors were either in the pool, or on deck, and they were extra eyes. Ms. Schmitz stated "it was a small pool".

Anya had never had trouble swimming in the COAC pool.

Ms. Schmitz never saw anything with the counselors that alarmed her, or caused her concern. Anya loved the camp.

Ms. Schmitz stated she passed the ambulance as she arrived and the ambulance was leaving. She actually received a call from Ryan Martin's father who told her what had happened as she was driving toward the club. She remembered that Mr. Martin told her that he first thought the boy down was Ryan, but then realized that the downed boy had a swim suit that was a different color.

Ms. Schmitz did not think there was any criminal intent on the part of anyone involved and described this as a horrible accident. Ms. Schmitz stated she feels for everyone involved, the parents and the lifeguards who were doing the best job they could.

STRAEDE, Kathy
(Mother of Ila & Eri)

STRAEDE, Ryan	DOB: 11/20/1999	Grade = K	5 years old
STRAEDE, Devyn	DOB: 02/02/2001	Grade = Pre-K	4 Years old

719 Cathedral Point Lane
Santa Barbara, CA 93111
(H) 964-3283

Kathy Straede was contacted by telephone on 1/31/2006.

DATE: 1/31/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

Kathy Straede answered the telephone and I confirmed that she was the mother of Devyn and Ryan Straede. She also confirmed that they were both at the camp on the day of the drowning. I explained that I was conducting an investigation into what happened that day.

I asked her to tell me what the children had told her about what happened. Ms. Straede stated her youngest son, Devyn, was not able to relate anything about what happened. She wondered if he was even aware of what really happened until afterwards. Ms. Straede stated her son Ryan, who was 5 years old, has told her "mixed things". Ms. Straede stated as near as she can figure out Ryan did not see anything that happened in the pool. When they pulled the kids out of the pool Ryan saw that a boy was on the deck, but she did not think Ryan realized it was Yoni at the time. She thought that Ryan found out it was Yoni when they got into the locker room.

Her sons knew Yoni from a woman who both families used for "baby day care". Ms. Straede identified the woman who ran the "baby day care" as Anita Sanquist. This woman ran the day care out of her home. Ms. Straede explained this woman took care of four babies at a time from infant to two years old. Ryan and Yoni's sister were together at this home. Yoni and Devyn were together at the same location later. Yoni and Devyn were only 6 weeks apart in age. They knew each other since that time, which would be over 5 years.

Ms. Straede stated Ryan was usually trying to keep up with the older boys, so she did not think he was with Yoni at the time he drowned. Her impression was that Ryan was in another section of the pool. Ryan's explanation to her sounded like he was in deeper water than Yoni. Ms. Straede opined that Ryan was a "really strong swimmer" and as far as she knew he was not playing with Yoni, and they were not interacting at all.

Devyn did not tell her where he was in the pool, but he generally hangs pretty close to the steps. Devyn had not passed the test to be able to go further in the pool. Ms. Straede stated at the time Devyn was still jumping from the stairs to the slightly deeper water near the stairs, swim a "U" and right back to the steps.

Ms. Straede did not think that Ryan knew anything about what was going on until everyone was pulled out of the pool.

On the other hand, the first thing Ryan said after telling her that it was Yoni who had drowned was, "It wasn't his fault". This made her a little nervous because then she wondered what had happened. Ms. Straede stated she questioned Ryan indirectly about where he (Ryan) was and where Yoni was. It was her fear that they were playing rough and something had happened. As near as she can tell this was not the case.

Ms. Straede reiterated that the nearest that she can figure out from what Ryan had told her was that Ryan was trying to hang out with some of the older kids and was in the deeper part of the pool. Ms. Straede said Ryan does this all of the time.

Ryan has talked about it since and brings up Yoni occasionally. There does not seem to be an emotional attachment for either of the boys when thinking about Yoni. Both boys have referred to "poor Yoni", but she did not see any feelings of guilt, or feeling of responsibility for what happened.

Ms. Straede did not know if Ryan knew Gavin, or Ryan Martin. She did not know either of the boys. If any of the kids went to the Montessori school Ryan probably would know them. Otherwise, Ryan might know them from camp.

Ms. Straede confirmed that both boys went to the Activity Camp, 6/20-6/24, 8/8-8-12 and 8/15-8/19.

Ms. Straede stated Ryan turned 4 years old in November, 2003 and his first Activity Camp was the winter camp in December, 2003. He went to the Spring Camp 2004 which was during the school vacation near Easter and then a couple of weeks in summer of 2004. Ms. Straede stated Devyn turned four years old in February 2005 and Devyn attended the spring camp in 2005.

Ms. Straede had no idea that the Activity Camp needed a license and she had dealt with licensing involving her mother's care in a licensed facility. She had also dealt with the licensing of group homes for kids. Ms. Straede stated it was for kids from 4-10 years of age and that she was not aware that the Activity Camp needed a license for the different age groups. It did not even occur to ask about the licensing of the Activity Camp because she had worked at COAC.

Ms. Straede stated she had been involved with the Santa Barbara Athletic Club for many years. The COAC couldn't keep a bookkeeper, so she was asked by Mr. Berti to work there to straighten out the books and hire someone. She was the bookkeeper there for a few months in 1989, 1990, or possibly 1991. She actually worked at the Santa Barbara Athletic Club for three years, but reiterated that she was not sure when, other than around 1990.

Ms. Straede had been a member of the COAC since approximately 2000. Ms. Straede stated she knows a lot of people who work there at COAC.

She stated the private investigator from the Gottesman's attorney did talk with her back in September.

Ms. Straede did not think that the boys were assigned a particular counselor at camp.

She made it a practice to be at the pool during the free swim period on the first day her sons went to camp. The campers would go to the pool at 2 o'clock and she would be there on this first day. She explained that she did this to make sure that the counselors were paying attention and that the kids were not being too wild. She particularly wanted to make sure her kids were not being too wild, were behaving themselves, and following the rules. She had gone up to the aerobics classroom and watched. Other times she had watched from the deck of the pool. Ms. Straede stated she just wanted to reassure herself that everything felt and looked okay because each particular group interacted differently. She just wanted to make sure it felt okay and she did not have a lot of anxiety about having her kids in the pool with a bunch of strangers.

Her kids started camp the Monday prior to the drowning, so she was there on that day (8/8/2005). She watched the swim tests. The test consisted of the kids swimming from the steps to the lane line

and back again. If they couldn't do that, then they had to stay near the steps. Most of the times in the past she had seen counselors in the water with the campers. She did not recall specifically seeing counselors in the water when she was there on 8/8/2005. Ms. Straede heard since then that there was a counselor in the water. She did not see anything that caused her concern, or she would have returned every afternoon.

Ms. Straede usually saw three counselors in or near the pool. One or two counselors would be in the water and the others on the deck. Sometimes Elizabeth, the director, would also be in the area with a clip board overseeing what the employees were doing, more than direct supervision of the campers.

She was not aware if a counselor was assigned certain kids, or how the counselors divided up watching the campers.

I asked Ms. Straede if she had ever seen a younger Counselor-In-Training at the Activity Camp. She replied that she had seen younger teenage boys who would help with the boys in the past. The only male she recalled from this time period was a tall guy with reddish hair (Sam Shipley).

I asked Ms. Straede what she thought about the lifeguards at COAC. She thought the lifeguards did a reasonable job in terms of the kids getting rowdy, but there were other things that she said they did not do. For example, the lifeguards did not confront club members when they brought babies in without swim diapers. Ms. Straede stated she could not recall anything that the lifeguards should have done. Ms. Straede stated she recalled the lifeguards interacting with the kids, blowing whistles and telling kids not to do things. She never saw anything where she thought, "Excuse me, you need to deal with this." She described an incident that occurred about two weeks after the drowning. She was at a pool in Las Vegas and she saw that the two lifeguards were talking with each other and neither one was watching the pool. Ms. Straede stated she went and got a supervisor and was really upset about it. Ms. Straede admitted that she did not know if she would have noticed that prior to Yoni's drowning.

Ms. Straede heard about the drowning when she arrived at COAC to pick up her kids. She was about 20 minutes early. An ambulance was leaving the club as she pulled in. Ms. Straede stated the front desk person, Chauncey, was standing there and turning people around. Ms. Straede told Chauncey that she was there to pick up her sons from the camp and asked what was going on. Chauncey told Ms. Straede that there had been an accident. Ms. Straede pressed Chauncey for more information. Chauncey then told her they thought that a kid might have had a seizure and drowned. She asked Chauncey if it was one of her sons and he told her he did not know the name of the child involved. Ms. Straede explained that her youngest son has a medical condition and she became concerned. She met the campers coming out of the locker room and her sons ended up being the last two to come out the door.

Ms. Straede dropped her sons with a neighbor and contacted the Gottesmans. She stated she did not know what type of support system the Gottesman family had. She ended up spending the rest of the day with them at the hospital.

I asked if there was anything else, good or bad, that I should know about the COAC, or the staff. Ms. Straede stated everyone has heard the stories about what an "ass hole" Richard Berti is. The situation had been really hard for her family because they know so many of the people at COAC and they also know the Gottesman family. Ms. Straede described this as a "tragedy first and foremost for Anat and Oded, but also for everyone who was working there that day". She said she

cannot even imagine the feelings she would have if she was an 18 year old lifeguard and had something like that happen on her shift.

Ms. Straede said the clubs that Richard Berti owned are just a business. Ms. Straede stated they try to do good basic job, but they cut corners where they think they can. Ms. Straede stated clearly something went terribly wrong, but she does not know what could be done to make sure that it did not happen again. She said sometimes tragedies happen even under the best of circumstances. She feels disloyal for saying that, but she does not know what happened because she was not there.

Ms. Straede said she was aware of things that she did not like. She was aware of things where Richard Berti had cut corners. She also knew of occasions where the management had not done things she thought important, or been quick enough in her opinion to respond to dangerous situations. She described how her oldest son escaped from the day care facility because the gate latch was not appropriate. It was another parent's fault that her son was able to walk away from the day care because that parent did not latch the gate. Her son made it all the way to the parking lot before someone found him. It took two weeks of her "raising holy hell constantly" before the latch was replaced with one that automatically latched. Ms. Straede explained that until the gate was fixed, she took her bike during spinning class over to the window. Whenever a parent went into the day care area and left the gate unlatched to drop off a child she would count the seconds that the gate was unlatched. Whenever a parent left the latch undone, she would go downstairs, grab the parent, and tell them they needed to go back and latch the gate. She told the manager each time that she found this had happened. It was ridiculous that she had to make such a fuss about this and that it was not taken care of immediately.

Ms. Straede never saw anything involving the Activity Camp kids that caused her concern. The only thing she did not like was that the lifeguards did not confront the parents about not having a swim diaper on their babies. This was the only thing that stood out in her mind, where she thought the lifeguards were not doing there jobs.

VOLLGARIS, Eric (Father of Kyle)
VOLLGARIS, Jami (Mother of Kyle)

VOLLGARIS, Kyle DOB: 9/3/2000 Grade = Pre-K 4 years old
216 E. Mission Ave.
Isla Vista, CA 93101
(H) 682-3540

I contacted Mrs. Jami Vollgaris by telephone and explained that I would like to speak with her about anything that her son, Kyle, might have seen on the day of the drowning at COAC. Mrs. Vollgaris stated she would like to meet with me to discuss what had happened with her son.

On 2/2/2006, I met with **Mrs. Jami Vollgaris** and **Mr. Eric Vollgaris** at their home.

DATE: 2/2/2006

LOCATION OF INTERVIEW: 216 E. Mission Ave. (Tape available)

Jami Vollgaris stated she was the first parent on the scene of the drowning. She had gone to pick up her son, Kyle, approximately 20 minutes early. She was met at the front of COAC by someone at the front gate and was told she could not go in because there had been an incident and the club was closed. She explained that her son was at Activity Camp and she needed to get in to pick him up. The employee said that the mother had not been notified yet so he was not allowing anyone in. Mrs. Vollgaris explained that her son had a medical history and she automatically jumped to the conclusion that it was her son. Mrs. Vollgaris confirmed with the person at the gate that it was a four year old boy and told the man that he better open the gate, or stand aside because she was going through.

Mrs. Vollgaris stated the ambulance was parked. She ran inside and asked where her son was. She was told he was in the dressing room.

Mrs. Vollgaris stated the male counselor brought out her son, Kyle. While she was hugging Kyle she heard two employees talking. One employee told another that "one of the children had swum up to a counselor in the pool and said, "Yoni had been floating at the bottom of the pool for a long time. Is that okay?" Mrs. Vollgaris stated that was when Yoni was pulled out of the pool.

Kyle asked Mrs. Vollgaris why Yoni was sleeping at the side of the pool. She described Kyle as being disturbed, shaken up, and frightened by the incident. Four, or possibly five days later, they were driving in the car and Kyle just started talking to an invisible person, something that he had not done before. She asked Kyle who he was talking with and Kyle told her it was Yoni. Mrs. Vollgaris asked Kyle what Yoni was saying and he replied that Yoni was saying, "Blub, blub, blub." This concerned her because she did not know what he had seen other than Yoni was "sleeping" on the side of the pool. She took Kyle to see a child psychologist who told Mrs. Vollgaris she thought Kyle saw a lot. The psychologist stated what he saw might not come out until he is an adult. Mrs. Vollgaris stated Kyle does not know that Yoni died. Kyle had been told that Yoni moved because Kyle wanted to go play with Yoni.

Mrs. Vollgaris stated Kyle was "a terrible swimmer" and he would be on the steps and would not venture off the steps. Kyle would not have passed any swim test if they gave it to him.

Mrs. Vollgaris stated Kyle had been to the Activity Camp during the spring around Easter time.

Mr. Vollgaris stated Kyle had also been to Activity Camp one week during the middle of the summer. Mr. Vollgaris stated Kyle went to different camps through the summer and they used the COAC Activity Camp to fill in between the other camps.

Mrs. Vollgaris stated they were not members of COAC and did not know anyone that worked there. They do not know the Gottesman family.

Mrs. Vollgaris stated she had called the coroner's office and asked to give a statement. Someone from the coroner's office did call her back. She told the coroner about what the counselor had said about Yoni floating on the bottom of the pool for a long time. The coroner called her back and said, "Just so you know, kids bob up and down in the pool all the time, so it would be hard to tell who was dead and who was alive.... or if he were dead it would be hard to tell. There were a lot of kids in the pool." The coroner did not seem to care about she had to say.

Mrs. Vollgaris did not ask anyone at the camp about being a licensed facility. She stated she assumed they were licensed.

Mr. Vollgaris stated he was the person who dropped off Kyle at the Activity Camp. He recalled one day that he got there to pick up Kyle and he couldn't find the kids. He eventually found them at the pool.

Mr. Vollgaris said Kyle was usually the first one there at the camp in the morning. There were three counselors. Mr. Vollgaris stated he was not aware that any one counselor was assigned to watch Kyle. Mrs. Vollgaris said Kyle did associate more with one of the counselors, but she did not recall his or her name at the time of my interview.

Mrs. Vollgaris and Mr. Vollgaris stated Kyle did not know Yoni. Mrs. Vollgaris opined that Kyle probably did play with Yoni that day at the camp because he wanted to go play with him later.

Mrs. Vollgaris stated Kyle had never complained about the pool conditions.

Mr. Vollgaris stated one of the most frustrating things that COAC did was the way they handled the refund of the money he had paid for the Activity Camp. Mr. Vollgaris called the camp to find out if they were still doing the camp. He was told that they were and there would be grief counselors there and asked if Kyle would be there. Mr. Vollgaris stated Kyle did not go back to COAC for the camp. At the end of the week he received a voicemail message that COAC was going to refund his payment and asked where to send the check. They received a check from COAC a short time later. It was just a check by itself in an envelope. There was no letter of explanation, nothing asking about whether Kyle was okay, no apology that this happened.

Mrs. Vollgaris stated during one of her conversations with employees after the drowning she mentioned taking Kyle to see the Child Psychologist. They told Mrs. Vollgaris, "Please don't. We have our own. You can see her, she is really good." Mrs. Vollgaris told the employee that Kyle would be taken to the psychologist the family chose.

Mrs. Vollgaris stated neither of them had been able to observe the Activity Camp in session. Mrs. Vollgaris and Mr. Vollgaris stated they had never seen anything that caused concern. Mrs. Vollgaris did go on to explain that during one of the prior camps she did talk with one of the counselors about the pool. Mrs. Vollgaris explained she had told them that Kyle did not swim and was afraid of the water. Kyle told her that one of the counselors took him into the water and was throwing him into the air and let him under the water. Mrs. Vollgaris described Kyle as being terrified to go back. She spoke with the director and told them that "Kyle did not want to get his

hair wet". Mrs. Vollgaris was told by the director that she would talk with "Claudia, who was actually the swim instructor."

Mrs. Vollgaris stated they were members of the Montecito Country Club. They had heard that one of the COAC lifeguards had called the lifeguards at the Montecito Country Club and told them he was getting a coke when the boy drowned. Mrs. Vollgaris stated there was also a rumor they had heard that the same lifeguard had been fired by the Montecito Country Club the week prior to the drowning. Mrs. Vollgaris stated the reason he got fired was because the members had complained about him. The main complaint was that he did not want to get wet and would yell at the kids whenever he would get splashed by accident. Mrs. Vollgaris identified this lifeguard as "Dave, or David." (Merin?) Mr. Vollgaris stated they heard this from one of the other lifeguards that they knew. This other lifeguard was critical of the techniques that lifeguard "Dave" used saying he never counted the kids in the pool like she did.

KUJAN, Katrina (Former Director of Activity Camp at Cathedral Oaks Athletic Club)
1944 D. Jamieson Lane
Montecito, CA 93108
(H) 565-4628

Ms. Katrina Kujan contacted the District Attorney's Office regarding the drowning of Yoni Gottesman because she was the former director of the Activity Camp at Cathedral Oaks Athletic Club and felt she had information that we might need for our investigation.

DATE: 11/29/05

LOCATION OF INTERVIEW: Telephonic (Tape available)

Katrina Kujan stated she was the director of the Activity Camp at Cathedral Oaks Athletic Club from fall of 2003 through fall of 2004. Ms. Kujan stated Elizabeth Heller replaced her as director in September 2004. Ms. Kujan stated Esther Clark was the Aquatics Director for the Cathedral Oaks Athletic Club while Ms. Kujan worked there.

Ms. Kujan stated she did not go back to Cathedral Oaks Athletic Club to check on the Activity Camp and does not know how it was run after she left. She did want to make me aware of the way things were while she was there and the attitude of management toward the children from the Activity Camp Programs. She had thought about calling on prior occasions, but did not think what she had to say was relevant. She changed her mind after reading the articles saying there was a pattern of neglect at the club. She opined that the management did neglect the camp, the children and that the camp program was always "the low man on the corporate totem pole". Ms. Kujan stated that was the reason she left her position there.

Ms. Kujan said it was made clear to her from the time she was hired at the club that she and her staff were responsible for the safety of the camp children at the pool. Ms. Kujan was told she needed to make sure that her staff was "on the ball" and watching the children while in the pool. She was told that the lifeguards could not be expected to watch all of the campers.

Ms. Kujan said she had a camper who began to struggle in the water and a clothed lifeguard jumped in and pulled the child out. The lifeguard was not sure what was going on, but did pull the child out. Ms. Kujan stated Esther Clark, the Aquatic Director, was very upset with Ms. Kujan because it was the opinion of Ms. Clark that Ms. Kujan's counselors had not been watching the camp children adequately. Ms. Kujan told that she and her counselors needed to do better. Because of this experience she had been told she always felt that she was responsible for the safety of the camp children when they were in the pool. This was an enormous stressor while she worked at Cathedral Oaks Athletic Club.

Ms. Kujan felt this was an unreasonable burden to place on people who were not trained to deal with pools and aquatic activities. The counselors whom Cathedral Oaks Athletic Club was holding responsible for the safety of these camp children were young people themselves. Ms. Kujan stated she had a 16 year old as a counselor and the others were 20 something. The volunteers were called Counselor-In-Training, or Junior counselor, and were sometimes 13 years old. If she turned her back, or went to the bathroom it seemed like they all abandoned their posts. Ms. Kujan opined that because they were young they just did not understand the seriousness of the pool situation.

Ms. Kujan said she put in safeguards that did not exist prior to her taking over. Ms. Kujan had a policy of staffing one counselor for every three campers who were 5 years old and under, beginning swimmers or non-swimmers. The three campers would be assigned to a Junior Counselor because financially the club could not afford to have that many adult staff. These Junior Counselors had to be in the pool with the children. There was also a paid staff member in the deep end of the pool and another paid staff outside the pool watching, so that there was a staff member at both ends of the pool. Ms. Kujan felt that the adults who were outside had a better advantage point to see if anyone was having trouble. Ms. Kujan would actually position herself between the two pools. She did this because no one was watching the other pool and the children would have to go by the other pool to go to the bathroom. This allowed her to be aware of two dangers the facility layout created. One, she would know if a camper went to the bathroom alone, and two, she could watch that the camper did not fall into the other unguarded pool. The pool situation was always very stressful situation for her and she felt alone in her responsibility for the campers.

Ms. Kujan stated Elizabeth Heller seemed nice enough, but was young. She did not have the experiences of a forty year old woman, and mother, like Ms. Kujan. Ms. Kujan stated even with that experience Ms. Kujan opined that she, herself, could barely handle it and she did not know how a person like Ms. Heller would ever be able to handle the job and keep the children safe.

Ms. Kujan stated she was not surprised to read what had happened.

Ms. Kujan agreed that it was the counselor who should take the first line in watching the campers because the children did not have their parents present. Ms. Kujan stated having her counselors watch the kids did not bother her. However, it should have been a partnership with the aquatics staff. She would have felt better if the aquatics people said "you counselors do your best. We will always be here as back up." It was not like that. It was as if the lifeguards could not be bothered jumping in the pool to help one of the campers if they needed it. That was very clear from the talk that Ms. Clark gave to Ms. Kujan after the lifeguard jumped in after the one child who had been struggling.

Ms. Kujan was not aware if any of the lifeguards were certified.

Ms. Kujan said there were three camps, spring, summer and winter which was held around Christmas time. The camps were 16 weeks total. During the summer camp there would be a five week period with 30 or more campers participating. She estimated that other weeks there would be between 18 to 24 campers.

Ms. Kujan also wanted to express her thoughts about how the club felt about the children and some of the other things she had to deal with besides the pool issues. She "was horrified at the facility that she inherited" when she started. There was hardly any furniture, there were safety issues including a staircase that was in disrepair. There were only two rooms for the kids. There was only one picnic table. There was a metal goal set for soccer that was not safe. Ms. Kujan said she tried to use it and it fell over and hit one of the campers on the head. She junked the goal set after that. Ms. Kujan said there were no books, the games were missing pieces and she had to "start from scratch". She bought a gazebo to set outside next to the trailer because the kids had no shade.

Ms. Kujan said there was no water source out at the trailer, or Activity Camp area. She developed a system that was used while she was there. The children had to be escorted through the parking lot to the main facility to use the bathroom or wash their hands. She considered the parking lot a safety issue because the Activity Camp catered to 4, 5, and 6 year old children primarily. She ordered

bottled water for drinking. The system that developed for washing hands was a table with two bowls of water. One bowl had soapy water for washing their hands and the other had clean water for rinsing their hands.

Ms. Kujan confirmed that there was no sink or sewage connected for the kids to use. Ms. Kujan stated another issue was cleaning up the art supplies. Prior camps had used the garden hose which was dragged down to the Activity Camp area. Ms. Kujan stated "Stefan"(Ornelaz), the maintenance person, set up a plastic laundry sink to the hose. The run off would just soak into the ground. While this was not a real sink it did seem more like a proper way to clean up. The sink was not used to clean the children's hands as they used the two bowl system described earlier for that purpose.

The trailer had a huge infestation of mice throughout the month of August, as evidenced by droppings all over the trailer. She would have to get there at 6:30 to clean up and chase away the mice before the children arrived. Ms. Kujan stated the droppings and urine were on everything, art work, toys, counters, etc. The club had Stefan try to plug up the holes, but he said there were too many holes. Charlotte Valentine had bought the trailer from a construction company and probably at a cheap price. Ms. Kujan thought that the mice infestation was probably a huge health code violation. Club management's attitude was that they did their best, but they can't get rid of the mice. She confirmed that the club did not call an exterminator. Ms. Kujan stated she just told the management to get rid of the mice.

There was a fence in the back of the play yard where the children could climb over and get down to the creek below. The kids did climb over the fence on occasions and adult strangers came through the Activity Camp twice by climbing over the fence from the creek. The club management did not fix the fence.

Ms. Kujan stated there were gopher holes all over the yard. She could not allow the children to play soccer because of the holes. One camper twisted her ankle, so they took this more seriously. Ms. Kujan stated Charlotte did investigate. Stefan would fill the holes and eventually they started to put poison down the holes before they covered them up.

Ms. Kujan stated the gopher holes were a minor thing, and Stefan did try to do things. On the other hand, she stated the situations with the mice and the pool were not dealt with adequately. She understood that it would be expensive to fix the yard, but part of her said, "Well don't run a camp here if you can't fix the yard." Ms. Kujan stated "what they did was end up putting kids at risk."

Ms. Kujan stated the general manager Charlotte Valentine came back to the Activity Camp only once during the entire summer. Ms. Valentine told her there was no interest in what was going on back at the camp. This convinced Ms. Katrina Kujan that the camp was purely a money making proposition. The management attitude was, "Katrina. turn a profit and that is really what we care about." Ms. Kujan admitted "that was her job, to bring in money for the club." Ms. Kujan then said the management really did care about the quality of the day that the kids had there at the camp.

Ms. Kujan said she would get a lecture if the Activity Camp kids would yell, or run while they were going through the club house. The kids were required to whisper while in the club house. It was very difficult to keep twenty-five 4, 5 and 6 year olds under control for a three minute walk through the club house to the pool. She would get a lecture from Charlotte Valentine every time the kids were heard or ran in the club house. She even was talked with about the camp kids being heard while playing basketball. Charlotte Valentine told her that the kids were disturbing the tennis

players. Ms. Kujan expressed frustration about this because the management wanted this camp but they did not want the kids to yell or be joyful while playing.

The tennis instructor was another issue. The kids' tennis shoes would pick up mud from the yard or from the wet soil. When they went to play tennis they would have to sit outside the club and clean their tennis shoes for about ten minutes. If the kids brought any mud into the courts, "Hugh", the tennis pro would complain to Ms. Kujan about it.

The financing was set up at the club so that each department was financially independent from the other departments. Every department was expected to turn a profit. For instance, when the camp children had swim lessons, Esther Clark would have an instructor assigned to teach those kids and the Aquatics Department would receive the money paid by the campers' parents. The same was true for tennis money.

Ms. Kujan stated she tried to make different sports available for her campers. She originally hired a tennis pro to teach her campers, but "Hugh" (the club tennis pro) became very upset with her. Her told that no strangers could come onto his tennis courts and that he would hire his own tennis instructors. She then arranged through "Hugh" to have teachers there for her campers twice a week. Ms. Kujan saw that "Hugh" had advertised to the community that there was a tennis clinic at the same time that her campers were being instructed. She saw that the community students from the clinics would be mixed with her campers for the tennis lessons. Ms. Kujan explained that basically she was paying for the tennis instructors with her campers' money and the money that "Hugh" brought in from the community clinic students was pure profit for the tennis department.

Ms. Kujan stated that it was just like that at the club, every department was trying to make money off of those little kids.

YOUNG, Colleen
(Child Care Program Regional Manager)
360 S. Hope Ave. Suite C-105
Santa Barbara, CA 93105
(W) 682-7647

VALENCIA, Maria
(Child Care Program Supervisor)
360 S. Hope Ave. Suite C-105
Santa Barbara, CA 93105
(W) 682-7647

McKENZIE, Janet
(Attorney for California Dept. of Social Services)

Ms. Colleen Young and Ms. Maria Valencia were interviewed at the office for the State of California, Department of Social Services, Community Care Licensing Division, Central Coast Region, located in Santa Barbara. State Attorney Janet McKenzie participated with the interview by conference call at the request of Colleen Young.

A comparison was done between the Department of Social Services reports that had been received at the District Attorney's Office and a complete set of reports completed by Department of Social Services staff. Colleen Young agreed to provide a copy of the documents that I had not received.

DATE: 2/6/2006

LOCATION OF INTERVIEW: 360 S. Hope Ave. Suite C-105 Santa Barbara (Tape available)

I asked Colleen Young and Maria Valencia to explain in layman's terms what the difference was between a "Child Day Care" facility and "a Day Camp". Attorney-Julie McKenzie interrupted and stated the department was regulated by the Health and Safety Code and that the section defining a "Day care Facility" was 1596.70 of the Health and Safety Code. Attorney-Julie McKenzie was not able to give me a code in the Department Of Social Services regulations defining a "Day camp" because they do not oversee camps.

Colleen Young stated the Department Of Social Services had substantiated that the COAC should have had a day care license and they did not have one. Ms. Young confirmed that even though COAC had named their program Activity Camp it was in reality a day care program.

I asked Colleen Young what changes would need to be made to the way the Activity Camp was staffed or to the facility to get a license. Ms. Young first stated she could not answer that question, as it would require a certain amount of speculation. Ms. Young stated Department of Social Services did not assess the COAC Activity Camp program since it was established there was no license and they were in violation. However, some of the requirements that would have to be looked into were: physical plant, criminal record, fire clearance, staffing ratios, professional staff and certain numbers of those staff. The investigation they did was to determine whether the COAC was operating without a license, not whether their program met the requirements of licensing. If they were a licensed program then a licensing worker would have been monitoring the Activity Camp.

I asked Ms. Valencia and Ms. Young questions about the facility based on things that I had been told during my interviews. Ms. Valencia agreed to answer my questions based on her recollection of what she saw during her inspection of the facility.

I asked if having the bathrooms in the clubhouse away from the Activity Camp area would be acceptable for a licensed facility. Ms. Valencia stated this situation would not be acceptable.

I asked if it was required to have hot water at a licensed facility. Ms. Young and Ms. Valencia stated while the regulations do require hot water, exceptions have been granted at facilities if they only have cold water for hand washing. Hot water would be required if the facility did food preparation.

I asked Ms. Valencia and Ms. Young if the older children needed to be kept separate from the younger children. Ms. Valencia explained that the three licenses that they issue for child care are for *Infant, Pre-school, and School age*. *Infant* is from birth through 2 years old. *Pre-school* can be from 2 years of age up to kindergarten. Ms. Valencia explained further that the kindergarten group could include a child from 4.9 years of age to the age of 7. This meant that the pre-school group could care for children from 2 to 7 years of age. *School age* would be from Kindergarten to technically 18 years old. Attorney-Julie McKenzie and Ms. Valencia stated a facility would need the appropriate license for the age of children that they were caring for.²⁹

I asked Ms. Valencia and Ms. Young what type of education a director such as Elizabeth Heller would be required to have. Ms. Valencia explained that the requirements for directors varied according to the age category of the child care license.

A *school age* director at a licensed facility would require fifteen units of early care and education, but they could accept course work in psychology or physical education, among others. A director would also need three units in administration, and six months experience as a director in a school age facility.

Ms. Valencia stated a *Pre-school* director would require twelve units in early care and education, and the three units of administration. She thought the regulations required a director for each specific licensed program. Ms. Valencia stated there were many different names for "a program director". The Department of Social Services just looked at whether the person doing the job of the director had met the experience, qualifications and education requirements.

Ms. Young also pointed out that a Criminal Record check would be required on all staff through Department of Justice, Child Abuse index and the FBI. The director of the licensed facility is responsible for having those clearances of the facility staff before anyone has contact with the children. The CEO of a corporation, or possibly the general manager of a business, would be identified as the licensee. That person would also be required to have the clearances even though they might not have direct contact with the children. When they license larger facilities, Department of Social Services staff stresses that everyone who might have contact with the children have a clearance. In the case of COAC that would include lifeguards and tennis instructors. There would be a discussion with the licensee about who else would need the clearance depending on their position at the facility and whether they would have contact with the children.

²⁹ Based on this statement the Activity Camp would technically need both the Preschool and School age licenses. There were only two children over the age of 7. One of the campers was Megan Bradbury and she was 9 years old. The second child was an 11 year old, Harrison Swalley. Harrison was at the Activity Camp in a Counselor-In-Training capacity and helping the counselors to care for the younger child in attendance.

Ms. Valencia explained that the Child Development Site Supervisor Permit and Child Development Director Permit are from the Department of Education. Those permits require more education and have higher standards than Department Of Social Services, so the permits could be substituted for any requirements by Department of Social Services.

Ms. Valencia stated a teaching credential was not required and, in fact, might not meet the requirements for person to be a director. Ms. Valencia and Ms. Young explained that a person might have a masters degree, but if none of their courses were in Child Development they would not meet the Department Of Social Services requirements.

Ms. Valencia stated Department of Social Services required at least one staff person to be CPR Certified and on the premises whenever a child care facility was operating.

Ms. Valencia explained that a health screening and a Tuberculosis test were required of the staff at a licensed facility.

Ms. Valencia explained that a counselor, or qualified teacher, of a licensed facility would need to meet certain requirements. Ms. Valencia explained a teacher/counselor would need to have 12 units of early childhood care and education. This person would then be able to supervise up to twelve pre-school children. Teacher aides would need to be supervised by the qualified teacher. A teacher-aide needs to have a minimum 2 units in early care and education, and be enrolled in a program working towards a total of 6 units of courses in the area of child early care and development.

I asked a hypothetical question. If Elizabeth Heller, the director, met the requirements to be a teacher of a licensed facility, could the counselors be considered teachers aides. Ms. Valencia and Ms. Young then had a discussion about whether a director could also be the teacher. Ms. Valencia stated this would not normally be allowed and would be an exception to what Department Of Social Services allowed. Ms. Valencia stated technically every licensed program needs to have a qualified teacher and qualified director who are two different people.

Ms. Young explained that there was an administrative process for a facility to submit a written request for their facility to be treated differently than what is required by the Department of Social Services regulations. If a facility wanted the Director to be considered the qualified teacher they could submit a written request via this administrative process.

Ms. Young and Ms. Valencia confirmed that there were special requirements for a licensed facility if there was a pool on the premises. Ms. Valencia stated a pool has to be enclosed with a five foot fence. The gates have to be self latching and open away from the pool. The pool has to be visible through the fence. In other words, the fence can not be solid wood or a wall. There are many specifications for the fencing used at a licensed facility. Ms. Valencia did not take any measurements because this was not a licensed facility.

Ms. Young stated when the pool is used by children there has to be a lifeguard, or a person with water safety certificate present. The ratio of child to staff was reduced when the day care involved water activities. Lifeguards would count in figuring those ratios as long as they were certified. I explained that it appeared that there were two lifeguards and three counselors for fifteen children signed in on the roster. Ms. Valencia stated this appeared to be an acceptable ratio of child to staff if COAC had been licensed.

I asked Ms. Valencia about the fence that was between the COAC Child Care building and the pool. Ms. Valencia explained that Department of Social Services had determined that the COAC child

care did not need to be licensed because the parents are on site while the child is being watched. However, this child care would have a problem getting a license because the bathrooms are on the inside perimeter of the pool area. (The child has to leave the child care area, enter the pool area and walk along the larger pool to go to the bathroom which was next door.) Ms. Valencia explained that this would create a major problem in getting a license if one had been required.

I asked Ms. Valencia and Ms. Young about the handwritten note that had been included in the documents provided to the District Attorney's Office. Ms. Valencia and Ms. Young explained that this was one of the first notes about a call reporting the drowning and requesting to open an investigation by Department of Social Services. We found that it was dated 8/29/2005 and Ms. Valencia stated Department of Social Services opened a formal investigation on 9/15/2005.

Attorney-Julie McKenzie reiterated that COAC did not meet any of the exceptions as listed in 1596.792 Health & Safety Code. Ms. Valencia reiterated that the Activity Camp was not considered an "Organized Camp" under the regulations (18897 Health & Safety Code).

Ms. Young stated none of the other clubs have a license for day or child care with Department of Social Services. The Department of Social Services has not received any complaints regarding the other athletic clubs associated with COAC, so there has been no investigation by Department of Social Services into whether they have similar programs.

(The tape recorder was turned off).

While waiting for the copies of additional documents including the interview of Elizabeth Heller, I asked Ms. Young the status of the COAC's administrative case. Ms. Young stated the COAC first level appeal had been denied. The second level appeal which was at Ms. Young's level as Regional Manager was also denied. Ms. Young explained that the next appeal level was at the Assistant Program Manager level in Sacramento. Ms. Young identified the Assistant Program Manager as Cagle Moore.

Copies of documents submitted by COAC in the appeal process and the documentation of the interview of Elizabeth Heller were given to me at the termination of the interview.

LYNCH Michal

(Mother of a girl who was found unconscious in the pool at COAC and revived by a family friend.)

Ms. Michal Lynch was contacted by telephone.

DATE: 3/6/2006

LOCATION OF INTERVIEW: Telephone (Tape available)

I introduced myself and told Michal Lynch that I was conducting an investigation into the drowning of Yoni Gottesman that occurred during the past summer. I told her I had the five page declaration that she had given in October 2005.

Michal Lynch confirmed that her daughter, Rebecca, had trouble in the pool at COAC and had been rescued. She confirmed that this incident had occurred on June 17, 2000.

I told Ms. Lynch that one of the concerns was that the lifeguard did not help with the CPR. Ms. Lynch stated that was correct. Ms. Lynch said the lifeguard was a woman who did not see that there was a problem. Rebecca's brother, Sean, was there and saw there was a problem. Ms. Lynch explained that Sean saw that his sister was face down and not moving. Sean yelled at his sister, walked out to where she was floating and pulled her toward the edge. Their family friend, Sylvain, jumped in the water and pulled Rebecca out himself. Sylvain did CPR and revived Rebecca.

The lifeguard told them later that, "He seemed to know what to do so I (the lifeguard) just watched." Ms. Lynch admitted that the friend was trained in CPR because he was an EMT in France and knew what to do.

Ms. Lynch admitted that she was not watching, "Like most parents, I figured the lifeguard was watching". Every now and then she would look over toward the pool. Ms. Lynch stated when she looked over at the pool Rebecca was already on the deck and Sylvain was doing CPR. The lifeguard was standing some distance away from them and watching. She did not recall whether the lifeguard had cleared the pool. Ms. Lynch stated she did not look at that.

Ms. Lynch called "911" after she asked if anyone had called and received no response. As she was reporting the drowning she heard the lifeguard say, "I think it is time to call 911".

Ms. Lynch stated she would never try to do CPR herself and her only training was basic first aid. The first thing that they teach you is to call "911". Ms. Lynch stated, "If a person is unconscious you need 911. That's it. It's simple." If she could learn this then she would expect a lifeguard to be able to do this.

Rebecca and Sean are twins and were six years old at the time.

Ms. Lynch confirmed that she did give the declaration and she signed it at a later time. She did read it over to make sure it was accurate.

Ms. Lynch stated she was the primary person involved and Mr. Lynch came to the hospital later.

They reported what had happened to the COAC staff. The staff told her this had never happened before. They were told that the lifeguard froze and did not know what to do. Ms. Lynch stated she accepted this explanation.

Coincidentally, she later became the supervisor for lifeguards at a beach. She had the opportunity to speak with lifeguards at length and now understood that until you have to pull someone out of the water and do CPR, you do not know how you are going to react. Ms. Lynch did not know the name

of the lifeguard involved with the rescue of her daughter. Ms. Lynch spoke with the manager a couple of times, but she did not know the name of the manager.

Ms. Lynch believed the staff when they said they did everything necessary. Now she wonders if she had looked into it more, she might have found out more. She did talk with a lot of people, but no one ever said they had a similar incident. If other people had reported similar things then she would have done something else.

She has talked with other mothers since Yoni's death was publicized. Many of those mothers have told of incidents that should not have happened, and asked what was that lifeguard doing, or that there was no lifeguard. She had been told about so many of these incidents that she has formed the opinion that something is seriously wrong.

Ms. Lynch was not a member of COAC.

She wrote a letter to the coroner with the story about her daughter and wondered why this was not investigated back at the time of Yoni's death.

CHILDS, Shari

(Her son was in the hospital at same time as Rebecca Lynch, a child who had been revived at COAC)

Ms. Shari Childs returned my telephone call.

DATE: 3/6/2006

LOCATION OF INTERVIEW: Telephone (Tape available)

I explained that I was investigating the drowning at COAC and that I had been given her name as a person who had information about what happened.

Shari Childs explained that she had heard about a prior incident involving the daughter of Michal Lynch. Shari Childs stated she had heard about that incident from Ms. Lynch at the hospital. Ms. Childs explained that her son was in the hospital at the time when the Lynch daughter was admitted to the hospital.

Ms. Childs' son went to a camp held at the COAC approximately five years prior to my interview. Ms. Childs stated she did not like the camp because the counselors were too young and inexperienced.

She had also heard something that disturbed her just before the drowning. She was out at UCSB and her son was taking a swim test. Ms. Childs heard one of the lifeguards say to another something like, "I used to work at the Cathedral Oaks and you've never had to pull a drowning person out of the water." The lifeguard seemed to be reprimanding the other lifeguard for something.

Ms. Childs stated she does not use the COAC. She is a member of the Santa Barbara Athletic Club. She rarely leaves her kids at camps or swimming without her staying. She said those types of programs and facilities seemed to be unsafe to her.

Del BONIS, Mary
(Her children go to school with the Gottesman children)
(H) 682-0706

Ms. Mary Del Bonis called me back regarding the message I had left on her voice mail. .

DATE: 3/6/2006

LOCATION OF INTERVIEW: Telephone (Tape available)

I introduced myself and explained that I was conducting an investigation into a drowning that occurred at COAC during the last summer. I also told her that her name had been given to me as a person who had information regarding a swim instructor not paying attention.

Mary Del Bonis stated she knew the Gottesman family because their children went to school together. She did know Yoni and her son were friends.

Ms. Del Bonis almost had her boys go to the "summer swim program" at COAC. She had two sons who were four and six years old. She decided not to enroll her sons because of concerns with safety.

Ms. Del Bonis was familiar with the COAC "pool scene" because she had been a member there. There are two pools, one pool for the kids and another for the serious swimmers. Ms. Del Bonis described the kids' pool as being Olympic size. There are a variety of swimmers in the pool at the same time including the campers, private swimmers and the club members. She could not figure out how the safety of all these people could be worked out. Ms. Del Bonis explained that the membership is a "dynamic number." How did the staff know they had enough employees to cover the number of kids in the pool?

Ms. Del Bonis spoke with the Director of Aquatics, Esther (Clark), about her concerns when she looked into the Activity Camp program. Ms. Del Bonis asked Esther Clark what the ratio of adults supervising to children in the pool would be. She was very upset by Esther's reply. Esther Clark replied, "The program met all licensure requirements." Ms. Del Bonis explained further that whatever the license requires were, the COAC met them.

Ms. Del Bonis understands now, after talking with the California Department of Social Services, that COAC was required to be licensed, but was not. She felt if COAC represented they were licensed and they were not, then there are more serious issues to be considered. Ms. Del Bonis stated "They (Esther Clark) told her that they (COAC) met all licensing requirements to her face. ...they were required to be licensed, but weren't." Ms. Del Bonis stated she did not know if this issue needed to be addressed by the District Attorney's office, but she knew it was an issue for the State Department of Social Services.

I asked Ms. Del Bonis when she had this conversation with Esther Clark. Ms. Del Bonis said it was before the beginning of summer and the beginning of camp. She was trying to plan out her sons' summer. I confirmed that when she mentioned "Swim camp" she was talking about the Activity Camp. She confirmed that she had enquired about "the camp where Yoni died". Ms. Del Bonis explained that she talked with Esther Clark even though Esther Clark did not have too much to do with the Activity Camp because of her concerns with the safety in the pool. Esther Clark said she was the Director of Aquatics and confirmed that swimming was part of the camp. Ms. Del Bonis stated when she called about the swimming portion of the camp and the safety in the pool she was put through to Esther Clark.

She had been a member of COAC in the past and this past summer she reenrolled.

Her two boys went to private swim lessons at COAC. She had gone to the lessons with her sons and everything seemed okay. She allowed "her nanny" to take her sons to the lessons eventually. One of the boys told her he had been scared in the pool after a swim lesson to which the nanny took them. She asked what happened. Her son replied, "I went under water and I couldn't get out and then the instructor came over and got me." Ms. Del Bonis stated this was her 5 year old son. Ms. Del Bonis talked with the swim instructor, but she could not recall her name.

The instructor told Ms. Del Bonis that while she was instructing the four year old the five year old was on the steps. The five year old was retrieving the toy from the bottom of the pool, got disoriented, and could not get back to the step without going under water. Ms. Del Bonis did not agree with leaving her son playing with the underwater toy and having the moment of panic. The swim instructor was unconcerned about this. The instructor just seemed to think that he was pulled out of the water and everything was fine. For her son it was different, he was scared. Ms. Del Her sons took swim lessons from the middle of June until Yoni's death.

Ms. Del Bonis had scheduled the swim lessons for her kids to finish prior to the Activity Camp" kids starting the free swim period. Her kids were intimidated by the splashing and noise of the other kids having fun and had asked that they finish class before the Activity Camp kids arrive. Ms. Del Bonis described the commotion in the pool while the Activity Camp kids were swimming as "an accident waiting to happen."

A friend of hers told her not to have her kids in the "summer swim program" (Activity Camp) at COAC because it was not safe.

Ms. Del Bonis called the COAC after Yoni drowned and asked if there was a tape and wanted to know if this was a safe place for her children. The person she spoke with was Charlotte Valentine. Charlotte Valentine told Ms. Del Bonis that they could not talk about it. Ms. Del Bonis eventually dropped her membership from the COAC. Charlotte Valentine called her and wanted to know why Ms. Del Bonis was leaving the club. Ms. Del Bonis told her that there were too many emotions and issues involved to explain. Charlotte Valentine told Ms. Del Bonis that the COAC was disbanding the Activity Camp program anyway because they couldn't make any money on it. She later found out that was not true and that the Activity Camp was discontinued because the state had shut them down. Ms. Del Bonis said this was the second time that the staff of COAC had misrepresented things to her.

Ms. Del Bonis felt a responsibility to make sure this did not happen again. She had a bad feeling about the program and other mother(s) had expressed the same feeling. Somehow Yoni's mother did not find out about the other mothers' feelings about the program. She felt guilt because she knew the program was not safe and the public was not told.

Ms. Del Bonis felt the COAC was criminally negligent because they (Esther Clark) had misrepresented that the camp was licensed, and if they had tried to get a license they would not have qualified. She formed the opinion that she did not care if the COAC was licensed or not, she was not going to send her kids to the Activity Camp program because it was not safe. She opined that when the COAC represents they are licensed then those parents sign a waiver relying on that expectation. Ms. Del Bonis stated what she saw going on in the pool area of COAC was irresponsible. It was never safe and there were no internal controls in place.

Ms. Del Bonis stated this was a popular program and friends wanted their friends to come

Ms. Del Bonis opined that if COAC had been licensed then the Activity Camp would have been operated in such a way that there would not have been a drowning.

She was told that the lifeguard who had done the CPR was on duty the next day. She did not understand how someone who had not seen a boy drown, or notice him in the water for 7 to 8 minutes could be allowed to work the next day.

Ms. Del Bonis would like to see something be put into place so that there is never a drowning of a kid at any camp again. Additionally, she would like to see the public educated in what to look for in selecting a camp program, so that parents can check to make sure that their children are going to a safe camp.

DISKIN, Hilary
(H) 965-9659

DISKIN, Jolie DOB: 4/22/2001

DISKIN, Hanah 8 years old

Ms. Hilary Diskin was contacted by telephone on 3/6/2006.

DATE: 3/6/2006

LOCATION OF INTERVIEW: Telephonic (Tape available)

I introduced myself and told Hilary Diskin that I had been given her name by the Gottesman family regarding the investigation I was conducting into the COAC.

Hilary Diskin stated her daughter was the same age as Yoni. Both of her children had attended the Activity Camp at COAC in prior weeks, but not the week that Yoni was enrolled to attend.

Ms. Diskin stated Mr. Gottesman had asked if he could give her name to the District Attorney's Office to speak with about the Activity Camp. She did not know what to tell me about the camp.

Ms. Diskin stated she had two daughters Jolie, 5 years old and Hanah, 8 years old.

I asked Ms. Diskin if there was anything that happened with her children that concerned her. Ms. Diskin stated the only thing that concerned her was an answer from her children that she got when they were asked if they were given a swim test. Ms. Diskin explained that she asked both of her kids about whether they were given a swim test on the first day of Activity Camp. Both kids said they did not recall a swim test at Activity Camp. Ms. Diskin stated Mr. Gottesman had been told that Yoni was given a swim test. Ms. Diskin stated her daughters told her that "the teachers just watched them to see if they could swim and made a decision (about where the swimmers could go in the pool)." She would not necessarily expect her five year old to remember, but her eight year old is usually reliable.

Ms. Diskin contrasted that with another camp her daughters had attended where the swim test was difficult. The swim test at the other camp involved not only swimming a certain distance, but also required them to tread water for a minute or two. If the campers could not pass the test they could not go into the pool. There was a "slip and slide" they could use instead. Her daughter came home after the first day at this other camp and told her that she was disappointed at not being able to go into the pool. The daughter told Ms. Diskin that she did not take the swim test because she was scared. Ms. Diskin stated the swim test was a really big deal. She went with her daughter the following day for emotional support while her daughter took the test.

Ms. Diskin then confirmed that Jolie attended Activity Camp June 27 through July 1, 2005. Her older daughter was going to another program, so she used the Activity Camp to fill in the week for Jolie. Hanah went to the Activity Camp for the summer and winter sessions in 2004.

FRIEDMAN, Jill

(A local attorney who stated her colleague had information regarding other incidents at COAC)

Ms. Jill Friedman called back after my call to her requesting a call.

DATE: 3/6/2006

LOCATION OF INTERVIEW: Telephone (Tape available)

I told Ms. Jill Friedman that I was investigating the COAC drowning of Yoni Gottesman and her name had been given to me by the Gottesman family.

Ms. Friedman confirmed that one of her colleagues had information regarding incidents at COAC, but that person still could not be involved.

Ms. Friedman stated Mr. Berti had been a client of her law firm and reiterated that her colleague was still not able to give information.

Ms. Friedman stated she did not have any knowledge herself that could help the investigation.

WALLS, Chelsea DOB: 7/17/1982
(Babysitter for children in swim class)
(W) (949) 874-7002

Ms. Chelsea Walls called me back regarding the message I had left on her voice mail.

DATE: 3/14/2006

LOCATION OF INTERVIEW: Telephone (Tape available)

Chelsea Walls corrected the information in the original report written by the law firm of Grassini. She explained that she had gone to Westmont College, but had graduated two years prior to my interview.

Chelsea Walls did confirm that she was at COAC on the day that the drowning occurred. She was a child care provider for the Bream family. She had two of the Bream children at the COAC for swim lessons who were 3 and 5 years old.

Ms. Walls stated she did not see what actually happened because she had the kids she was caring for inside the bathroom area. They were inside for approximately 15 minutes. When Ms. Walls came out of the bathroom they were just pulling the boy out of the water.

Ms. Walls explained further that she had brought the Bream children to their swim classes all summer long. Ms. Walls thought that the children had classes on Monday and Wednesday.

She did not like what she saw and considered the situation with the Activity Camp kids hazardous even before the boy drowned. She did not think that the Activity Camp counselors paid very good attention to all of the kids in the pool. There were too many kids in the pool for the number of counselors that were there with them. Some of the kids were too young to be in the environment provided by the Activity Camp.

She first started taking the Bream children to swim lessons at the beginning to the middle of July 2005. The swim lesson that her kids attended was getting over about the time that the Activity Camp kids arrived. She and the kids she was watching would sometimes stay after the lesson and be in the water with the Activity Camp kids.

She did not know Yoni, or any of the kids in the camp. She did not think the Bream kids knew anyone either.

I asked if she recalled anything specific that made her form the opinion this was a hazardous situation. Ms. Walls stated she saw the counselors "talking with each other quite a bit" and not paying attention to the kids in the pool. Sometimes this was also true for the lifeguards. On one occasion, she saw them lounging, laying back possibly tanning themselves on the lounge chairs. This incident was not the day of the drowning. It just did not seem to her that the counselors were very vigilant.

Ms. Walls stated she recognized the three counselors. She identified the counselors as "Maryam" with dark brown hair, a blond haired woman (Jennie Darling) and a guy (Sam Shipley). She saw a couple of male counselors that switched in and out, but she saw Maryam and the blond woman a lot.

She did not recall seeing Yoni swimming in the pool.

The only thing that recalled about that day when she saw the Activity Camp kids was that some of those kids looked “extra young” comparing them to the kids from the weeks prior.

She did see the swim test given by the counselors. The test “consisted of a whole group of kids swimming from one step to the other”. She described this as being chaotic. Ms. Walls stated her memory was a little vague, but that she definitely recalled that the swim test was given as a group “a couple of times”. She also recalled one time when a counselor got into the water and stood in the shallow end while the kids took their test. She did not see the test every time she went.

Ms. Walls did not recall any specific things that were unsafe. Ms. Walls stated even though she was young she thought that the lifeguards, instructors, and counselors seemed “overly young to her.” They seemed too young to have the responsibility for the safety of all those kids.

She spoke with a private investigator for the parents back in September 2005. Ms. Walls’ roommate gave her name to the Gottesman family and told them that Ms. Walls had been there often over the summer.

Ms. Walls stated she was not a member of the club.

ALPERT-WOOD Julie

(Terminated club membership after she found kids in the swimming pool with no lifeguard, or parents watching)

(H) 966-7344

I called Julie Alpert-Wood and left a message introducing myself and telling her that I was conducting an investigation into the drowning of Yoni Gottesman at the COAC.

Julie Alpert-Wood called me back regarding the message I had left on her voice mail on 3/6/2006.

On 3/13/2006, I received six e-mails containing forwarded messages and letters sent between Santa Barbara Athletic Club and Ms. Alpert-Wood regarding the unsafe conditions at the pool seen by Ms. Alpert-Wood. See attached e-mails and letters for further details.

DATE: 3/6/2006

LOCATION OF INTERVIEW: Telephone (Tape available)

I explained that I had been given two letters with her name and would like to confirm what she had written. By the end of our conversation we had established that the letters were part of several that had been exchanged between herself and the Santa Barbara Athletic Club (SBAC). Ms. Alpert-Wood agreed to send me all the e-mails and letters written by both herself and SBAC personnel.

Ms. Alpert-Wood explained that the reason she wrote the first letter to SBAC was to recount the conditions she found during a visit to "Kid's swim" on a Sunday, September 4, 2005, shortly after Yoni had drowned. Ms. Alpert-Wood requested that all of her membership money be refunded because of the unsafe conditions. Ms. Alpert-Wood described the fee to join as "substantial" and not usually refundable. It was her intention to get this initial fee refunded because of the unsafe conditions she found at the pool. Ms. Alpert-Wood was eventually successful in getting this fee refunded.

Ms. Alpert-Wood explained "kid's swim" further. Ms. Alpert-Wood stated the SBAC was usually an adult only facility, but there was a specific time period devoted on week-end mornings for kids on both Saturday and Sunday. She said that "kid's swim" was a term that the mothers adopted for this time for the kids. She stated her sons were 2 years 4 months and 7 years old at the time and she usually took her children on Sunday mornings.

Ms. Alpert-Wood stated she knew about the Gottesman drowning at COAC.

Ms. Alpert-Wood stated she found kids in the pool and there was no lifeguard when she went to SBAC on September 4, 2005.

Ms. Alpert-Wood stated she and the General Manager, Ms. Main, had many exchanges of information over the time period where she was trying to get her money refunded. Ms. Main did not seem to care that there was no lifeguard in the pool during the kids swim period.

Ms. Alpert-Wood stated she entered the pool with her kids. She recalled as she got in she counted that there were eleven kids in the pool. Ms. Alpert-Wood stated she then looked around at the parents that were in the pool area. The parents were talking and walking around and she did not get any sense that anyone was watching, or supervising these children. It seemed like her older son was one of the oldest and he was seven years old at the time.

Ms. Alpert-Wood recalled being shocked about the fact “there were eleven little bodies in this pool in a club that is owned by the same organization where there was recently a death of a child”. She could not believe that no one was watching those kids.

Ms. Alpert-Wood asked the employee who checked her in where the lifeguard was and she stated she did not know. Ms. Alpert-Wood told this employee to call the manager and find out where the lifeguard was because maybe there was a mistake with a schedule and someone didn’t show up for their shift. Ms. Alpert-Wood stated she went back to this employee to see what the manager said. Ms. Alpert-Wood stated this employee told her that there was no lifeguard on duty after Labor Day. This was the Sunday before Labor Day. She was really surprised that the club management was so relaxed about not having a lifeguard there when a child had just died at their other facility.

The female employee told Ms. Alpert-Wood, “There is no lifeguard and I am not trained as a lifeguard.” Ms. Alpert-Wood stated this really surprised her because if she was the manager of that club and her only employee on duty did not have any lifeguard training with eleven unsupervised kids in the pool, I would be concerned. “What is that employee supposed to do if something happened?”

As she was changing, she mentioned that there was no lifeguard to another mother and this mother replied that there was a lifeguard. Ms. Alpert-Wood stated this mother was referring to the “guy” in the shallow end who was giving private swimming lessons. Ms. Alpert-Wood pointed out that this was not a lifeguard, but an instructor who was paying attention to only one person, his student. Ms. Alpert-Wood said this just pointed out to her that there was confusion among the mothers about whether there was a lifeguard, or not. Ms. Alpert-Wood stated the lifeguard policy was not clear and the club should make it clear to the mothers.

She was so alarmed about the lack of lifeguards and the situation that she had seen that she sent her first e-mail to the club that afternoon. It took over two weeks for a response from the club.

She canceled her membership at the SBAC because she did not want to be at a facility where there is potential for another drowning. Ms. Alpert-Wood felt the drowning of a kid is the ultimate tragedy. She did not want to be part of that institution. She could not understand the manager’s slow response to this obviously dangerous situation.

In a personal meeting with Julie Main regarding this situation Ms. Main seemed to be disconnected from the reality of what had happened and the fact that they were talking about a real human boy. Ms. Main told Ms. Alpert-Wood a story about being at a meeting with the club attorney and the attorney told them that his dog drowned and burst into tears. Ms. Alpert-Wood stated she understood that some people love their dogs, but Ms. Alpert-Wood stated they were talking about children and a little four year old boy who drowned, not a dog, when this happened. Ms. Alpert-Wood stated this was just bizarre behavior by the manager Ms. Main.

Ms. Alpert-Wood stated she just wanted to point out a dangerous situation and to wake up the management there at SBAC.

Ms. Alpert-Wood had spoken with the private investigator from the Gottesman attorney.

SMITH, Rena
(Present at COAC two days prior to drowning and thought lifeguards were not paying attention)
(H) 682-6715

Ms. Rena Smith was contacted by telephone on 3/23/2006

DATE: 3/23/2006

LOCATION OF INTERVIEW: Telephone (Tape available)

Rena Smith confirmed her identity. I introduced myself and told her that I was conducting an investigation into the drowning of Yoni Gottesman at COAC. I explained that I had been given her name as a possible witness and asked her to tell me what she had actually seen.

Rena Smith stated she had taken her epileptic daughter to a birthday party at COAC a few days before the drowning. Because her daughter is epileptic she watched her very closely and tended to be more concerned with water safety. Ms. Smith also worked at a youth shelter and was aware of community care licensing issues.

Ms. Smith stated she did not feel confident, or comfortable, with the supervision of the pool by the lifeguard(s) on duty the day of the party. The primary lifeguard was male and he would just leave the pool. He would get the kids out of the pool for bathroom breaks, but his instructions were not always followed. At one point there was a woman and her child in the pool while he was gone. Ms. Smith stated that the lifeguard spoke with this woman at one point, but she remained in the pool when he left again. She recognized this woman as a professional volleyball player who lived locally. Someone actually confirmed that during a conversation in the woman's locker room.

Other times, the lifeguard left the pool area to get a drink or was at the deeper end of the pool sitting with a female who was possibly another lifeguard. Ms. Smith did not know if this female lifeguard was on duty, or not. The kids were in the shallow end of the pool, the opposite end of the pool from where the lifeguard(s) was sitting.

Ms. Smith assumed the lifeguard was there to watch the kids, but while she was sitting on the edge of the pool watching her daughter she noticed a folding sign next to the pool. The sign was about knee level in height and said "No lifeguard on duty. Parents need to watch their own kids. Or, something similar." Ms. Smith interpreted this sign as a disclaimer and was for liability purposes. She thought to herself that it was a bonus to have a lifeguard there, but she still needed to watch her own kid. However, one of the problems was that she did not notice the sign until she was seated on the edge of the pool and eyelevel to it.

She thought to herself and actually told a friend there, "that this place was an accident waiting to happen." This friend told someone else and eventually the private investigator called her. Ms. Smith stated the lifeguards did not take their jobs seriously. The lifeguard's presence gave the parents a false sense of security.

Ms. Smith stated she had never been to the COAC before this and she thought that was the way COAC handled those kinds of kid parties on the weekends.

Ms. Smith stated there were also other COAC club members in the pool during the time the party was held.

COSENTINO, Rachel

(According to Ms. Tina Haimovitz - Cosentino said "COAC pool was an accident waiting to happen")

(H) 563-8852

Attempts to speak with Ms. Cosentino had not been successful at time of this report

There is a summary of what she had seen at a birthday party two days prior to the drowning on page 7 and 8 of the Grassini letter sent to the District Attorney's office on 11/2/2005.

GARCIA, Mario
(Club Member swimming in other pool at time of drowning)

(H) 964-2517
(W) 893-2991

There is a six page declaration signed by Mr. Garcia on October 3, 2005 included with the Grassini letter sent to the District Attorney's office on November 2, 2005.

I interviewed **Mr. Mario Garcia** on 3/24/2006 by telephone. I introduced myself and explained that I was conducting an investigation into the drowning at COAC. I explained that I had been given a six page "Declaration of Professor Mario Garcia". I asked if he recalled reviewing this document and whether the information was accurate.

Mr. Garcia recalled reviewing the document I described. He said he had been interviewed extensively by the Private Investigator hired by the family of the boy who drowned. The Private Investigator brought it to him afterwards and he read and signed each of the pages. Mr. Garcia stated what he read was an accurate representation of what he remembered happening.

I read sections of the declaration to Mr. Garcia and he talked about other sections. He again stated the report appeared to be an accurate representation of what he recalled. A copy of that document can be viewed in the following section.

Mr. Garcia stated he wanted to reiterate that it seemed to him that the ambulance personnel took at least 15 minutes or longer to arrive on scene. I told Mr. Garcia that if I used the ambulance report and the video clock the paramedics arrived approximately 3 minutes after being called. Mr. Garcia stated did not seem right and then we got into a discussion about the differences in the different clocks and the fact that no one checked the clock along side the pool that he was using to see if it had the correct time.

1 7. The lifeguard chairs have red umbrellas. The pool furniture moves around a little bit, but
2 on the day of the accident, the lifeguard chair closest to the shallow end of the pool was closer to
3 the rope barrier that marks off a swimming lane in the smaller pool.

4 8. There's a rope barrier, like a lap lane barrier, against the left side of the pool as you are
5 facing it from the club. The barrier sections off one lane in that pool so people who want to can
6 swim laps. There is also a temperature difference between the smaller and larger pools. Usually,
7 the big pool is kept somewhere in the 70's (in terms of degrees Fahrenheit). I think the smaller
8 pool stays somewhere in the 80's (in terms of degrees Fahrenheit). There's a board in the locker
9 room that lists the current pool temperatures. I see it every time I go swimming.

10 9. On previous occasions, I have observed lifeguards sitting in the chairs with the red
11 umbrellas and walking the edge of the pool. The number of lifeguards on duty appears to
12 fluctuate based on the level of activity in the pool and is given seasonal consideration. There are
13 usually one or two lifeguards on duty.

14 10. I do not know the names of any of the club employees. There is one employee named
15 Chauncey, I think, that sometimes says hello to me, but he works in the office. I don't think I've
16 ever spoken to any of the lifeguards and I'm sure I don't know their names.

17 11. I never really paid attention to the lifeguards before the accident. They were around, but I
18 never really noticed what they were up to. I had seen them talking to guests, but it is hard to
19 estimate how much attention they were paying to the pool. Occasionally, I would see them
20 engaged in conversation away from their chairs. Now, after the accident, I started watching them
21 a lot more. In fact, there was an incident that I was concerned about that occurred on August
22 23rd. I went back to the athletic club about a week after the accident, and I was working out in
23 the weight room. The weight room is on the second floor of the athletic club, and there's a
24 window that looks down over the pool area.

25 12. I watched from the weight room while the two lifeguards that were on duty left their posts

Declarant initials:

- 2

Berza & Associates Investigations
26650 The Old Road, Suite 216
Valencia, California 91381
(661) 799-7777

1 at the family pool simultaneously and walked to the far corner of the lap pool. The two
2 lifeguards were talking to each other, and one was facing the smaller pool and one had his back to
3 the pool. The one that was facing the pool was not really watching, just facing that direction.
4 The lifeguards kept talking like that for five or ten minutes, and that's a long time. I just watched
5 the whole time, because I was thinking, "Wow. After that accident, these guys really ought to be
6 paying attention." While they were talking, I noticed that there were four or five people in the
7 family pool. There was one adult and three or four children. The kids were between about 6 and
8 8 years old, I think.

9 13. The lifeguards finished chatting and then went back to their chairs at each end of the pool,
10 and I watched them the whole time.

11 14. On August 15, 2005, I arrived at the club at about 2:00 p.m. I went to the dressing room,
12 changed, and entered the pool area. I was in the water at about 2:20 p.m. I usually swim laps for
13 about 20 minutes and I looked at a clock that is hung at the end of the pool after I completed my
14 first full lap and it was 2:25 p.m. I average about five minutes for a complete lap.

15 15. I had just completed my second full lap when I noticed the commotion at the other pool. I
16 estimate that it was about 2:30 p.m. I was finishing the second lap when I heard tense voices. I
17 think the woman in the next lane over might have brought the matter fully to my attention. She is
18 an older woman, and I don't know her name, but she was standing in the water and looking over
19 at the other pool. I stood up and looked, too.

20 16. I saw a woman in a blue one-piece bathing suit with some kind of white pattern standing
21 in the water over the little boy. The boy was on the side of the pool, sort of at an angle to the
22 water. She was standing in the water and performing mouth-to-mouth.

23 17. I remember the little boy's face very distinctly. I could see it clearly, both during the CPR
24 and after. Something strikes me that her hands were not covering his nose. I mean, I remember
25 his face, and I don't remember anything obstructing my view. If she was pinching his nose

Declarant initials:

- 3

Beza & Associates Investigations
26650 The Old Road, Suite 216
Valencia, California 91381
(661) 799-7777

50)

1 closed, I think I would've noticed that, but I don't recall exactly. I don't think she was doing
2 that.

3 18. The woman did the mouth-to-mouth breathing for about five minutes, and then she
4 stopped. She got out of the pool and walked sort of over to the end of the pool and then she bent
5 over and started sobbing uncontrollably. She was being consoled by other people and was
6 eventually escorted by another woman into the dressing room. When she was crying, she sort of
7 collapsed to her knees. She was very shaken.

8 19. While the girl was still doing the mouth-to-mouth, there was another male, a lifeguard, I
9 think, rubbing the boy's chest. He was on his knees, straddling directly over the boy. He was
10 massaging the boy's chest and sort of "pushing." I recall that the male lifeguard's hands were
11 splayed, with fingers extended and apart. The hands were not overlapping, and each hand
12 massaged a different quadrant of the boy's chest.

13 20. I don't remember there being a violent movement, only a massaging sort of motion while
14 the lifeguard was doing CPR. I think that's how he did it.

15 21. The massaging and the mouth-to-mouth by the woman in the water were happening
16 simultaneously. It wasn't that he would massage, and then she would breathe. It happened at the
17 same time with no breaks.

18 22. After the woman in the pool stopped doing mouth-to-mouth, the male lifeguard kept
19 massaging for about another five minutes until the paramedics got there, but I never saw him do
20 mouth-to-mouth. As far as I know, no one else tried to breathe for the little boy.

21 23. At least two paramedics arrived with some equipment. One of them stood over the boy
22 with what looked like a little plastic bag. They came from the parking lot, through that gate I
23 described. When they walked in, they were very businesslike. I didn't get the sense that they felt
24 any kind of urgency. It was almost like they already knew that the boy was dead.

25 24. The paramedics arrived at about 2:45 p.m.. It seemed like a long time. Almost

Declarant initials:

- 4

Batza & Associates Investigations
26650 The Old Road, Suite 216
Valencia, California 91381
(661) 799-7777

1 immediately, they used the defibrillator and worked on the boy for about five minutes before
2 putting him on a stretcher and taking him out through the gate, I assume to the ambulance. When
3 they wheeled him past me, I could still see his face. I don't think he was wearing an oxygen
4 mask or anything. His eyes were closed.

5 25. I didn't see a defibrillator before the paramedics arrived. I saw a young man on a cell
6 phone, and a bunch of people standing around, but I don't remember seeing anyone else try to
7 defibrillate the boy.

8 26. The male lifeguard that I observed on August 15, 2005 was in his early twenties. He was
9 Caucasian with an athletic build. He had closely cut blond-ish hair and red shorts. I think he was
10 wearing a white shirt that said "Lifeguard." He was probably about 5' 9" in height.

11 27. I don't know what happened to the female lifeguard during the accident. I don't
12 remember seeing her while everything was going on. She was also in her early twenties. She
13 had a more robust build. I think she had shoulder-length blond-ish hair that was lighter than the
14 male lifeguard's. She was dressed the same though, and was probably about 5' 5" in height.

15 28. I didn't know who the camp counselors were, but there were, I think, at least three
16 counselors running around. The kids from the camp were still around for a little while after the
17 accident, and then the counselors started moving them into the locker rooms.

18 29. After the paramedics left, I swam one more lap. At the end of that lap, a club employee
19 told me that the club was closing and that I would have to get out of the pool. There was another
20 guy in the lane next to me who hadn't even been aware that anything happened. He swims with
21 his head in the water. I do not. We got out of the pool and I told him about what had happened
22 while we changed back into our clothes.

23 30. There are a lot of professional people who are members of the club. There are many
24 professionals there, like doctors. The club never made an announcement. The club never called
25 for a doctor. There could have been a doctor in the weight room that could have saved that boy's

Declarant initials: ME

- 5

Eatze & Associates Investigations
26650 The Old Road, Suite 216
Valencia, California 91381
(661) 799-7177

1 life.

2 31. There was at least one camera. It's located on the building near the weight room between
3 the first and second floors. I don't think the camera rotates; I think it just stays in one position,
4 looking at both pools. The camera looks like a small tube. I think the camera is maybe 5 to 7
5 yards from the pool, but it's hard to say.

6 32. During the accident, my view of Jonathan Gottesman was unobstructed, and I was able to
7 fully observe the events that took place.

8 33. I'm reasonably sure there was a sheriff's deputy present at the athletic club on that day,
9 but I don't really remember what he was doing.

10 34. I have taken issue with the athletic club management's failure to address my concerns
11 about another matter. There was a man that brought his two-year old daughter into the locker
12 room on a couple of occasions. I brought it up to the manager, Charlotte Valentine, and she
13 never really addressed the problem. She said she had handled it, and then it happened again. I
14 don't know what she did exactly, but I wasn't satisfied with the result.

15 I declare under the penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed this 3 day of October 2005, in Salinas, California.

18

19

20

Mario Garcia
Prof/Mario Garcia, Declarant

21

22

23

24

25

Declarant initials: MG

- 6

Escaza & Associates Investigations
26650 The Old Road, Suite 215
Valencia, California 91381
(661) 799-7777

BERTI, Richard
(Board Member/Owner of COAC)

I contacted Charlotte Valentine by telephone on 4/14/2006 and requested to speak with Richard Berti. Richard Berti contacted me a short time later that same day.

I explained to Richard Berti that I wanted to offer him the opportunity to respond to the allegations that he had tried to influence the investigation by the sheriff's department into the drowning at COAC through his association with the sheriff's council. Richard Berti's first response was, "That's a lie."

I asked Richard Berti to explain his involvement with the Santa Barbara Sheriff's Council. Richard Berti stated he was a member of the cabinet and the council. He was one of the vice-presidents on the Executive Committee. There were eight, or nine, vice-presidents on that committee. Mr. Berti said he was not very active with the committee.

Mr. Berti stated the Executive Committee would meet for approximately an hour prior to the council meeting. The purpose of these meetings was to plan "the gala" and the events of "the gala" which was the main money raiser for the organization.

The committee also reviewed requests from the sheriff's department for equipment. Mr. Berti thought that the requests were repeated again in front of the whole council. He did not quite understand the purpose of the executive committee meeting prior to the main meeting. Mr. Berti estimated that he attended maybe half of the meetings during the time he was involved.

Mr. Berti stated he joined the sheriff's council sometime in 2004, but he was not positive.

He thought he paid \$400 a year as dues. He bought his first table at a gala in 2004. He thought he paid \$10,000 that year. Mr. Berti thought that the tables varied in price during the 2005 gala from \$10,000 to \$125,000. Mr. Berti stated more perks were given with the higher donations. He bought a table for \$15,000. He also bought raffle tickets at the 2004 and 2005 galas. He thought he bought a \$1000 worth of tickets in 2004. Mr. Berti stated when he received his allotment of raffle tickets to sell in 2005 he bought the whole bunch because he did not want to sell them. He thought he bought just over \$3000 worth of raffle tickets for the 2005 event.

Mr. Berti stated at the council meeting just before the gala he bought additional raffle tickets, so that the council could reach their goal of \$50,000. He stated the members received 12 raffle tickets for the price of 10. Mr. Berti did not recall how much those extra tickets cost, but that would have put his donation for raffle tickets just over \$3000. He later found out that he was one of the largest raffle ticket holders.

He was surprised at the gala when he won the raffle for \$25,000. He was not even paying attention and someone else sitting at his table had to tell him that he won. Mr. Berti stated he told the master of ceremony, possibly Andy Granatelli, that he did not want to take the money from the sheriff's department and gave it back. He stated this was an immediate reaction to the situation. Mr. Berti stated giving the raffle prize back to the sheriff's council

had nothing to do with the investigation into the drowning. He thought this was in November 2005.³⁰

Mr. Berti stated the only sheriff personnel he knew was Tim Gracey and that was for a couple of years. He can recognize Sheriff Jim Anderson, had shaken his hand, and said hello, but he does not have a personal relationship with Sheriff Anderson. At the meeting where Sheriff Anderson told the Sheriff's Council he was not going to be associated with the council, Mr. Berti spoke and told the sheriff that he did not understand why the sheriff was doing that. Mr. Berti stated he thought the council served a good purpose.

Mr. Berti described the issues revolving around the council as ugly and that was over just a few members actions. Mr. Berti thought about resigning, but decided to wait until after the audit was completed.

Mr. Berti stated after the audit is done he will resign. He will not participate in supporting anything for law enforcement again because of the way that he has been accused of buying favors from the sheriff's department.

Mr. Berti stated he did not contact anyone from the sheriff's department at the time of the drowning. Mr. Berti did speak with someone after he was being accused of trying to influence the investigation in the press and media. He could not recall who that was. He told that person that he did not want any favors. Mr. Berti stated he did not want any favors from anyone. Mr. Berti went on to say "that there shouldn't be favors given to anyone in this situation." The person he spoke with might have been the sheriff himself, but Mr. Berti could not be positive who he had said this to. Mr. Berti stated the conversation was definitely after the news articles began appearing accusing him of using his position on the council to influence the sheriff's department.

Mr. Berti stated this whole situation has been a horrible experience. Mr. Berti stated he feels incredible pain for the Gottesman family, but he did not influence anyone. Mr. Berti stated he does not do those sorts of things.

Mr. Berti stated he also donated money to other organizations. He then listed some of those as, SBCC, "the university", PAL, and Endowment for Youth. He explained that the Endowment for Youth was a local non-profit that helps youth from the black community and that they had recently honored him.

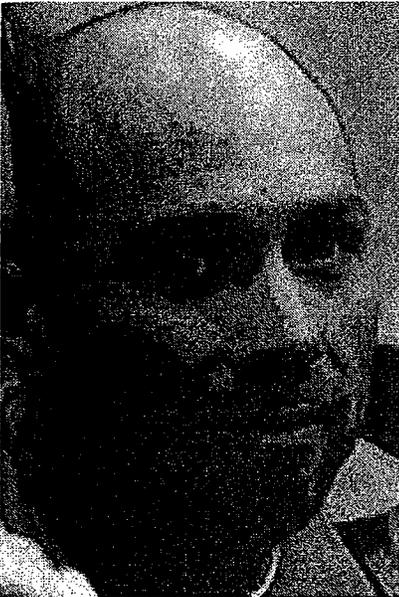
Mr. Berti stated he wished he had something magic that would make this right for everyone, but he doesn't.

³⁰ A check on the internet after the interview found that the SB Sheriff's Council gala was actually on September 24, 2005.

Attachment 2

Lompoc battles child deaths

By Mark Abramson/Staff Writer



Gomez

In the past three years, seven Lompoc infants have died under a cloud of suspicion as a result of their parents' involvement with drugs or alcohol, according to authorities.

Lompoc police, who say a methamphetamine epidemic is sweeping the community, said they asked the district attorney's office to file charges in each of the cases. But charges were filed only in the most recent case - against the father of twin baby girls who died in January after their father allegedly rolled onto them in their sleep.

Jason Moises Gomez was charged with two counts of involuntary manslaughter, two counts of child endangerment and a misdemeanor count of being under the influence of a controlled substance in the deaths of Michelle Caroline Perry and Chrissy Dawn Perry.

Tests showed he had used methamphetamine shortly before the girls were accidentally smothered. In each of the other deaths, the child also was sleeping with a parent, according to police.

Gomez faces seven years and four months in prison if he is convicted of all the felony charges. He is scheduled to appear in court June 15 in Lompoc to set a date for his preliminary hearing.

Deputy District Attorney Jerry McBeth declined to discuss the Gomez case or the other cases involving infants' deaths, but said charges are filed only if authorities believe there is enough evidence to prove a crime beyond a reasonable doubt. Prosecutors will not file charges unless they believe they can get a conviction, he said.

"They are difficult cases to put together," said Lompoc Police Chief Bill Brown. "There is no real ability to tell if it was a SIDS (Sudden Infant Death Syndrome) deaths or from co-sleeping."

Police, however, say methamphetamine use was involved in most of the cases, and now they are looking at ways to work with the community to alert parents about the dangers of doing drugs or drinking when co-sleeping with a child.

Brown said he met with the Lompoc Hospital's pediatric subcommittee last week as a first step.

The next meeting could be with the Lompoc Valley Healthcare Council sometime in the coming months to work on some sort of public education program about the problem that could include public service announcements, Brown said.

"(The number of deaths) seems like a lot to me. That is what prompted this," said Brown. "Maybe there is something we can do here."

The seven deaths involved a 9-month-old boy Feb. 14, 2003; a 2-month-old girl March 6, 2003; a 3-week-old boy June 23, 2004; a 5-month-old boy July 21, 2005; a 1-month-old girl Dec. 22, 2005; and the Perry twins, who died late Jan. 22 or early Jan. 23.

"In all except for one (of the deaths) the parents were determined to be under the influence of meth or another

drug," said police Sgt. Deanna Clement. The other case involved a parent who admitted to using alcohol at the time, she said.

Usually the parents in these cases have had a history of drug-related offenses, and most of the cases involved a parent co-sleeping with their child, Clement said.

Besides meeting with medical experts, police said they have found other ways to focus on the issue.

Lompoc police officers now go through a new program that teaches them to recognize when children are in danger because of drugs and how to investigate it immediately when they are called to a potential crime scene.

Despite the rise of methamphetamine use and the death of the children, Brown said he is uncertain that the two are directly related.

But Child Welfare Services (CWS) say about 80 percent of their cases deal with some sort of substance abuse, and many of those involve methamphetamine.

When a parent or guardian uses meth, aggressive behavior, abuse or neglect of children is more common, said Cindy Nott, a CWS division chief.

Each case involving drug abuse by a parent is treated differently, and CWS looks at several factors before it takes action.

"There is no magic number (for taking a child away from a parent), but we are looking at repeated history," Nott said. "What we look at are the crimes that have a role on a parent's impact to care for kids. We really look at those crimes closely."

In many cases, Child Welfare Services is involved in situations in which a parent has a drug history and that agency can do an assessment when a child is born.

The agency has safeguards in place for children, but when parents are on drugs, nothing is foolproof.

"When people are doing any kinds of drugs, their whole priority system changes," Nott said.

Mark Abramson can be reached at 737-1057 or

mabramson@lompocrecord.com.

May 22, 2006

Find this article at:

<http://www.santamariatimes.com/articles/2006/05/22/news/centralcoast/news06.txt?imw=Y>

Check the box to include the list of links referenced in the article.



[News Search](#) [Web Search](#) [Classified Search](#) [Advertising](#) [Home Delivery](#) [Reader Services](#) [Traffic](#) [Stocks](#)
[Home](#) [News](#) [Sports](#) [Business](#) [Opinion](#) [Entertainment](#) [Features](#) [Columnists](#) [Cor](#)
[Subscribe](#) [Previous Issues](#) [Letters](#) [Obituaries](#) [Place An Ad](#) [Send Fee](#)

[Print Page](#)

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.

Jacque 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

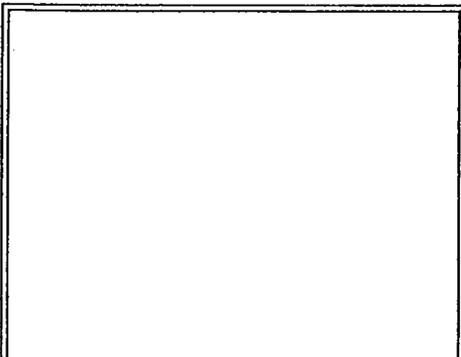
Vicars argued that such legislation usurps a system that needs more funding, not more bureaucracy. He said there are about 14,000 free-standing private preschools and another 45,000 day-care providers in neighborhood houses but the state's Department of Social

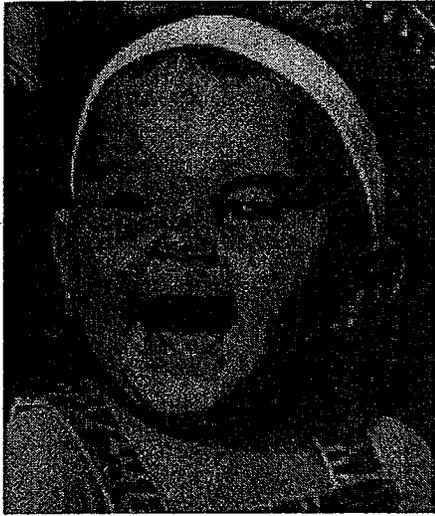
"Aryanna's Law"

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.

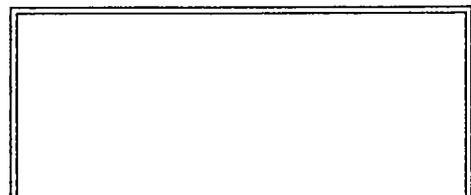
Aguilar is a 24-year-old, soft-spoken, polite woman. But the Riverside native is very capable of boasting about the little girl who was born the day before the Fourth of July with the "perfect, little round head."

"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.

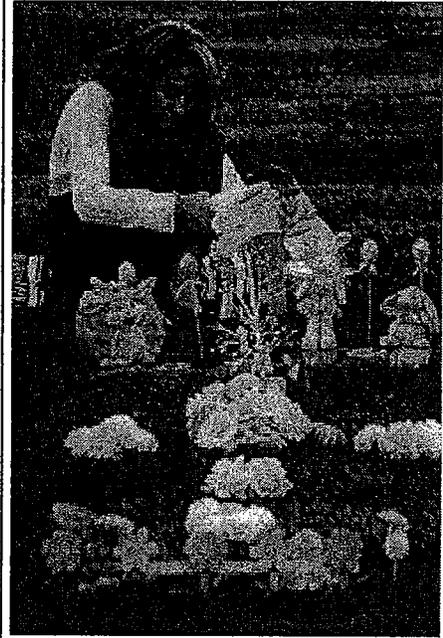
One of the bills also would create an 800 number so people could call with questions about specific day-care providers or facilities.

"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."

Reach John Welsh at (951) 368-9474 or jwelsh@pe.com

Reach Lisa O'Neill Hill at (951) 368-9462 or loneillhill@pe.com

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

Birthday Anniversary Get Well Sympathy New Baby

The perfect gift. The perfect price.



.com

Choose your price:

Under \$35 Under \$45 Under \$55 Under \$75 Over \$75

home | Send us info | Shop | Search | Advertise | Subscribe | Help | Thursday, September 7, 2006

California Assembly Approves Childcare Safety Measure in Memory of Aryanna Sanchez

California Political Desk
January 23, 2006



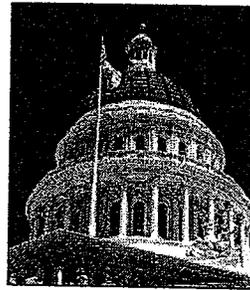
Assemblyman
John J. Benoit



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

California Political Desk



The California Political Desk provides information, news releases, and announcements obtained from communication and public relations offices throughout the state.

[author's email](#)

[author's web site](#)

[view author's other articles](#)

Join this author's mailing list

Your Name:

E-mail Address:

Sign up

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."

Ads by Google

Advertise on this site

San Francisco Hotels

Boutique & Luxury San Fran hotels. Low price guaranteed at JDV Hotels
www.JDVhospitality.com

Need a SF Dentist?

Amazing Smiles In Our Relaxing Environment. Downtown San Francisco
www.drcornehl.com

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.

CASH BOND
 RECOMMENDED WARRANT 110,000.00 LBF#2: WARRANT 110,000.00 DDA:
 GROVER C. TRASK
 DISTRICT ATTORNEY

AGENCY: P30-0089148/RPD
 MONAGAS

**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE
 (Riverside)**

THE PEOPLE OF THE STATE OF CALIFORNIA,

D.A.# 170499

Plaintiff,

CASE NO. RIF 116967

v.

FELONY COMPLAINT

FERNANDO GONZALES
 DOB:09/22/1974

MAJOR CRIMES DIVISION
 SACA

DEBRA LYNN GONZALES
 DOB:03/15/1974

Defendants.

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE

MAY 17 2004

COUNT 1

The undersigned, under penalty of perjury upon information and belief, declares: That the above named defendants FERNANDO GONZALES and DEBRA LYNN GONZALES committed a violation of Penal Code section 273a, subdivision (a), a felony, in that on or about March 29, 2004, in the County of Riverside, State of California, they did wilfully and unlawfully, under circumstances and conditions likely to produce great bodily harm and death, cause and permit a child, ARYANNA, to suffer, and inflicted thereon unjustifiable physical pain and mental suffering, and, having the care and custody of said child, did wilfully cause and permit the person and health of said child to be injured and did wilfully cause and permit said child to be placed in such a situation that their person and health was endangered.

It is further alleged that the above-named defendants did wilfully and unlawfully, under circumstances likely to produce great bodily harm and death, cause and permit a child to suffer and inflicted thereon unjustifiable physical pain and injury which resulted in death, and having the care and custody of a child, under circumstances likely to produce great bodily harm and death, wilfully cause and permit that child to be injured and harmed which resulted in death, within the meaning of Penal Code section 12022.95.

COUNT 2

That the above named defendants FERNANDO GONZALES and DEBRA LYNN GONZALES committed a violation of Penal Code section 273a, subdivision (a), a felony, in that on or about March 29, 2004, in the County of Riverside, State of California, they did wilfully and unlawfully, under circumstances and conditions likely to produce great bodily harm and death, cause and permit a child, KRISTOPHER, to suffer, and inflicted thereon unjustifiable physical pain and mental suffering, and, having the care and custody of said child, did wilfully cause and permit the person and health of said child to be injured and did wilfully cause and permit said child to be placed in such a situation that their person and health was endangered.

COURT ORIGINAL

CASH BOND
RECOMMENDED \$ _____
GROVER C. TRASK DISTRICT ATTORNEY

COUNT 3

That the above named defendants **FERNANDO GONZALES** and **DEBRA LYNN GONZALES** committed a violation of Penal Code section 273a, subdivision (a), a felony, in that on or about March 29, 2004, in the County of Riverside, State of California, they did wilfully and unlawfully, under circumstances and conditions likely to produce great bodily harm and death, cause and permit a child, **MAIYA**, to suffer, and inflicted thereon unjustifiable physical pain and mental suffering, and, having the care and custody of said child, did wilfully cause and permit the person and health of said child to be injured and did wilfully cause and permit said child to be placed in such a situation that their person and health was endangered.

COUNT 4

That the above named defendants **FERNANDO GONZALES** and **DEBRA LYNN GONZALES** committed a violation of Penal Code section 273a, subdivision (a), a felony, in that on or about March 29, 2004, in the County of Riverside, State of California, they did wilfully and unlawfully, under circumstances and conditions likely to produce great bodily harm and death, cause and permit a child, **DAVID**, to suffer, and inflicted thereon unjustifiable physical pain and mental suffering, and, having the care and custody of said child, did wilfully cause and permit the person and health of said child to be injured and did wilfully cause and permit said child to be placed in such a situation that their person and health was endangered.

COUNT 5

That the above named defendant **DEBRA LYNN GONZALES** committed a violation of Health and Safety Code section 11550, subdivision (a), a misdemeanor, in that on or about March 29, 2004, in the County of Riverside, State of California, she did wilfully and unlawfully use and be under the influence of a controlled substance, said controlled substance not having been administered by and under the direction of a person licensed by the State of California to prescribe and administer controlled substances.

COUNT 6

That the above named defendant **DEBRA LYNN GONZALES** committed a violation of Health and Safety Code section 11550, subdivision (a), a misdemeanor, in that on or about March 29, 2004, in the County of Riverside, State of California, she did wilfully and unlawfully use and be under the influence of a controlled substance, said controlled substance not having been administered by and under the direction of a person licensed by the State of California to prescribe and administer controlled substances.

I declare under penalty of perjury upon information and belief under the laws of the State of California that the foregoing is true and correct.

Dated: May 13, 2004

CEMO:lks



 Complainant

COURT ORIGINAL



Home Def. Status Def. Info Charges Actions Minutes Probation Case Report
Fine Info

Defendant **GONZALES, FERNANDO** Of 2

Action: **Report and Sentencing - 10/28/2005**

Case RIF116967 Defendant 348363 GONZALES, FERNANDO

Action: Report and Sentencing Date: 10/28/2005 Time: 1:30 PM
Division: 44 Hearing Status: DISPOSED

HONORABLE PAUL E. ZELLERBACH PRESIDING.
COURTROOM ASSISTANT: EMA-E. ANDERSON
COURT REPORTER: KS-K. SMITH
PEOPLE REPRESENTED BY DEPUTY DISTRICT ATTORNEY CARLOS MONAGAS.
DEFENDANT REPRESENTED BY PVT-DAVID CALL
DEFENDANT PRESENT.

AT 2:02, THE FOLLOWING PROCEEDINGS WERE HELD:
COURT HAS READ AND CONSIDERED THE PROBATION OFFICER'S REPORT.
PEOPLE'S EXHIBIT 1 AND 2 - PHOTOGRAPHS (VICTIM) IS/ARE MARKED FOR IDENTIFICATION ONLY.
PEOPLE'S EXHIBIT 3 - VIDEO TAPE IS/ARE MARKED FOR IDENTIFICATION ONLY.
THE FOLLOWING PERSONS PERMITTED TO ADDRESS TO

THE COURT:
DONETTE SMITH/SHANN GRIFFIN/ANITA AGUILAR/AND
DEFENDANT.

DEFENDANT WAIVES ARRAIGNMENT FOR PRONOUNCEMENT OF JUDGMENT.
NO LEGAL CAUSE WHY SENTENCE SHOULD NOT NOW BE PRONOUNCED.
PROBATION IS DENIED AND SENTENCE IS IMPOSED AS FOLLOWS: (SENT)
AS TO COUNT(S) 1, THE COURT IMPOSES THE LOW TERM OF 2 YEAR 0 MONTHS.
PRINCIPAL COUNT DEEMED TO BE COUNT 1.
AS TO ENHANCEMENT CI IN COUNT 1, THE COURT IMPOSES 4 YEARS.
ENHANCEMENT CI IN COUNT 1 TO RUN CONSECUTIVE TO SENTENCE IMPOSED IN COUNT 1.
AS TO COUNT(S) 2, THE COURT IMPOSES THE LOW TERM OF 2 YEAR 0 MONTHS.
COUNT 2 TO RUN CONCURRENT.
AS TO COUNT(S) 3, THE COURT IMPOSES THE LOW TERM OF 2 YEAR 0 MONTHS.
COUNT 3 TO RUN CONCURRENT.
AS TO COUNT(S) 4, THE COURT IMPOSES THE LOW TERM OF 2 YEAR 0 MONTHS.
COUNT 4 TO RUN CONCURRENT.
SENTENCED TO STATE PRISON FOR A TOTAL TERM OF 6 YEARS AND 0 MONTHS.
CREDIT FOR TIME SERVED OF 3 ACTUAL DAYS PLUS 0 DAYS PURSUANT TO 4019 PC FOR A TOTAL OF 3
DAYS.

PAY RESTITUTION FINE PURSUANT TO 1202.4(B) PC IN THE AMOUNT OF \$2000.00. (PRISON)
PURSUANT TO SECTION 2085.5 PC, DEPARTMENT OF CORRECTIONS IS AUTHORIZED TO COLLECT
RESTITUTION OBLIGATIONS.

PURSUANT TO SECTION 2085.5 PC, DIVISION OF ADULT INSTITUTIONS IS AUTHORIZED TO COLLECT
RESTITUTION OBLIGATIONS.

ADDITIONAL PAROLE REVOCATION FINE IMPOSED PURSUANT TO 1202.45 PC IN THE AMOUNT OF \$2000.00
SUSPENDED UNLESS PAROLE IS REVOKED. (PRISON)

PAY \$20.00 FOR COURT SECURITY FEE PURSUANT TO 1465.8(A)(1) PC. DEPT. OF CORRECTIONS TO
COLLECT/TRANSMIT SAID FEE TO THE TRIAL COURT TRUST FUND (STATE).

PAY \$20.00 FOR COURT SECURITY FEE PURSUANT TO 1466.8(A)(1) PC. DIV. OF ADULT INST. TO
COLLECT/TRANSMIT SAID FEE TO THE TRIAL COURT TRUST FUND (STATE).

SUBMIT NECESSARY THUMB & PALM PRINTS, SPECIMENS OF BLOOD & SALIVA TO CDC FOR DNA TESTS
PURS. 296 PC RESULTS TO BE FORWARDED TO COURT FOR DISTRIBUTION.

PAY A TOTAL OF \$110.00 FOR BOOKING FEE, PURSUANT TO 29550 GC, TO THE COURT AS DIRECTED BY
FINANCIAL SERVICES.

FOR ALL CHARGES:

PAY THE COST OF PRE-SENTENCE REPORT PURS. TO 1203.1B PC IN AMOUNT AND MANNER DETERMINED
BY FINANCIAL SERVICES; NOT TO EXCEED \$318.00

FURTHER ORDER: PAY RESTITUTION PURS TO 1202.4 PC DIRECTLY TO THE VICTIM.

(TO ANITA AGUILAR AND RANDY SANCHEZ)

FURTHER ORDER: PAY RESTITUTION PURSUANT TO
1202.4(7)(2)(C) PC TO VICTIM DAVID IN COUNT 4

IN AN AMOUNT TO BE DETERMINED.

VICTIM RESTITUTION TO BE DETERMINED. FINANCIAL SERVICES TO FORWARD COURT'S FINDINGS TO
DEPARTMENT OF CORRECTIONS.

VICTIM RESTITUTION TO BE DETERMINED. FINANCIAL SERVICES TO FORWARD COURT'S FINDINGS TO
DIVISION OF ADULT INSTITUTIONS.

ANY DISPUTE AS TO AMOUNT TO BE RESOLVED IN A COURT
HEARING.

AMOUNTS INCURRED, AMOUNTS TO BE DEPOSITED IN THE RESTITUTION FUND PUR 1202.4(F)(2) PC AND
COLLECTED BY THE DIVISION OF ADULT INST. PUR 2085.5 PC.

ANY DISPUTE AS TO AMOUNT TO BE RESOLVED IN A
COURT HEARING.

SHERIFF TO DELIVER DEFENDANT TO CALIFORNIA DEPARTMENT OF CORRECTIONS AT SOUTHRECPT

SHERIFF TO DELIVER DEFENDANT TO DIVISION OF ADULT INSTITUTIONS AT SOUTHRECPT

CURRENT BAIL BOND EXONERATED.

REMANDED TO CUSTODY OF RIVERSIDE SHERIFF.

JAIL COMMITMENT ISSUED. (HAND PROCESSED)

MINUTE ORDER OF COURT PROCEEDING



Home Def. Status Def. Info Charges Actions Minutes Probation Case Report
Fine Info

Defendant **GONZALES, DEBRA LYNN** Of 2

Action: **1203.03 Penal Code return and Sentence Hearing - 02/10/2006**

Case RIF116967 Defendant 275167 GONZALES, DEBRA LYNN

Action: 1203.03 Penal Code return and Sentence Hearing Date: 02/10/2006 Time: 8:30 AM
Division: 44 Hearing Status: DISPOSED

HONORABLE PAUL E. ZELLERBACH PRESIDING.
COURTROOM ASSISTANT: EMA-E. ANDERSON
COURT REPORTER: KH-K. HEGGI
PEOPLE REPRESENTED BY DEPUTY DISTRICT ATTORNEY C. MONAGAS.
DEFENDANT REPRESENTED BY PVT-W. SMALL
DEFENDANT PRESENT.

AT 9:06, THE FOLLOWING PROCEEDINGS WERE HELD:
COURT HAS READ AND CONSIDERED THE PROBATION OFFICER'S REPORT.
COURT HAS READ AND CONSIDERED 1203.03 PC DIAGNOS-
TIC REPORT; LETTER FROM DEFENDANT DATED 1-6-06
AND PEOPLES SENTENCING BRIEF AND STATEMENT IN
AGGRAVATION; ATTACHMENTS.
FRANK CASTEJON PERMITTED TO ADDRESS THE COURT.
DEFENDANT WAIVES ARRAIGNMENT FOR PRONOUNCEMENT OF JUDGMENT.
DEFENDANT REQUESTS IMMEDIATE SENTENCE.
NO LEGAL CAUSE WHY SENTENCE SHOULD NOT NOW BE PRONOUNCED.
PROBATION IS DENIED AND SENTENCE IS IMPOSED AS FOLLOWS: (SENT)
AS TO COUNT(S) 1, THE COURT IMPOSES THE LOW TERM OF 2 YEAR 0 MONTHS.
PRINCIPAL COUNT DEEMED TO BE COUNT 1.
AS TO ENHANCEMENT CI IN COUNT 1, THE COURT IMPOSES 4 YEARS.
COURT ORDERS TIME IMPOSED ON ENHANCEMENT(S) CI IN COUNT 1 STAYED.
AS TO COUNT(S) 2, THE COURT IMPOSES THE LOW TERM OF 2 YEAR 0 MONTHS.
COUNT 2 TO RUN CONCURRENT.
AS TO COUNT(S) 3, THE COURT IMPOSES THE LOW TERM OF 2 YEAR 0 MONTHS.
COUNT 3 TO RUN CONCURRENT.
AS TO COUNT(S) 4, THE COURT IMPOSES THE LOW TERM OF 2 YEAR 0 MONTHS.
COUNT 4 TO RUN CONCURRENT.
FOR THE CHARGE(S) 5.
PROBATION IS DENIED AND SENTENCE IS IMPOSED AS FOLLOWS: (SENT)
SENTENCED TO RIVERSIDE COUNTY JAIL FOR THE TERM OF 180 DAYS.

COUNTY JAIL SENTENCE TO RUN CONCURRENT TO COUNT 1.
FOR THE CHARGE(S) 6.
PROBATION IS DENIED AND SENTENCE IS IMPOSED AS FOLLOWS: (SENT)
SENTENCED TO RIVERSIDE COUNTY JAIL FOR THE TERM OF 180 DAYS.
COUNTY JAIL SENTENCE TO RUN CONCURRENT TO 1.
COUNTY JAIL SENTENCE MAY BE SERVED AT ANY PENAL INSTITUTION.
SENTENCED TO STATE PRISON FOR A TOTAL TERM OF 2 YEARS AND 0 MONTHS.
CREDIT FOR TIME SERVED OF 109 ACTUAL DAYS PLUS 54 DAYS PURSUANT TO 4019 PC FOR A TOTAL OF 163 DAYS.
PAY RESTITUTION FINE PURSUANT TO 1202.4(B) PC IN THE AMOUNT OF \$8000.00. (PRISON)
PURSUANT TO SECTION 2085.5 PC, DEPARTMENT OF CORRECTIONS IS AUTHORIZED TO COLLECT RESTITUTION OBLIGATIONS.
PURSUANT TO SECTION 2085.5 PC, DIVISION OF ADULT INSTITUTIONS IS AUTHORIZED TO COLLECT RESTITUTION OBLIGATIONS.
ADDITIONAL PAROLE REVOCATION FINE IMPOSED PURSUANT TO 1202.45 PC IN THE AMOUNT OF \$8000.00 SUSPENDED UNLESS PAROLE IS REVOKED. (PRISON)
PAY \$20.00 FOR COURT SECURITY FEE PURSUANT TO 1465.8(A)(1) PC. DEPT. OF CORRECTIONS TO COLLECT/TRANSMIT SAID FEE TO THE TRIAL COURT TRUST FUND (STATE).
PAY \$20.00 FOR COURT SECURITY FEE PURSUANT TO 1465.8(A)(1) PC. DIV. OF ADULT INST. TO COLLECT/TRANSMIT SAID FEE TO THE TRIAL COURT TRUST FUND (STATE).
PAY A TOTAL OF \$110.00 FOR BOOKING FEE, PURSUANT TO 29550 GC, TO THE COURT AS DIRECTED BY FINANCIAL SERVICES.
SUBMIT NECESSARY THUMB & PALM PRINTS, SPECIMENS OF BLOOD & SALIVA TO CDC FOR DNA TESTS PURS. 296 PC RESULTS TO BE FORWARD TO COURT FOR DISTRIBUTION.
PAY THE COST OF PRE-SENTENCE REPORT PURS. TO 1203.1B PC IN AMOUNT AND MANNER DETERMINED BY FINANCIAL SERVICES; NOT TO EXCEED \$318.00
FOR ALL CHARGES:
FURTHER ORDER: THE DEFENDANT PAY RESTITUTION TO THE EXTENT THE VICTIM HAS RECEIVED FINANCIAL ASSISTANCE FROM THE VICTIMS OF VIOLEN CRIMES PROGRAM IN THE AMOUNT OF \$4514.64; AND ANY ADDITIONAL AMOUNTS INCURRED; SAID AMOUNTS TO BE DEPOSITED IN THE RESTITUTION FUND; PURSUANT TO 1202.4(F)(2)(C)PC; ANY DISPUTE AS TO AMOUNT TO BE RESOLVED IN A COURT HEARING.
PAY RESTITUTION PURSUANT TO SECTION 1202.4(A)(1)PC TO THE PARENTS OF ARYANNA; ANITA AGUILAR AND RANDY SANCHEZ; IN AN AMOUNT TO BE DETERMINED; ANY DISPUTE AS TO AMOUNT TO BE RESOLVED IN A COURT HEARING.
VICTIM RESTITUTION TO BE DETERMINED. FINANCIAL SERVICES TO FORWARD COURT'S FINDINGS TO DEPARTMENT OF CORRECTIONS.
VICTIM RESTITUTION TO BE DETERMINED. FINANCIAL SERVICES TO FORWARD COURT'S FINDINGS TO DIVISION OF ADULT INSTITUTIONS.
PURSUANT TO SECTION 2085.5 PC, DEPARTMENT OF CORRECTIONS IS AUTHORIZED TO COLLECT RESTITUTION OBLIGATIONS.
PURSUANT TO SECTION 2085.6 PC, DIVISION OF ADULT INSTITUTIONS IS AUTHORIZED TO COLLECT RESTITUTION OBLIGATIONS.
SHERIFF TO DELIVER DEFENDANT TO CALIFORNIA DEPARTMENT OF CORRECTIONS AT FRONTERA
SHERIFF TO DELIVER DEFENDANT TO DIVISION OF ADULT INSTITUTIONS AT FRONTERA
REMAINS REMANDED TO CUSTODY OF RIVERSIDE SHERIFF.

--- CORRECTED MINUTE ORDER PRINTED TO THE JAIL AT 1:54 ---

****MINUTE ORDER OF COURT PROCEEDING****



Van Nuys, CA 91406
(818)787-0422 Fax(818)787-4294

Santa Ana, CA 92701
(714)558-7901 Fax(714)558-7790

Ventura, CA 93003
(805)477-4321 Fax(805)477-4325

EO12

www.PersonalAttorney.com

Invoice #:



COURT INSTRUCTIONS

8351
Cappello = NOEL
831 State Street
Santa Barbara, CA. 931
FAX:

ROUTE:

FAX RECEIVED
CAPPELLO & NOEL LLP

SEP 26 2006

TIME: 10:52 AM
BY: JF

COUNTY: RIVERSIDE

COURT BRANCH/DESTINATION: Criminal

LIMITED UNDER 10K OVER 10K UNLIMITED U.D.

NUMBER: RIF116967

TITLE: ① Fernando Gonzales

② Debra LYNN Gonzales

REMARKS: Obtain copies of charging/Complaint and sentencing documents for Fernando and Debra LYNN Gonzales

EXT/DIRECT LINE: 805-568-52

FAX NO.: 805-965-8950

E-MAIL:

CONTACT NAME/ATTY: Daniel Di

TODAY'S DATE: 9-25-06

FIRM FILE NO.: 06009.007 CLAIM NO.:

FEES ATTACHED \$0 CHECK NO(S):

DEFENDANT/RESPONDENT APPEARANCE FEE PAID? NO YES DATE PAID

HEARING SET FOR: AT AM PM IN DEPT/DIV

PLEASE NOTE ANY SPECIFIC OR TIMELY FILING REQUIREMENTS

LAST DAY TO FILE

DATE

ADDITIONAL CHARGES (IF APPLICABLE)
APPROVED BY (NAME): Daniel

EXPEDITE & RETURN BY

9-25-06 or 9-26-06

SERVE RUSH SERVE PROCESS SERVICE INVOICE #(S)

FILE CONFORM COPY(S) ISSUE RECORD OBTAIN EXPLAIN CERTIFIED COPIES OF:

SELF ADDRESSED, STAMPED ENVELOPE ATTACHED

ADDITIONAL INSTRUCTIONS:

RUSH DO TODAY COPY JOB

Fax Copies Back to Attn: Jerry

FOR ATTORNEY SERVICE USE ONLY - PLEASE DO NOT TYPE OR PRINT BELOW THIS LINE

SUBMITTED ON

DEPT DATE

ROOM

OUT FOR SERVICE DATE

RESEARCH WALK-THRU TIME

FILING CONFIRMED, SPOKE WITH

CLIENT CALLED, SPOKE WITH Daniel

FILING WINDOW

WITH COURT FILE

WITHOUT COURT FILE

CONFORMED COPY(S) TO FOLLOW UPON COMPLETION

CLERK WILL MAIL CONFORMED COPIES

PAS RECEIVED STAMP	
SEP 25 2006	
COURT CONFORMING STAMP	
BILLING BREAKDOWN	
RECORDER	
PULL FILE	10 ⁰⁰
BLUEBACK(S)	
PAS PHOTOCOPY	
TELEPHONE FAX	16 ⁰⁰
RIVERSIDE INDEXING	
COURT SERVICE	30 ⁰⁰
1/2 HOURS	30 ⁰⁰
DELIVERY	
RUSH FILING	
SPECIAL P/U	
MILES	
ADV SVCE FEE	1.00
FEES ADVANCED	3.50
ADV SVCE FEE	
FEES ADVANCED	
TOTAL	140.50

SEP 25 2006

CLIENT PLEASE RETAIN PINK COPY ONLY

Case Defendants

[Home](#)

Case RIF116967

Seq	Defendant	Next Court Date	Status	Agency / DR Number	Arrest Date	Count 1 Charge	Violation Date
1	GONZALES, FERNANDO			RIPD P304089148	03/29/2004	PC 273A(A)	03/29/2004
2	GONZALES, DEBRA LYNN			RIPD P304089148	03/29/2004	PC 273A(A)	03/29/2004

Charges

[Home](#)
 [Def. Status](#)
 [Def. Info](#)
 [Charges](#)
 [Actions](#)
 [Minutes](#)
 [Probation](#)
 [Case Report](#)
[Fine Info](#)

Defendant 2 - GONZALES, DEBRA LYNN Of 2

Case RIF116967 Defendant 275167 GONZALES, DEBRA LYNN

Arrest Charges					
Count	Charge	Severity	Description	Violation Date	Plea
1	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	
Filed Charges					
Count	Charge	Severity	Description	Violation Date	Plea
1	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	
	<i>Enhancement</i>		<i>Description</i>		<i>Plea</i>
	PC 12022.95		Corporal Injury on Child-Death		DENY
2	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	
3	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	
4	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	
5	HS 11550(A)	M	Under Influence/Controlled Substance	03/29/2004	
6	HS 11550(A)	M	Under Influence/Controlled Substance	03/29/2004	
Infor Charges					
Count	Charge	Severity	Description	Violation Date	Plea
1	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	GUILTY
	<i>Enhancement</i>		<i>Description</i>		<i>Plea</i>
	PC 12022.95		Corporal Injury on Child-Death		ADMIT
2	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	GUILTY
3	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	GUILTY
4	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	GUILTY
5	HS 11550(A)	M	Under Influence/Controlled Substance	03/29/2004	GUILTY
6	HS 11550(A)	M	Under Influence/Controlled Substance	03/29/2004	GUILTY

Charges

[Home](#)
 [Def. Status](#)
 [Def. Info](#)
 [Charges](#)
 [Actions](#)
 [Minutes](#)
 [Probation](#)
 [Case Report](#)
[Fine Info](#)

Defendant 1 - GONZALES, FERNANDO Of 2

Case RIF116967 Defendant 348363 GONZALES, FERNANDO

Arrest Charges					
Count	Charge	Severity	Description	Violation Date	Plea
1	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	
Filed Charges					
Count	Charge	Severity	Description	Violation Date	Plea
1	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	
	<i>Enhancement</i>		<i>Description</i>		<i>Plea</i>
	PC 12022.95		Corporal Injury on Child-Death		DENY
2	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	
3	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	
4	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	
Infor Charges					
Count	Charge	Severity	Description	Violation Date	Plea
1	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	GUILTY
	<i>Enhancement</i>		<i>Description</i>		<i>Plea</i>
	PC 12022.95		Corporal Injury on Child-Death		ADMIT
2	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	GUILTY
3	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	GUILTY
4	PC 273A(A)	F	Willful harm/injury to child; endangering person/health	03/29/2004	GUILTY

[Print This Article](#)

SAN JOSE**Sitter of boy killed by train plea-bargains**

- 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.

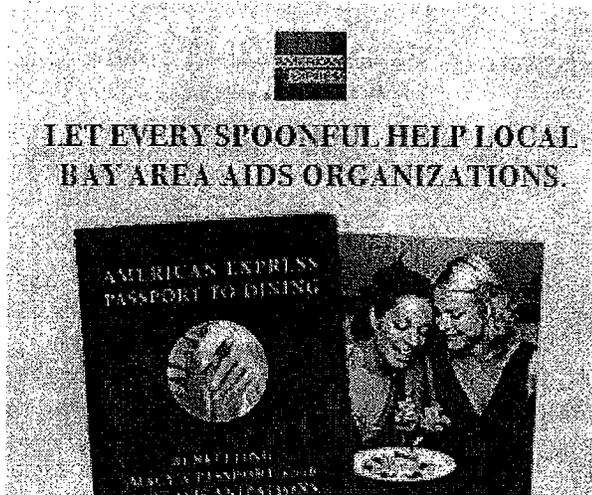
The day Alexander Arriaga was killed, Hatton had been asked to watch him and his brother by her roommate, who needed to take a drug test. The roommate had been babysitting for a friend who was at a job orientation.

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

Page B - 3

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

©2006 San Francisco Chronicle



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.

Related To Story



Video: SAN JOSE: Mother Of 2-Year-Old Killed On Train Tracks Gives Tearful Testimony At Plea Hearing

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.

Copyright 2006 by KTVU.com and Bay City News. All rights reserved. This material may not be published, broadcast, rewritten or redistributed.



**COUNTY OF SONOMA
DISTRICT ATTORNEY**

[Sonoma County Home](#)

[Site Map](#)

[Contact Us](#)

[Search](#)



STEPHAN R. PASSALACQUA
SONOMA COUNTY DISTRICT ATTORNEY
600 ADMINISTRATION DRIVE, RM 212-J SANTA ROSA, CA 95403 (707)
565-2311

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 Rena 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 "indescribable," 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?" Meli 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."

Copyright 2006 by KTVU.com and Bay City News. All rights reserved. This material may not be published, broadcast, rewritten or redistributed.

Deputies search Michael Jackson's ranch

Source: Molestation allegations spur investigation

LOS OLIVOS, California (CNN) --Law enforcement officers responding to allegations of child molestation, according to one source with knowledge of the investigation, searched pop star Michael Jackson's Neverland Ranch for several hours Tuesday.

There was no official confirmation of what prompted what one official called an "ongoing criminal investigation" or what as many as 70 officials from the Santa Barbara Sheriff's Department and District Attorney's office were searching for or may have found.

"We cannot comment on law enforcement's investigation because we do not yet know what it is about," a spokesman for the entertainer said.

But a source with knowledge of the investigation said it involved allegations of child molestation -- nearly a decade after Jackson, now 45, settled a lawsuit filed on behalf of a boy who had done sleepovers at Neverland Ranch while he was 13 and accused Jackson of molesting him. No criminal charges were filed in that case.

Stuart Backerman, a spokesman for Jackson, said the singer has been in Las Vegas, Nevada, for the past 2 1/2 weeks, shooting a video for the song "One More Chance." That single is on his "Number Ones" album, a greatest-hits collection released Tuesday by Epic Records.

Later this month, a special on Jackson is due to be broadcast on CBS.

According to Backerman's statement, Jackson himself said, "I've seen lawyers who do not represent me and spokespeople who do not know me speaking for me. These characters always seem to surface with a dreadful allegation just as another project, an album, a video, is being released."

The search warrant was served at 8:30 a.m. (11:30 a.m. EST), said Chris Pappas, a spokesman for the sheriff's department. Investigators were still on the scene at 6 p.m. (9 p.m. EST), a CNN correspondent reported.

The Santa Barbara County Sheriff's Department and the district attorney will hold a news conference regarding the search Wednesday at 11 a.m. (2 p.m. EST).

Attorney Larry R. Feldman, who represented the alleged victim in the 1994 child molestation lawsuit against Jackson, told CNN on Tuesday that he would "not confirm or deny" that he is representing anyone in a civil or criminal investigation pertaining to Jackson because of possible "violation of attorney-client privilege."

Brian Oxman, an attorney for the Jackson family, said on CNN's "Larry King Live" that he believes the investigation stems from someone else seeking financial gain from Jackson.

"It is a case of excitement and hysteria because we have the same accusations that we had 10 years ago," he said. "It's like playing the playoffs all over again."

Johnnie Cochran, Jackson's attorney in the case 10 years ago, said it's odd the search warrant was served the day the singer's latest album was released.

"I think it's more than coincidence. I think it was planned," he said on "Larry King Live."

Cochran said he's tried to counsel Jackson "not to ever put yourself in that position" of being alone with young children.

"But that's who Michael Jackson is, he's a very, very naive person in many respects, and there's no question about that. Yeah, he does wear a bull's eye," Cochran said.

Backerman criticized what he called "the malignant horde of media hounds claiming to speak for Michael on this and many other issues.

"A rogues' gallery of hucksters and self-styled 'inside sources' have dominated the airwaves since reports of a search of Neverland broke, speculating, guessing and fabricating information about an investigation they couldn't possibly know about," he said.

Backerman said Jackson will "cooperate fully with authorities in any investigation even as it is conducted, yet again, while he is not home."

Terms of the 1994 lawsuit settlement were confidential, though the boy's attorney -- Feldman -- said at the time they were happy to resolve the matter.

Cochran said at the time that Jackson maintained his innocence and that the settlement was in no way an admission of guilt.

Criminal investigators stopped pursuing their case after the lawsuit was settled and the young boy -- by then 14 -- made clear he did not want to participate in any prosecution of the singer.

CNN correspondents Frank Buckley and Charles Feldman and producer Stan Wilson contributed to this report.

Find this article at:

<http://www.cnn.com/2003/SHOWBIZ/Music/11/18/jackson.ranch/index.html>

Check the box to include the list of links referenced in the article.

Authorities await Jackson's surrender

Singer faces multiple counts of child molestation

SANTA BARBARA, California (CNN) --Authorities are awaiting the surrender of pop star Michael Jackson and say they plan to charge him with multiple counts of child molestation.

Jackson is expected to meet his attorney, Mark Geragos, at the Santa Barbara County sheriff's office and turn himself in to authorities late Thursday morning, a source told CNN. Jackson's huge estate, Neverland Ranch, is in Santa Barbara County.

District Attorney Tom Sneddon said Jackson faces multiple counts of lewd or lascivious contact with a child younger than 14.

When authorities announced the arrest warrant for Jackson on Wednesday, they indicated he had a limited amount of time to surrender and turn in his passport.

Sneddon said his message for Jackson is: "Get over here and get checked in." ([Transcript of news conference](#))

Jackson, 45, was in Las Vegas, Nevada, shooting a video, his spokesman, Stuart Backerman said.

Backerman released a statement saying arrangements have been made with the district attorney for Jackson "to return to Santa Barbara to immediately confront and prove these charges unfounded."

He promised the allegations would be proved false in court.

"Michael would never harm a child in any way," he said. "When the evidence is presented and the allegations proven to be malicious and wholly unfounded, Michael will be able to put this nightmare behind him."

Authorities released no details about the child or the time of the alleged molestation. A judge ordered affidavits in the case sealed for 45 days.

Authorities asked other possible victims to come forward.

Jackson could face a minimum of three years and a maximum of eight years in prison on each count if convicted.

The warrant set his bail at \$3 million dollars, according to authorities.

CBS announced Wednesday that "given the gravity of the charges" against Jackson it was postponing a special program on him scheduled for November 26.

The allegations come almost a decade after Jackson settled a lawsuit filed on behalf of a boy who slept over at Neverland Ranch when he was 13 and accused Jackson of molesting him.

Criminal investigators stopped pursuing their case after the lawsuit was settled and the boy -- by then 14 -- made clear he did not want to participate in any prosecution of the singer.

Sneddon said he did not know whether the parents of the accuser were aware of the past allegations. He said no civil suit has been filed in the case and none is expected.

"We have a cooperative victim in this particular proceeding," Sneddon said.

Dozens of law enforcement officers searched Jackson's Neverland Ranch for about 13 hours Tuesday, and search warrants were served on two other locations in Southern California where some property was seized, authorities said.

Jackson's mansion is on a 2,600-acre estate about 50 miles (80 kilometers) northwest of Santa Barbara and features amusement park rides, a petting zoo and statues of children.

Backerman said the tone of the authorities' news conference was disturbing.

"We are disturbed by the levity of the environment surrounding the announcement of these very serious charges," he said.

Backerman said the singer has been in Las Vegas for the past two-and-a-half weeks shooting a video for the song "One More Chance." That single is on his "Number Ones" album, a greatest-hits collection released Tuesday by Epic Records.

Questions have been raised about whether the execution of the search warrants was timed to coincide with the music release.

Sneddon rejected that idea. "In fact, we were going to execute these warrants several weeks ago, but had to put it off" for operational reasons, he said.

"It really has nothing to do with his album or whatever else he's doing in his life."

Jackson sang about Sneddon in his song "D.S.," which was on the pop star's 1995 double-CD album "HIStory Past, Present and Future, Book 1." Each chorus repeats the line "Tom Sneddon is a cold man" four times. ([Full story](#))

The Las Vegas Metropolitan Police Department said Santa Barbara police have not asked permission to arrest Jackson in Las Vegas, which they would do if they wanted to arrest him immediately rather than allowing him to return to Santa Barbara and turn himself in.

Geragos -- who has been representing Scott Peterson in a high-profile California trial -- will be Jackson's lead attorney, Backerman said.

Brian Oxman, an attorney for the Jackson family, told CNN he believes the investigation stems from someone else seeking financial gain from Jackson.

"It is a case of excitement and hysteria because we have the same accusations that we had 10 years ago," he said. "It's like playing the playoffs all over again."

Terms of the settlement of the lawsuit -- filed in 1993 and settled the next year -- were confidential, though the boy's attorney said at the time the boy and his family were happy to resolve the matter.

Johnnie Cochran, Jackson's attorney in that case, said at the time that Jackson maintained his innocence and that the settlement was in no way an admission of guilt.

CNN's Frank Buckley, Charles Feldman and Stan Wilson contributed to this report.

Find this article at:

<http://www.cnn.com/2003/SHOWBIZ/Music/11/19/jackson.ranch/index.html>

Check the box to include the list of links referenced in the article.

Michael Jackson formally charged in molestation case

SANTA BARBARA, California (CNN) --Setting the stage for a contentious legal battle played out in the world's media spotlight, California prosecutors on Thursday formally filed molestation charges against pop star Michael Jackson in a case involving a cancer-stricken boy invited to the singer's Neverland Ranch.

Jackson was charged with nine counts -- seven of child molestation and two of administering an intoxicating agent for the purpose of a committing a felony. The charges involve incidents alleged to have occurred in February and March of this year, District Attorney Tom Sneddon said.

In addition, the complaint includes special allegations that could make Jackson ineligible for probation in the case, Sneddon said.

In a prepared statement released Thursday, Sneddon said the alleged victim would take the stand at a trial. "The family is committed to this process," the district attorney said.

Later Thursday, Jackson attorney Mark Geragos again asserted Jackson's innocence and told reporters that the entertainer's legal team would "take no quarter" in their defense of the accused singer.

The charges against the 45-year-old singer were filed nearly a month after local authorities raided his Neverland Ranch home. He was booked November 20 on suspicion of multiple counts of child molestation and has been free on \$3 million bond.

The singer and his lawyers maintain he is innocent, and contend that the boy in the current case and his family have brought the allegations for financial gain.

Geragos -- who acknowledged he was brought into the case soon after Jackson appeared with the cancer-stricken boy, the alleged victim, in a documentary in February -- said his client will "fight these charges with every fiber of his soul."

"Michael Jackson is unequivocally and absolutely innocent of these charges," he said.

"I'm telling you right now that there is absolutely no way that we will stand for this besmirching of this man with these horrible, horrible allegations, and I will tell you right now that there is no way that the prosecution will prevail in this case."

Geragos called the case "an intersection between a shakedown" -- the alleged victim's family looking for money -- and an investigator who's "got an ax to grind."

Jackson was accused of child molestation in 1993, but the case was settled, reportedly for millions of dollars, and no charges were filed. Sneddon was the district attorney who looked into that case. Later Jackson released a song widely considered to be an indictment of Sneddon for his efforts to prosecute Jackson in the 1993 case. Sneddon denies that the current case stems from a personal animus against Jackson.

Thursday evening, Katherine Jackson, the singer's mother, released a statement proclaiming Michael's innocence.

"On behalf of the Jackson family we know these vicious lies are totally untrue, malicious and motivated by pure greed and revenge," the statement said. "We proudly stand next to Michael who we know could never commit any of the acts he is accused of. We will fight with every ounce of our energy to reveal the truth behind these false allegations and the motivations behind those who have falsely accused Michael."

Dates may be crucial to case

A complaint filed with Santa Barbara County Superior Court accused Jackson of having "substantial sexual conduct" with a boy under the age of 14 in incidents alleged to have occurred in February and March of this year.

Five of the child molestation counts accuse Jackson of a "lewd act upon a child," a felony, "on or between February 7, 2003, and March 10, 2003, in the county of Santa Barbara." The other two molestation counts allegedly happened on or between February 20 and March 10, according to the complaint.

The two counts of administering an intoxicating agent allegedly happened on or between February 20 and March 10 of this year, according to the complaint.

A source close to the investigation told CNN the "intoxicating agent" was wine.

The specific dates could be significant for both prosecutors and defense attorneys. In mid-February, Los Angeles County child welfare officials found there was no evidence Jackson had had inappropriate contact with the boy. ([Full story](#))

Additionally, Jackson's attorneys played for a CNN legal analyst an audiotape from mid-February in which the boy and mother said there had been no inappropriate contact.

Sneddon said prosecutors were aware of the agency's report before seeking a search and arrest-warrant for Jackson, but he contended the welfare officials did not conduct interviews, or any investigation.

On the audiotape, sources told CNN that a Jackson representative was present when it was recorded by a private investigator hired by Jackson.

Jackson to travel to Britain

Thursday's charges were filed in Santa Maria, a working-class town close to Jackson's Neverland Ranch.

The filing came after Sneddon had agreed to delay Jackson's arraignment a week to January 16, and return Jackson's passport to allow him to travel overseas. Sneddon said prosecutors agreed to return to Jackson his passport for a planned trip to Great Britain, because Jackson could face "significant economic problems" if he missed the trip.

Stuart Backerman, spokesman for the 45-year-old pop star, said Jackson planned "to relax and enjoy the surroundings of the Christmas season."

On Thursday, Sneddon denied suggestions that the state waited to file charges in hopes of finding evidence in the interim. "That was never, never, never the intent of our office," he said.

Given the intense interest in the case, he said, prosecutors wanted to wait until a Web site was in place, he said. "They're having technical difficulties. I told the court we're not going to wait any longer."

In another development, Geragos told CNN in a phone interview that reports of famed attorney Johnnie Cochran joining the Jackson defense team are false.

"I have known Johnnie Cochran for many years as an attorney and personal friend but he has already expressed publicly that he is not on this case," said Geragos.

The attorney also dismissed other reports that Jackson replaced his management staff with representatives of the Nation of Islam as "tabloid trash."

Find this article at:

<http://www.cnn.com/2003/LAW/12/18/jackson.case/index.html>

Jackson not guilty

Jurors acquit pop star of all molestation charges

SANTA MARIA, California (CNN) -- A California jury has exonerated Michael Jackson of the child molestation, conspiracy and alcohol charges that could have sent him to prison for nearly 20 years.

The jury deliberated about 32 hours throughout the course of seven days before reaching its decision.

The clerk of court read the verdicts Monday in a packed courtroom while a large crowd of supporters waited outside. Jackson fans cheered, wept and hugged upon hearing the verdicts. ([Fans react](#))

Courtroom observers reported that Jackson dabbed his eyes with a tissue after his acquittal.

Prosecutors had charged the singer with four counts of lewd conduct with a child younger than 14; one count of attempted lewd conduct; four counts of administering alcohol to facilitate child molestation; and one count of conspiracy to commit child abduction, false imprisonment or extortion.

Santa Barbara County District Attorney Thomas Sneddon sat grim-faced during the reading of the verdict and said later that he would accept the decision.

"In 37 years [as a prosecutor], I've never quibbled with a jury's verdict, and I'm not going to start today," Sneddon said. ([Legal reaction](#))

Asked if the acquittal ends California's prosecution of Jackson, Sneddon replied, "No comment."

Jackson's family members accompanied him to the courthouse to hear the verdict and flanked him as he exited the courthouse to the cheering of supporters.

Looking drawn and expressionless, Jackson did not address the throng before leaving the courthouse in a caravan of black sport utility vehicles.

His lead defense attorney, Thomas Mesereau Jr., told reporters on his way out of the courthouse that "justice was done."

"The man's innocent. He always was," Mesereau said.

CNN's Rusty Dornin reported that before the clerk of court read the findings, the courtroom was hushed. The only sound was that of the judge tearing open the envelope for each count.

Jackson's father, Joe Jackson, stared stiffly with hands clasped as he listened to the verdicts, Dornin said.

Jackson stared starkly at jurors with no visible signs of emotion, she said. Santa Barbara Superior Court Judge Rodney Melville previously admonished courtroom observers to restrain themselves at the reading of the verdicts, Dornin reported.

Upon hearing the findings, Jackson's family members reached out to touch one another and to support Jackson's mother, Katherine Jackson, Dornin said.

The matriarch sobbed at hearing the first "not guilty."

After the verdicts, the judge read a statement from the jury. It stated: "We the jury feel the weight of the world's eyes upon us." The jurors asked to return to their "private lives as anonymously as we came."

They later held a news conference, identifying themselves by their juror numbers.

The attorney for Debbie Rowe, one of Jackson's former wives, released a statement from her. "Debbie is overjoyed that the justice system really works, regardless of which side called her to testify at the trial," it read.

Chain of events

Monday's verdicts capped a chain of events that began in February 2003, after the broadcast of "Living With Michael Jackson," an unflattering television documentary by British journalist Martin Bashir.

In the program, Jackson was shown holding hands with the boy now accusing him of child molestation, and he defended as "loving" his practice of letting young boys sleep in his bed.

In November of 2003, California authorities searched Jackson's Neverland Ranch, following molestation allegations against the singer. Jackson was booked on child-molestation charges that month and released on \$3 million bail. Formal charges against Jackson were filed in December 2003.

A grand jury indicted the 46-year-old pop star in April 2004 on charges of molesting the boy at the center of the trial, giving him alcohol and conspiring to hold him and his family captive in 2003.

Jackson pleaded not guilty to the charges and did not testify during the trial.

Testimony and closing arguments stretched nearly 14 weeks before the jury got the case.

Prosecutors alleged that, following the broadcast of the Bashir documentary in 2003, Jackson and five associates plotted to control and intimidate the accuser's family to get them to go along with damage-control efforts, including holding them against their will at Neverland. The molestation charges relate to alleged incidents between Jackson and the accuser after the Bashir documentary aired.

Jackson's lawyers, however, consistently portrayed the singer as a naive victim of the accuser's family, who, they claimed, were grifters – schemers – with a habit of wheedling money out of the rich and famous.

Dramatic testimony

The Jackson trial was full of salacious testimony, dramatic moments and celebrity defense witnesses. (Key moments)

Among the more than 130 people who testified were former child star Macaulay Culkin. He disputed testimony from earlier witnesses who claimed they saw Jackson behaving inappropriately with him in the early 1990s.

On March 10, the first day Jackson's accuser testified, the pop star arrived late for court as the judge threatened to revoke the singer's \$3 million bail. Jackson, claiming he had a back injury severe enough to require a hospital visit, finally came to court in pajamas and slippers, walking gingerly with a bodyguard and his father supporting him.

The accuser, now 15, testified in graphic detail about what he claims were molestations by Jackson on two separate occasions in early 2003. During cross-examination, however, the teenager admitted he told an administrator at his school that nothing happened between him and the singer.

Prosecution witnesses included the accuser's mother, who was on the stand for three days, and a former security guard who testified that he saw Jackson engaged in oral sex with another teenage boy.

That boy received an out-of-court settlement in his family's molestation case against the pop star for an undisclosed amount. Jackson was not charged in that case and denied any wrongdoing.

Testimony in the trial closed with prosecutors showing a police videotape in which the accuser tells detectives the singer gave him wine and masturbated him as many as five times.

Members of the jury came from a pool of 200 people from Santa Barbara County, just north of Los Angeles. The eight-woman, four-man jury ranged in age from 20 to 79, including a 21-year-old male paraplegic who said he once visited Neverland Ranch, where Jackson has a mansion, zoo and small amusement park.

Find this article at:

<http://www.cnn.com/2005/LAW/06/13/jackson.trial>

Check the box to include the list of links referenced in the article.

Santa Maria Sun > News > News Briefs

- Home
- News
- Opinion
- Classifieds
- Art & Events
- Film
- Sports
- Community
- Food & Wine
- Outside
- Special Issues
- Archives
- About Us
- Advertising Info

Search

GO

Friday, Oct 13, 2006 Volume 7, Issue 30

News

Advertisements

Sheriff's Department estimates Jackson costs

Two weeks after a Santa Maria jury acquitted Michael Jackson of child molestation and related charges, the Santa Barbara County Sheriff's Department estimated that it spent a little more than \$3 million to investigate the pop star and provide security for his trial.

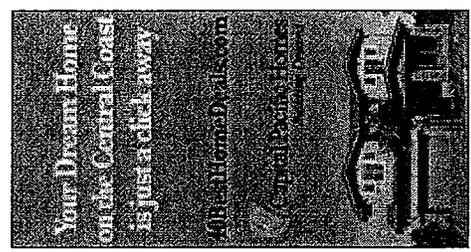
The preliminary estimate of costs associated with the case against the pop star shows that roughly \$1.3 million was spent on the investigation between the 2003 and 2005 fiscal years, \$1.1 million of which went toward the deputies' regular salaries.

Of the \$1.7 million spent on security at the trial, roughly \$1.3 million went toward the regular salaries of the deputies assigned to the courthouse.

"The real distinction is you've got regular salaries money paid out anyway," said Sheriff's Department Public Information Officer Sgt. Erik Raney. "Whether they're investigating burglary, homicide, or allegations against Jackson, those are positions that are already being paid."

Raney also said that the books won't be closed on this fiscal year until July 8, so a few small changes could be added to the current estimate.

Even with roughly \$97,000 in overtime costs and another nearly \$80,000 in extra help/travel/other expenses, Raney said the costs associated with the Jackson investigation aren't too different from those of any large-scale investigation. The extra courthouse security, however, was another matter.



Your Email

Signup



"It was unprecedented in that respect. It was something well above and beyond anything we've come to expect with high-profile cases," Raney said. "Complex homicide investigations or other complex investigations where a lot of work needs to be done, they tend to be expensive and involved."

But the department answered the call of duty, he said. Raney also noted that the deputies succeeded in maintaining the peace around the courthouse.

"The amount of resources and the cost of the security were really directly in response to the amount of interest in that particular trial from the public and the media," he said. "We had an obligation and duty to respond in the level that we did."

The security costs include:

- \$1,252,775 in regular salaries
- \$347,307 in overtime salaries
- \$117,828 in extra help (part timers or retired deputies)
- \$35,493 in food/other expenses

Some of those expenses could be covered if the state Legislature approves a bill from Sen. Abel Maldonado, R-Santa Maria. SB 827 would reimburse the county for the costs of providing security and ensuring public safety in and around the courthouse. Similar legislation has helped counties recoup expenses that went toward the Rex Allan Krebs and Scott Peterson trials.

[Comment on this Article](#) | [Submit your Story Idea](#) | [View Archives](#)

TECH
SOLUTIONS

IT Consulting

805.595.1900
Toll Free: 888.886.4832
www.tech-solutions.com

NIPONA REAL ESTATE
KALUC & DOVE

We Know Niponia

Full Service Real Estate

www.niponarealestate.com

Cost Of Jackson Trial Climbs To \$2.7 Million

SANTA BARBARA - Santa Barbara county taxpayers are on the hook for nearly \$3 million spent on the unsuccessful prosecution of Michael Jackson.

Most of the money went to sheriff's deputies who were posted at the Santa Maria courthouse from January, when pretrial hearings began, through mid-June, when the trial ended. Crowd control also consumed a substantial amount of the money.

And the multi-million-dollar bill could climb even higher.

The county's business manager says not included in the costs are prosecution, investigative and grand jury expenses.

Jackson was acquitted of child molestation, conspiracy and other charges.

Copyright © 2005 KABC-TV and the Associated Press. All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.

THE SUPERIOR COURT, STATE OF CALIFORNIA
For the County of Santa Barbara
Figueroa Division

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

ERNESTO LANDEROS BOTELLO DOB:02/24/1982
AKA: ERNESTO L. BOTELLO

Defendant.

DA No. 06-09-159982

Court No. 1215092

MISDEMEANOR COMPLAINT

FILED

SUPERIOR COURT of CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 23 2006

GARY M. BLAIR, EXEC. OFFICER

By [Signature]
R. PALMER Deputy Clerk

The undersigned is informed and believes that:

COUNT 1

On or about September 6, 2006, in the County of Santa Barbara, the crime of VEHICULAR MANSLAUGHTER, in violation of PENAL CODE SECTION 192(c)(2), a Misdemeanor, was committed by ERNESTO LANDEROS BOTELLO, did unlawfully, and without malice, kill J. BOYSEL, a human being, while driving a vehicle in the commission of an unlawful act, to wit: an unsafe lane change and excessive speed for condition, not amounting to a felony, but without gross negligence.

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code Section 1054.3.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT CONSISTS OF 1 COUNT(S).

Executed at Santa Barbara, California, on October 23, 2006.

[Signature]

JAMES J. KREYGER
SR. DEPUTY DISTRICT ATTORNEY

Agency: SBPD

DEFENDANT NAME	SEX	RACE	HGT	WGT	EYES	HAIR	DRIVER'S LICENSE	STS	COURT DATE
Ernesto Landeros Botello	M	H	600	185	BRO	BLK	D2006944	LR	11/13/2006

an

THOMAS W. SNEDDON, JR.
District Attorney



PATRICK J. MCKINLEY
Assistant District Attorney

CHRISTIE A. STANLEY
Assistant District Attorney

**Santa Barbara County
District Attorney's Office
1112 Santa Barbara Street
Santa Barbara, CA 93101
Telephone: 805 568-2300**

October 23, 2006

Ernesto Landeros Botello
4280 Calle Real, Unit 71
Santa Barbara, Ca 93110

RE: D.A. CASE NUMBER 06-09-159982

Dear Mr. BOTELLO:

On October 23, 2006, a complaint was filed against you for violation of section(s) PC 192(C)(2).

This letter is to advise you that you must appear on **Monday, November 13, 2006 at 08:30 AM**, at the Santa Barbara Superior Court, 118 E. Figueroa Street, Santa Barbara, CA, 93101. Your failure to appear will result in a warrant being issued for your arrest.

Very truly yours,

THOMAS W. SNEDDON, JR.
District Attorney

cc: Clerk of Court
DA File

CINCINNATI.COM | NKY.COM | ENQUIRER | POST | WCPO | CIN WEEKLY | Classifieds | Cars | Trucks |





Ct
6
F
V

HOME

News

Tri-state News
Stories

9Links
Story Archive
Butler/Warren Stories
Survey USA Polls

9Newsbreakers
Nat'l/World Stories
WCPO Segments

Don't Waste Your \$
I-Team
Healthy Living
9 On Your Kids Side
More...

Traffic
Traffic Cameras
Maps & Directions

News To Go

POD Podcasts
News On Your Phone
XML RSS Feeds
Streaming Video
E-mail Newsletters

9News Tips
9News Bio Pages
Special Sections
Democracy 2006
Marcus Fiesel
Road To Recovery
More...

Recipes

WCPO.com

News

Weather

Sports

Health

Video

Webcams

Business

About WCPO

Giveaways

Recipes

Traffic

Pet Pals

Search

Help/Contact Us

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.

AUDIO/VIDEO

 Watch this 9News video

RELATED PICTURES

Click for larger images.



Dione Hillman in court
Thursday
(WCPO/WCPO.com)



Dione Hillman's home
(WCPO/WCPO.com)



Dione Hillman in court
Thursday
(WCPO/WCPO.com)

 [Click for more local headlines](#)



Coming up Watch 9News at 11 for the latest local and national news stories. Program schedule
on WCPO-TV



Check out

abc

NEWS

net

9NEWS

Up

DU

WEB

CINCINNATI.COM | NKY.COM | ENQUIRER | POST | WCPO | CIN WEEKLY | Classifieds | Cars | Homes |



HOME

News

Tri-state News Stories

9Links

Story Archive

Butler/Warren Stories

Survey USA Polls

9Newsbreakers

Nat'l/World Stories

WCPO Segments

Don't Waste Your \$

I-Team

Healthy Living

9 On Your Kids Side

More...

Traffic

Traffic Cameras

Maps & Directions

News To Go

POD Podcasts

News On Your Phone

XML RSS Feeds

Streaming Video

E-mail Newsletters

9News Tips

9News Bio Pages

Special Sections

Democracy 2006

Marcus Fiesel

Road To Recovery

More...

Recipes

WCPO.com

News

Weather

Sports

Health

Video

Webcams

Business

About WCPO

Giveaways

Recipes

Traffic

Pet Pals

Search

Help/Contact Us

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

RELATED PICTURES

Click for larger images.



Dione Hillman
(WCPO/WCPO.com)

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.

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.

[Click for more local headlines](#)

Coming up on WCPO-TV Watch 9News at 11 for the latest local and national news stories. Program schedule

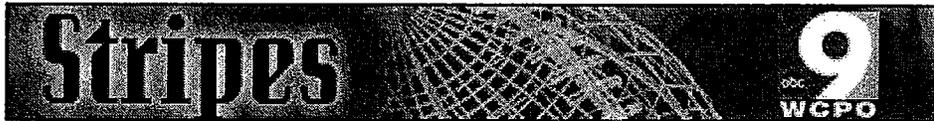


Click for t
abc
NE
Pod
Update
around

ARTHRITIS FOUNDATION
BONE BASH
Enter to Win a 2007 Cadillac CTS

Saturday, October 21, 2006
Verdin Bell Event Centre





HOME

News

Tri-state News
Stories

9Links

Story Archive

Butler/Warren Stories
Survey USA Polls

9Newsbreakers

Nat'l/World Stories

WCPO Segments

Don't Waste Your \$
I-Team

Healthy Living

9 On Your Kids Side
More...

Traffic

Traffic Cameras
Maps & Directions

News To Go

POD Podcasts

News On Your Phone

XML RSS Feeds

Streaming Video

E-mail Newsletters

9News Tips

9News Bio Pages

Special Sections

Democracy 2006

Marcus Fiesel

Road To Recovery
More...

Recipes

WCPO.com

News

Weather

Sports

Health

Video

Webcams

Business

About WCPO

Giveaways

Recipes

Traffic

Pet Pals

Search

Help/Contact Us

EEO Report

Daycare Worker Sentenced To Three Years In Jail

Reported by: [9News](#)
Web produced by: [Liz Foreman](#)
Photographed by: [9News](#)
6/26/03 11:24:51 AM

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.

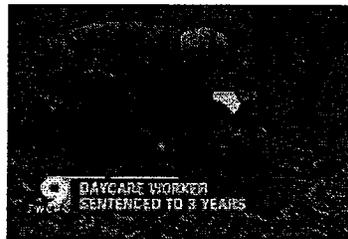
Hillman could have faced as much as 20 years in prison.

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

[Click for more local headlines](#)

RELATED PICTURES

[Click for larger images.](#)



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

RELATED WCPO STORY

[Cincinnati Woman Indicted In Child's Drowning Death](#)
(06/21/03)



9 Coming up on WCPO-TV

Watch 9News at 11 for the latest local and national news stories. [Program schedule](#)

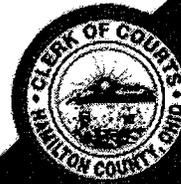
You Are Not Currently Logged In

[Directions](#) | [Policies](#) | [Site Map](#)



Greg Hartmann

Clerk of Courts



Hamilton County Courthouse
1000 Main Street
Cincinnati, OH 45202

[Home](#)

[Court Records](#)

[Court Date](#)

[Forms](#)

[Services](#)

[D](#)

Case Summary

Case O

Case Number: B 0205061

Municipal Case Number: /02/CRA/18743

Case Caption: STATE OF OHIO vs. DIONE H HILLMAN

Judge: CHARLES J KUBICKI JR

Filed Date: 6/21/2002

Case Type: 4 - SUMMONS ON INDICTMENT

Race: BLACK - AFRICAN AMERICAN

Sex: F

Age: 35

Date of Birth: 6/3/1971

Bond Amount: \$10000 STRAIGHT

Count 1: INVOLUNTARY MANSLAUGHTER 2903-04A ORCN

Disposition: 6/26/2003 DOCC DEPARTMENT OF CORRECTIONS

Count 2: ENDANGERING CHILDREN 2919-22A ORCN

Disposition: 6/26/2003 CC COMMUNITY CONTROL

Count 3: OBSTRUCTING JUSTICE 2921-32A1 ORCN

Disposition: 6/26/2003 3D DISMISSAL

[Case History](#)

[Case Schedule](#)

[Case Documents](#)

[Party/Attorney List](#)

[New Case Search](#)

[New Name Search](#)

[Add Case to My](#)

[About the Clerk](#) | [FAQ](#) | [Links](#) | [Directions](#) | [Policies](#) | [Contact Us](#) | [Site Map](#)

Alternate languages: [Deutsch](#) | [Español](#) | [Français](#) | [Italiano](#)

© 2006 Greg Hartmann, Hamilton County Clerk of Courts. All rights reserved.



Unwrap the holiday season



Home News Sports Lifestyle A&E Events Business Jobs Cars Classifieds Subscribe Se

post-gazette.com Local News

Thursd

- Local News
- Latest News
- Previous Articles
- Neighborhoods
- News Obituaries
- Education
- Weather
- Elections
- Photo Journal
- Transportation
- Events Calendar
- Lottery
- The Morning File
- Multimedia
- Casino News
- Capitol Notes
- Columnists
- Consumer
- Special Reports
- First Amendment

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.



Trans Med Pr

Over 700... Reduced... Decreased... Extended... Pittsburgh... Pittsburgh@... 412

Click here for an interactive map of Pittsburgh.

post-gazette.com

Place an Ad Click Here

Buying or selling? Click here for Auto Classifieds

Click here to view today's front page

post-gazette.com

Headlines by E-mail

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.)

PAID ADVERTISING

Car Donation to Help Kids

Real Charity, Real Kids Fast & free pickup.
Tax deductible.

[Ads by Google](#)

1-800-CHARITY CARS

100% Non-Profit, Car Donation Program.
Receive Full Retail Value

[Advertise on this site](#)

E-mail this story  Print this story 



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

Works Cited

- Arizona Revised Statutes*. Arizona State Legislature. 29 August, 2001
<<http://www.azleg.state.az.us/ars/13/01102.htm>>.
- Bommersbach, Jana. "Yes, There Is a Difference." *Good Morning Arizona*. KTVK, Phoenix. 10 July, 2001.
- Cole, David. "No Equal Justice: Race and Class in the American Criminal Justice System." *The Social Construction of Difference and Inequality: Race, Class, Gender and Sexuality*. Ed. Tracy E. Ore. Mountain View, Calif: Mayfield Publishing, 2000. 329-337.
- Cooperman, Jeanette. *The Broom Closet: Secret Meanings of Domesticity in Postfeminist Novels by Louise Erdrich, Mary Gordon, Toni Morrison, Marge Piercy, Jane Smiley, and Amy Tan*. New York: Peter Lang Pub. 1999.
- Craig, Michelle. "Drownings: 'Enough is Enough.'" *Arizona Republic*. 20 June, 2001.
- Feinman, Clarice. *Women in the Criminal Justice System*. Sec. Ed. New York: Praeger Publishing. 1986.
- hooks, bell. "Feminism: A Transformational Politic." *The Social Construction of Difference and Inequality: Race, Class, Gender and Sexuality*. Ed. Tracy E. Ore. Mountain View, Calif: Mayfield Publishing, 2000: 612-619.
- Hopkins, Adrienne. "What's Happened to Accountability?" *Ahwatukee Foothills News* 13 July, 2001.
- Klawonn, Adam. "Judge Disqualifies Himself from Bathtub Drowning Case." *Arizona Republic* 3 July, 2001.
- Klawonn, Adam and Carol Sowers. "Mother Convicted in Tot's Drowning." *Arizona Republic* 10 July, 2001.
- Montini, E.J. "Treading Water over Drowned Kids." *Arizona Republic* 20 May, 2001.
- Muñoz, Cecilia and Carmen T. Joge. "NCLR, Hispanic Law Enforcement Organizations Forms Partnership to Address Harassment and Abuse of Latinos." *National Council of La Raza*. 15 December, 1999
<<http://nclr.policy.net/policy/civil.vtml>>.
- Naffine, Ngaire. *Feminism and Criminology*. Cambridge: Polity Press. 1997.
- Perez Jr., Rudolfo. Telephone Interview. Phoenix, Arizona. 19 October, 2001.
- Sered, Susan Starr. *Priestess, Mother, Sacred Sister: Religions Dominated by*

Women. New York: Oxford University Press. 1994.

Smart, Carol. "Disruptive Bodies and Unruly Sex." *Historical Essays on Marriage, Motherhood and Sexuality*. Ed. Carol Smart. London: Routledge. 1992. 7-32.

Sowers, Carol. "Mom Gets Probation in Child's Drowning." *Arizona Republic* 22 September, 2001.

PaloVerde Home Page	Writer's and Artist's Guidelines	Feedback	Disclaimer
-------------------------------------	--	--------------------------	----------------------------

© Copyright 2002 Kathleen Crocker and Arizona State University West
Last Updated: August 27, 2002

From phoenixnewtimes.com
Originally published by *Phoenix New Times* 2001-10-18
©2005 New Times, Inc. All rights reserved.

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.

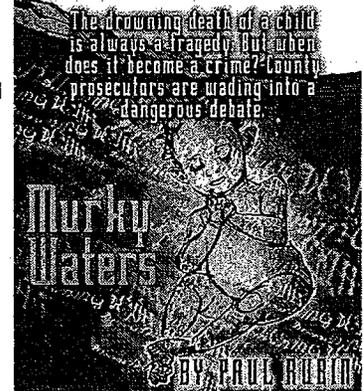
She found Valeria face down in the more-than-half-filled tub, as Antonio stood near the running faucet, the drain stopper in place. The woman snatched the motionless child from the water. Someone screamed for Rico, who fainted when she saw her baby. Valeria was 19 pounds and in excellent health when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

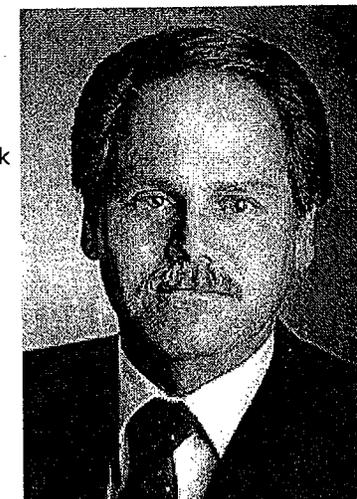
As a member of the Family Violence Unit, Ryan faced the worst of the worst at trial -- generally parents and guardians who had pummeled, burned, stabbed, scalded or



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

CR2003-009108-001 DT

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

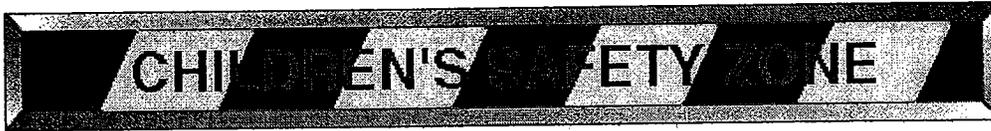
CR2003-009108-001 DT

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
©Copyright 2003 Arizona Republic



[Current Stories Index](#)

POOL SAFETY

[Facts & Figures](#) || [Safety Tips](#) || [High Risk Profile](#)
[Current Stories & Events](#) || [Sponsors & Contributors](#)

Children's Safety Zone

[Babysitting Safety](#) || [Fire Safety Index](#)
[Christmas Safety](#) || [Halloween Safety](#) || [Using 911](#)

[Home Page](#) || [Contact Us](#)

©Copyright 2003 Swift Office Solutions, Inc.

case history

Superior Court of Arizona, Maricopa County

Case Information



case history

court calendar

Superior Court

dept. home page

Search go

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.

[Close Window](#)

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.

LENGTH: 21886 words

Article: CRIME AND PARENTHOOD: THE UNEASY CASE FOR PROSECUTING NEGLIGENT PARENTS

NAME: Jennifer M. Collins*

BIO: *Assistant Professor of Law, Wake Forest University. My thanks go to Adam Charnes, Robert Chesney, Maxine Eichner, Vic Fleischer, Rick Garnett, Anara Guard, Kay Levine, Dan Markel, Jan Null, Wendy Parker, Ahmed Taha, Ronald Wright, Kathy Zeiler, and all the participants in faculty workshops at the University of North Carolina School of Law, the May Gathering, and Wake Forest School of Law for their helpful and insightful comments. I also thank Catherine Blackburn, Karolyn Johnson, Heather McKinney, and Will Woodlee for their invaluable research assistance.

SUMMARY:

... On May 29, 2002, Kevin Kelly, a Virginia father of thirteen children, left his youngest child, a nineteen-month-old girl, in the family van when the family returned home from running an errand. ... This Article attempts to broaden our understanding of how the criminal justice system addresses parental negligence cases. ... The 2002 annual report of the National Child Abuse and Neglect Data System concluded that local child protective agencies determined that 896,000 children were victims of abuse or neglect, with more than sixty percent of these victims suffering from neglect. ... Dressler's third variant is the "victim vindication" model set forth by Jean Hampton, in which punishment "evens the score" between the victim and the offender. ... We are still left with the second question: even if we assume that the defendant's suffering should play some mitigating role in determining the ultimate level of punishment that should be imposed, should the existence of suffering play a role in determining whether he should be charged with a crime in the first instance? Is there something unique about the nature of the charging decision, as opposed to the sentencing or clemency decision, that renders the exercise of mercy inappropriate at that stage of the criminal justice process? ...

HIGHLIGHT: On May 29, 2002, Kevin Kelly, a Virginia father of thirteen children, left his youngest child, a nineteen-month-old girl, in the family van when the family returned home from running an errand. A neighbor found the child dead in the van seven hours later. n1

Kelly was promptly prosecuted by the Commonwealth of Virginia for involuntary manslaughter, a decision that immediately ignited a firestorm of controversy. One well-respected commentator, for example, immediately condemned the decision as "sending a chilling message of prosecutorial over-reach and abuse" and compared the "logic" behind the prosecution to "the Vietnam war technique of destroying a village to save it." n2

TEXT:

[*808] Approximately fifteen children under the age of fourteen die every day in this country as a result of unintentional injuries, totaling more than 5600 children per year. n3 Although surely not all, many of these deaths were undoubtedly caused by parental negligence. n4 Yet despite the prevalence of these fatalities, almost no research explores the treatment of these cases by the criminal justice system. n5 Commentators often assert that parents are rarely prosecuted in cases involving deaths due to parental negligence, but they completely fail to cite any authority for that proposition. n6 In addition, prosecutors are relying on the common perception that a failure to prosecute is the norm when making charging decisions in individual cases. n7

This Article attempts to broaden our understanding of how the criminal justice system addresses parental negligence cases. After briefly surveying the existing literature, the Article reports the results of an empirical study examining prosecutorial charging decisions over a six-year period in cases involving children who died of hyperthermia when left alone in motor vehicles. n8 [*809] The results fly in the face of conventional wisdom: my study found that parents were in fact prosecuted in over fifty percent of the cases. Further, although parents are prosecuted in the majority

of cases, individuals not related to the victim fare even worse: nonrelatives were prosecuted in over eighty-eight percent of the cases. One particularly important - and disturbing - finding was the disparate treatment of parents from different socioeconomic groups: parents in blue collar professions and parents who were unemployed were four times more likely to be prosecuted than parents from wealthier socioeconomic groups.

In Part II of the Article, I shift from the descriptive to the normative, as I consider the exceedingly difficult question whether these parents should be prosecuted. The answer to this question revolves in large part around the relevance placed on a defendant's suffering. Specifically, when a parent's misconduct has caused him to experience emotional suffering, should that fact be the dispositive consideration in the decision whether or not to file criminal charges? Whether to prosecute a grieving father who has lost a child due to his own negligence is an undeniably close and difficult question, but I ultimately conclude that the criminal justice system must treat these tragedies as criminal acts when gross negligence is involved, and charge defendants accordingly. ⁿ⁹ Failing to charge a defendant because of his personal suffering denigrates the life of his victim and raises important concerns about equality of treatment, both as between victims and as between defendants. Instead, questions of suffering are most appropriately considered at sentencing.

Those who oppose any involvement by the criminal justice system in these cases argue that prosecution of negligent parents cannot be justified under either the retributivist or utilitarian philosophies that are typically invoked to justify the government's imposition of criminal sanctions. ⁿ¹⁰ In terms of deterrence, for example, it is no doubt true that many negligent [*810] parents like Kevin Kelly can suffer no greater punishment, have no starker deterrent, than the loss of a child. But this objection conflates specific and generalized deterrence. At a minimum, prosecution in these cases can serve the interests of generalized societal deterrence; it can educate and deter other parents who are either unaware of a particular danger or who are knowledgeable, but nonetheless engage in unduly risky behavior. ⁿ¹¹ Moreover, prosecution can serve a rehabilitative role within the affected household itself; for example, perhaps a parent serving a period of probation could be provided with additional state resources or community-based support to help ease the undeniable burdens of parenting. In terms of retribution, the decision to prosecute validates the life of the individual victim and, by making a statement that the grossly negligent parent has violated an important legal norm, reflects the importance that society should attach to protecting the lives of its most vulnerable citizens.

More fundamentally, the controversy over whether to prosecute these parents raises troubling questions about our conceptions of parenthood itself and the extent to which a family relationship - by that fact alone - should exempt a malfactor from the reach of the criminal law. One of the most disturbing aspects of the Kelly case is that Kevin Kelly did not bother to check on his twenty-one-month-old daughter Frances for seven hours. During that span of time, a toddler would ordinarily need at least two meals, some additional beverages, and two or more diaper changes. Yet in those seven hours, Mr. Kelly never once made any effort to make sure that his child's most basic needs were being addressed. If Mr. Kelly had dropped his daughter off at a daycare center and it was later revealed that her caregiver left the child alone in a room and then ignored her for the entire day, never bothering to provide food, drink, or a clean diaper, can there be any doubt that the community would be universally outraged and that prosecution for child neglect would be uniformly viewed as justified? Yet because Mr. Kelly is Frances's parent, he is somehow viewed as less morally culpable, less deserving of criminal punishment, than an unrelated third party would be.

This Article is one piece of a larger project whose aim is to demonstrate that we need to reconceptualize the way we think about the relationship between parenthood and criminal justice. In the context of parenthood and the criminal justice system, family members are still far more likely to be excused for behavior that would be considered criminal if committed by third parties. Examples abound: the extraordinary difficulties prosecutors [*811] face in convicting parents on homicide charges in child abuse cases, ⁿ¹² the lighter sentences imposed on defendants who kill family members, ⁿ¹³ the preferential treatment in some states given to sex offenders who victimize their own children rather than a stranger, ⁿ¹⁴ and the outcry over prosecuting negligent parents like Kevin Kelly. This preferential treatment for parents persists even though young children in particular face far greater risk of danger from their relatives at home than they do from strangers in public places. ⁿ¹⁵

The arguments in this Article emphatically do not mean that we should engage in wholesale incarceration of grieving parents; incarceration is not now and should never be the inevitable result of criminal prosecution. In most cases, probation and community service may well be the appropriate punishments. However, the decision to file criminal charge is justifiable in cases involving gross negligence because of its deterrent and expressive effects. ⁿ¹⁶ A defendant's suffering as the result of the crime he committed is [*812] more appropriately considered at the sentencing stage of a criminal case than at the charging stage. Most critically, prosecution can reinforce the normative judgment that parents have a greater responsibility to their children because of their decision to assume the obligations - and the concomitant tremendous rewards and undeniable risks - of the parental role.

I. Deaths of Children Due to Parental Negligence

Since at least the early 1960s, policymakers and academics have devoted increasing attention and resources toward addressing the problems posed by the physical and sexual abuse of children. n17 The problem of fatal neglect of children, however, has not received comparable attention. n18 Although legal scholars have discussed the important problem of the impact of the disproportionate use of neglect laws against poor and minority families, this is a problem different in kind from that discussed in this Article, because the children at issue in those cases are still alive and the policy debate centers over how best to improve their circumstances, for example through direct aid to or even removal from their families. n19 But in the cases with [*813] which I am concerned, the child is already dead, and the questions are therefore different: whether the criminal justice system has and should be used to redress that wrong.

For my background survey, I first reviewed discussions of fatal neglect in the legal and social science literature. Second, I attempted to locate all judicial opinions involving criminal charges filed against parents after a child died because of parental negligence. I did not conduct an empirical study of these opinions because the problems with relying only on published case opinions are particularly pronounced in this context, so this part of the Article concentrates on identifying some general trends in the case law. n20

A. Fatal Parental Negligence in the Literature

The problem of child neglect is a significant one in this country. The 2002 annual report of the National Child Abuse and Neglect Data System concluded that local child protective agencies determined that 896,000 children were victims of abuse or neglect, with more than sixty percent of these victims suffering from neglect. n21 Despite the pervasiveness of the neglect problem, the legal academy has devoted scant scholarly attention to these cases, and the few discussions of parental negligence found in the academic literature generally have focused on issues other than criminal justice outcomes. n22 When prosecution is referenced, it is typically only to make the broad assertion that the criminal justice system usually decides not to intervene when a child dies as the result of parental negligence, an assertion ordinarily backed by no empirical support. n23

[*814] Indeed, it is difficult even to determine the number of child deaths due to parental negligence, let alone the criminal justice outcomes in such cases. This problem is multifaceted. First, the larger category of child neglect deaths is one that "has not received proportionate attention from researchers and practitioners." n24 Indeed, no one knows the true incidence of child neglect deaths. n25 Second, deaths due to parental negligence could be categorized as a subset of these "neglect fatalities," but whether any jurisdiction chooses to do so - or any researcher chooses to study them - "depends largely on the precise definition of neglect adopted." n26 For example, in its "deaths due to neglect" statistics, does a jurisdiction include only deaths due to a failure to provide care, such as malnutrition resulting from chronic [*815] neglect, or does it also include deaths caused by a failure to supervise, such as drowning in an unattended bathtub? n27

Despite these data problems, several statistical sources give some insight into the potential magnitude of fatal neglect. The Centers for Disease Control concluded that in 2001, 859 children aged fourteen years or younger died in drowning accidents. n28 The National Safe Kids Campaign estimated that seventy-two children aged fourteen and under died from unintentional injuries caused by firearms in 2001. n29 The Campaign also estimated that in the year 2000, 603 children aged fourteen and under died from accidental fire injuries. n30 Further, the Campaign concluded that fifty-five percent of the children killed in motor vehicle crashes in 2001 were not secured in a safety restraint system at the time of the crash. n31 Although no doubt not all of these deaths involved parental negligence, surely some did. n32

Despite the sobering nature of these statistics, there have unfortunately been very few empirical studies of child fatalities caused by parental negligence, and I was unable to find any study that focused on the role of the criminal justice system. n33 The few studies that have considered the issue of negligent parental conduct more generally, however, contain many interesting findings. Leslie Margolin examined a set of eighty-two child fatalities that occurred in Iowa between January 1980 and May 1988. n34 Forty-eight [*816] children died from physical abuse and thirty-four from neglect. n35 This data set specifically included children who died from episodic negligence, rather than just from chronic neglect. n36 Margolin determined that most children who died from neglect were age three or younger and that boys were more likely to die from neglect than girls, perhaps because parents tend to supervise male children less closely. n37 Twenty-nine of the thirty-four neglect deaths occurred in the child's home. n38 The single most dangerous location in the home for a child was the bathtub: six children drowned when left unattended and three children died from scalding. n39 Seven of the neglect deaths were the result of fires and two were the result of children gaining access to unsecured guns. n40 Mothers alone were the responsible party in fifty-three percent of the cases, while fathers were solely responsible in only twenty-five percent of the deaths. n41 Margolin also found that a larger family size seemed to

correlate with child neglect fatalities, perhaps because "the more children caregivers support, the more their resources will be stretched, and the less adequate will be the supervision they provide." n42 Only thirty-nine percent of the families where a child died from parental neglect were previously known to child protective agencies in Iowa, a conclusion which suggests that it would be difficult to implement preventive measures for individual families in advance of a tragedy and that a more global education and prevention strategy might be more effective. n43 Her study did not consider criminal justice outcomes.

In 1986, the Child Welfare League of America conducted a one-year study of parental "lack of supervision" cases, using as a data set 807 new cases of child abuse or neglect reported to the New York State Central Register for Child Abuse and Maltreatment between July 1, 1982 and June 30, 1983. n44 Twenty-two percent of the 17,000 new cases reported to New York [*817] authorities during that time frame contained an allegation of lack of supervision, specifically including cases where a parent left a child unattended. n45 Cases containing this allegation "were disproportionately associated with fatalities." n46 Some of the findings in this study paralleled Margolin's. For example, lack of supervision cases arose more frequently in families with "more children and younger children" when compared to other cases in the child welfare system. n47 The mother was also more likely to be the perpetrator. n48 This study also did not consider the issue of criminal justice system involvement.

Michelle Oberman and Cheryl Meyer, as part of their larger study examining mothers who kill their children, studied fifty-seven child deaths that occurred as a result of maternal "neglect-omission" between January 1990 and December 1999. n49 They determined "the prevailing theme" within these cases was "inadequate supervision." n50 The primary causes of death were fires when children were left home alone, car hyperthermia, bathtub drowning, layover suffocation, the provision of inadequate nutrition, and "inattention to safety needs," such as leaving hazardous substances within the reach of children. n51 However, their study considers the problem of child-neglect fatalities from the perspective of "power and privilege" issues, and accordingly does not focus on criminal justice outcomes. n52 Oberman and Meyer also concluded that mothers were most likely to be the perpetrators of neglect, a finding they attribute to the "disproportionate numbers of children in the custody of their mothers rather than their fathers." n53 They also concluded that neglectful mothers are generally "young, single, have large families, are lacking in social support systems, and are of [*818] lower socioeconomic status." n54 They believed that many of the mothers in the cases they reviewed were suffering from depression, low self-esteem, or dependency on drugs or alcohol. n55 Meyer and Oberman briefly mention that criminal charges were filed in ten of the eleven cases they highlight in their discussion, but do not discuss that facet of the cases in any further detail.

B. Judicial Decisions Involving Parental Negligence

I attempted to locate every reported judicial decision involving fatal neglect charges brought against parents or guardians, an effort which located only ninety-two cases, although it is impossible to know whether this data set is complete. n56 Indeed, the results of my research into the hyperthermia cases suggest that looking only at reported cases would grossly understate the number of criminal prosecutions, since that empirical research located forty-three examples of criminal prosecutions against parents in car cases over a six-year period, only two of which resulted in a reported opinion. The most logical inference to be drawn from these numbers seems to be that the vast majority of fatal neglect cases are being resolved via a guilty plea.

In reviewing the cases, this Part uses a categorization scheme suggested by Donna Rosenberg for evaluating fatal neglect cases: (1) failure to provide (such as food, water, or medical care), (2) failure to supervise, and (3) failure to intervene (to protect a child from the abuse or neglect of another adult). n57 The reported case survey showed, as I expected, that a very significant percentage of the cases involved a failure to provide for a child, especially medical care. n58 Forty-three cases primarily involved a failure to provide for the child. In twenty-four of those forty-three cases, the charges against the parent primarily involved a failure to provide timely medical care. Twelve of the remaining cases involved a failure to provide nourishment and six involved a failure to provide both. n59 Another case, in which a four-day-old baby was attacked and killed by a swarm of fire ants, involved a failure to provide safe conditions. Only thirteen of the ninety-two cases included an allegation that the death was caused by a failure to intervene to protect a child from abuse by another individual, probably because this is still a relatively new legal development. n60

[*819] In thirty-four of the ninety-two cases, the parent or guardian was prosecuted because of a failure to provide adequate supervision. Thus, prosecution in failure to supervise cases is certainly not unprecedented. The most common causes of death were as follows: twelve cases involved accidental drowning, which resulted either from children being left unattended in a bathtub or from children being left unsupervised, allowing the children to wander outside and drown in a pool or other water hazard; eleven cases involved leaving young children home alone, who died when a fire broke out in their residence; and seven of the remaining cases involved deaths in automobiles. n61

Appellate courts were relatively receptive to the government's prosecution efforts in the failure to supervise cases. In the twenty-four cases reviewing a conviction on the merits, the appellate court issued an opinion favoring the government in eighteen of the cases. n62 In six of the cases, the ruling favored the defendant. These courts were often appalled by the decision of the government even to bring criminal charges. The sentiments of an appeals court in California are particularly striking, where the court reversed a conviction of a mother who left four children, all between the ages of two and six, alone in the house late at night, and the youngest burned to death when a fire broke out. The court mused, "Must a parent never leave a young child alone in the house on risk of being adjudged guilty of manslaughter if some unforeseeable occurrence causes the death of the child?" n63 Although not asked to review a conviction on the merits, another court upheld the dismissal of an indictment filed against a mother who left her nine-month-old daughter unattended in the bathtub because "the prosecution of this defendant for a grave mistake that will haunt her forever has unwarranted and excessive repercussions not only for her but for her other children." n64 The court further added that neither the defendant "nor her children [*820] deserve to be further victimized by the stigma and repercussions of a criminal prosecution." n65 These sentiments exemplify the objections often raised to prosecuting parents, which are addressed in Part II.

This review of the existing empirical research and the reported cases makes plain that we know almost nothing about how child fatalities resulting from parental negligence are treated by the criminal justice system. Is the common perception that parents are not prosecuted in these cases accurate? If a parent was prosecuted, did the prosecution result in a conviction, and was that conviction the result of a guilty plea or a trial? If the responsible party was convicted, what sentence was imposed? Are bereaved parents in fact being shipped off to jail to serve lengthy sentences? Further, are there meaningful differences in the way different categories of offenders are treated by the criminal justice system? For example, are parents more or less likely to be prosecuted than day care providers? The study discussed in the next part is an effort to begin to answer these questions.

C. An Empirical Study of Failure to Supervise Cases

On August 5, 2001, a music minister named Kevin Kinsey and his wife Anita, a youth minister, left their three-year-old son inside their car for over an hour after arriving at church. Each parent thought the other had taken the child. When Kevin Kinsey eventually began looking for his son, he found the boy dead inside the car. A six-person jury, convened as a "coroner's inquest," ruled the death accidental and law enforcement officials subsequently decided not to file charges. The parents, although obviously the most relevant witnesses, were not asked to testify during the inquest. The county sheriff stated, "We wouldn't put them through that." n66

This section analyzes actual cases involving the death of a child as a result of parental negligence. I selected the subset of cases involving children who died of hyperthermia as a result of being left unattended in an automobile for several reasons. n67 First, this is unfortunately a quite common factual scenario; in 2003, for example, at least forty-two children died [*821] from hyperthermia in the United States after being trapped in a car. n68 Second, there are some extraordinarily good websites devoted to this particular problem that have done an excellent job of compiling some basic statistics and thus provide a particularly useful starting point for research. n69 Third, these are cases that typically involve grossly negligent conduct and thus most starkly present the issue at the heart of this Article. Many other fact scenarios raise the specter of either willful and deliberate conduct, n70 or of conduct that does not rise to the level of gross negligence, and therefore potentially sidestep the more difficult questions presented when a death is the result of a level of negligence traditionally recognized as warranting criminal liability.

I attempted to identify as many incidents as possible involving a child dying from hyperthermia in the United States after being left in a car for the six-year period from the beginning of 1998 to the end of 2003. n71 My aim was to develop as much factual information as possible about each separate incident. In particular, I was interested in ascertaining the identity of the responsible party - was it a parent, another relative, or some unrelated caregiver? And how was each incident treated by the criminal justice system? n72

[*822] I used multiple resources in an attempt to compile as complete a database as possible. One very helpful resource was the various advocacy organizations currently devoted to compiling such case reports. I then searched both Lexis and Westlaw case and news databases to identify other potential incidents, as well as various Internet search engines such as Google and Yahoo. If it was impossible to determine the outcome of an incident from published news reports, I contacted the attorneys for the government, the defendant, or both in a particular incident or consulted court records. After these steps were complete, I then compared my database against two other databases to ensure that I had captured all relevant incidents: one maintained by Jan Null, a forensic meteorologist and adjunct professor at San Francisco State University, and one maintained by Anara Guard, a public health researcher formerly at the Boston University School of Public Health and now at the Education Development Center. n73

Because of my reliance in part on media reports, gleaned both from my own research and from copies archived by advocacy organizations, it is important to consider whether my data is affected by a selection bias. Specifically, did the media more often report on certain types of cases - e.g., cases where prosecution was pursued or cases involving white-collar professionals - because those cases were considered the most newsworthy? Although the possibility of selection bias exists, I do not believe that it is a significant problem here for several reasons. First, the genesis of my data set was the initial media report(s) issued immediately following the discovery of a dead child in a car. At the time these initial stories were filed, the reporters obviously had no idea whether prosecution would ultimately be pursued, n74 and at most would only have cursory information about the socioeconomic status of the family involved. n75 The primary contribution of my research was determining [*823] what happened to the case after these initial media reports. n76 Second, the advocacy groups that track media reports explicitly attempt to capture every incident where a child dies after being left unattended in a car because their very purpose is to increase public awareness of the problem by showing its prevalence. These groups simply do not care whether a prosecution is initiated or not; that is not the focus of their work so there is no reason to believe they have introduced a selection bias. n77

In addition, there is simply no reliable, comprehensive, accessible data source other than media reports. It would be impossible, for example, to attempt to compile meaningful data by going to the Dallas police department and looking at all police reports on child deaths over a six-year period because any one city or county or even state has at most a handful of child hyperthermia deaths in that timeframe. Indeed, even if there had been a large number of deaths in any one city, the public documents available would be incomplete. Autopsy reports, for example, even if accessible to the public, would simply list hyperthermia as the cause of death; there would be no way of ascertaining from the document whether the child died because he was left in a car or because he collapsed while playing outside on a hot day. So although reliance on media reports may be imperfect, such reports are simply the most comprehensive data source available when looking at national trends.

I excluded from my database incidents where the child died after climbing into a car on his own. n78 Although these incidents might well involve [*824] some degree of parental negligence, such as failing to supervise the activities of a child, a single moment of inattention could result in a child slipping out of the house and into a car. This scenario thus did not seem sufficiently comparable to the negligence involved in forgetting a child in a car for several hours. I identified forty-four separate incidents in which children died after climbing into a car, involving forty-nine total victims. Parents were in fact prosecuted in at least three of these incidents. n79

After these exclusions, my data set consisted of 130 incidents involving 136 total victims. In forty-six of these incidents, or 35.4%, the mother was the sole party responsible for leaving the child in the car. Fathers were the culpable parties in twenty-eight, or 21.5%, of the incidents. Fourteen incidents, or 10.8% of the total, actually involved both parents as potential defendants. Other relatives were responsible for forgetting the child in the car in fourteen, or 10.8%, of the incidents. Most typically, these incidents involved a grandparent, although there was at least one incident each involving an aunt, uncle, and cousin. n80 Finally, twenty-eight of the incidents, or 21.5%, involved caregivers who were unrelated to the victim, such as a day care worker, babysitter, or foster parent. In at least eighty-seven of the incidents, the child was left alone in the car for three or more hours. n81

The results of my empirical research into the treatment of these incidents by the criminal justice system are summarized in the table below, and then described in greater detail in the paragraphs that follow.

[*825]

Table: Hyperthermia Incidents in the Criminal Justice System (1998-2003)

Identity of Defendant	Number of Incidents	Incidents Prosecuted n82	Defendant Convicted	Jail Sentence Imposed
Mother	46	26/43 (60.5%)	23/25 (92%)	15/22 (68.2%)
Father	28	11/25 (44%)	10/11 (90.9%)	5/9 (55.5%)
Both Parents	14	6/12 (50%)	5/6 (83.3%)	1/4 (25%)
Other Relative	14	6/10 (60%)	5/6 (83.3%)	1/5 (20%)
Unrelated Party	28	24/27 (88.8%)	20/22 (90.9%)	12/20 (60%)

The conventional wisdom about parental negligence cases supposes that parents are usually not charged with a criminal offense and in the unlikely event they are charged, are rarely convicted. n83 This perception clearly is inaccurate, especially with regard to mothers. n84 I obtained information regarding prosecution decisions for forty-three of the forty-six incidents where the mother was the individual solely responsible for leaving the child in the car. Mothers were prosecuted in twenty-six of these incidents, meaning prosecutions were initiated in 60.5% of the incidents. n85 In one [*826] case, I was unable to learn whether the mother was convicted of the criminal charges filed against her. An overwhelming percentage of the remaining incidents resulted in a criminal conviction: mothers were convicted in twenty-three of twenty-five cases, meaning the government secured a 92% conviction rate. n86

Not surprisingly, the majority of these convictions were the result of guilty pleas. n87 At least thirteen of the convictions resulted from guilty pleas and seven resulted from a trial or military hearing. n88 Mothers were convicted of offenses ranging from involuntary manslaughter and criminally negligent or reckless homicide to lesser charges of child neglect or endangerment. One Michigan mother was actually convicted of second-degree murder because she deliberately left her two children in the car for three hours while getting her hair done. Both children died. n89

Moreover, mothers received sentences that included incarceration in a significant percentage of the cases. Mothers were sentenced to jail in 68.2% of the cases where the government obtained a conviction. n90 Although one of these sentences involved just one day of jail time, the remaining cases involving jail sentences ranged from one year to fifteen years to life. The other seven cases that included no jail time resulted in a sentence of either probation or a suspended sentence.

Fathers fared a little better, at least at the charging stage of the case, although they were still prosecuted, convicted, and sentenced to jail in a considerable percentage of incidents. I obtained information regarding prosecution decisions in twenty-five of the twenty-eight incidents involving fathers as potential defendants. Fathers were prosecuted in 44% of these incidents. n91 Again, the overwhelming percentage of these cases, 90.9%, resulted [*827] in a conviction. Four of the convictions resulted from a trial and the remaining six from a plea of guilty or no contest. In the remaining case, the father was allowed to enter a diversion program, such that the charges would be dropped if he successfully completed the requirements of a year-long program.

In terms of sentences, I obtained sentencing information for nine of the ten cases with a conviction. n92 Fathers were sentenced to jail time in five of the cases, although one sentence required a father to spend just one day in jail on his daughter's birthday for seven years. The remaining sentences ranged from one year of imprisonment to fourteen years. Four defendants avoided jail time and were either sentenced to probation or received a suspended sentence.

The incidents involving both parents as potential defendants followed the same general pattern. Prosecution information was available for twelve of the fourteen incidents; the prosecution rate was fifty percent. n93 Parents were convicted of criminal offenses in five of these six cases; all were the result of guilty pleas. The remaining case was dismissed by a judge over the government's objection on the ground that the parents' conduct, while negligent, did not amount to manslaughter. n94 Of the four cases where sentencing information was available, three resulted in probation and one resulted in a five year jail sentence for each parent.

Prosecution decisions in the fourteen incidents involving a relative other than a parent were roughly comparable to the parent cases. Of the ten incidents for which I could obtain information, the prosecution rate was sixty percent. Five of the six cases resulted in a conviction; one was the result of a trial and four were the result of guilty or no contest pleas. One case resulted in a five-year jail sentence; the remaining defendants were sentenced to probation.

[*828] Prosecution rates were strikingly higher in the twenty-eight incidents involving only adults unrelated to the victim. n95 Of these incidents, sixteen involved workers at daycare centers; the remaining incidents involved babysitters, family friends, or foster parents. I was unable to obtain prosecution information for one of the incidents. For the twenty-seven remaining incidents, the prosecution rate was 88.8%. Of the twenty-two cases for which I could obtain disposition information, n96 the government obtained convictions in twenty cases, or in 90.9%. Fifteen of the cases were resolved via a guilty plea, four were resolved via a trial, and one incident with multiple defendants involved one conviction via a guilty plea and one via a trial.

Nonrelatives who were prosecuted faced the very real possibility of a jail sentence. In twelve of the twenty cases (sixty percent), where the government obtained a conviction, the defendants were sentenced to jail. The remaining eight cases resulted in a sentence of probation. The jail sentences for nonrelatives ranged from ninety days to thirteen years of incarceration.

The stark differential in the treatment of parental defendants versus the treatment of unrelated defendants suggests, I believe, that prosecutors are in fact employing a "suffering discount" for parents. n97 Of the cases where I was able to determine the decision regarding prosecution, parents were prosecuted in forty-three of eighty cases, or in 53.75%, still a very significant percentage. But individuals not related to the defendant were prosecuted far more frequently, in 88.8% of cases where I was able to trace the prosecution history. n98

It is also clear from the statistics that the initial decision whether or not to prosecute is the most significant one. Although there was a wide disparity in the percentage of defendants prosecuted between the different categories of defendants, the conviction and sentencing statistics were remarkably consistent across all categories. For example, once the decision to prosecute was made, conviction rates ranged from eighty-three percent to ninety-two percent.

Other significant trends were evident in the cases. The factors that influenced prosecutorial decisionmaking are highlighted through the use of [*829] narrative, so this section incorporates some actual case studies in an effort to illustrate patterns within the various charging decisions.

On July 27, 2002, a twenty-year-old mother and Navy sailor named Lateasha Moore deliberately left her eleven-month-old son in her car when she went to work because she was unable to find a babysitter. Although she checked on him periodically, he was dead when she ultimately returned to the car. Although she argued that she did not have any intent to harm her baby, she was convicted by a military court of involuntary manslaughter and sentenced to nine years in prison. n99

On June 28, 2002, a twenty-five-year-old mother named Tarajee Maynor deliberately left her three-year-old son and ten-month-old daughter in her car for more than three hours while she was getting her hair done and getting a massage. When Ms. Maynor returned to her car and discovered that her children were dead, she drove around with their bodies for another three hours trying to concoct a story to explain her conduct. She initially told the police she had been taken from the car and raped, and returned to the parking lot after the rape to find her children dead. She eventually confessed to intentionally leaving the children, but claimed that she was "too stupid" to know that the children could be harmed as a result. She recently pled guilty to second degree murder and was sentenced to 12.5 to sixty years in prison. n100

My research showed that prosecutions were initiated in every case where the responsible party left the child in the car deliberately. n101 The evidence in these cases did not suggest that the perpetrator intended to kill the child; indeed, the facts typically demonstrated that the defendant was unaware that a decision to leave the child behind posed any fatal danger. Nonetheless, prosecutions were far more likely in these cases than in a case where the responsible party simply forgot the child was in the car. The remarkably consistent decisions to prosecute across this category of cases are perhaps explained because these defendants arguably behaved recklessly, rather than only negligently.

[*830] On August 1, 1999, a thirty-year-old mother named Sandra Arteaga accidentally left her eight-month-old son in her car after a night of drinking. Ms. Arteaga was driving home with her two children after a night of partying when she decided to pull over in a gas station parking lot to rest. A limousine driver noticed Ms. Arteaga and offered her a ride home. Ms. Arteaga brought her two-year-old daughter into the limo, but forgot her son was also in her car and drove off without him. Her son was found dead in the car more than ten hours later. Ms. Arteaga was convicted at a jury trial of reckless injury to a child and sentenced to twelve years in prison. Her husband objected to the prison sentence and stated that the jurors should have imposed probation, saying "it's the least they could have done for her." n102

Prosecutions were initiated in virtually every case where any sort of aggravating factor was present. For example, the responsible party was prosecuted in every case where there was an indication of significant drug or alcohol use prior to forgetting the child in the car. The only exception to this trend was a daycare provider who waited thirty-five minutes to call 911 after finding an unconscious child in her van. Despite the delay in summoning help and the fact she was a daycare provider, a category of defendant prosecuted in more than eighty-eight percent of the incidents, the grand jury declined to indict her.

On July 24, 2001, an unemployed twenty-four-year-old father named Brian Gilbert accidentally left his five-month-old son in his car for three hours while he visited a relative to play video games. Prosecutors in San Jose, California, charged him with involuntary manslaughter and child neglect. Mr. Gilbert went to trial and was found guilty of both charges by a jury. He was sentenced to four years probation and 500 hours of community service. n103 The prosecutor remarked after the verdict that Gilbert's actions constituted a "flagrant departure from what the community expects" in terms of a parent's duty of care and "that it was obvious that he should have been aware of his own son." n104

On August 8, 2003, a forty-nine-year-old college professor and Fulbright scholar named Mark Warschauer accidentally left his ten-month-old son in his car for over three hours when he went to work. The district attorney in

Irvine, California, declined to file charges, saying the death was a [*831] "tragic mistake" and citing Warschauer's "unquestionable love for his child." n105

One of the most striking trends in the data was the preferential treatment accorded parents who could be identified via descriptions contained in media reports as middle or upper class or employed in "white collar" professions. n106 I was able to obtain information regarding both socioeconomic status and prosecution outcome for fifty-one of the cases involving parents as potential defendants. n107 Thirty of these cases involved parents who could be characterized as working in a white collar profession or as being the spouse of a white collar professional. n108 Professions ranged from a NASA scientist to college professors to a hospital CEO. Of these individuals, only seven were prosecuted, for a prosecution rate of 23.3%. But of the twenty-one individuals who could be classified as working in a blue collar profession or who were unemployed, or had some other indicator of a lower socioeconomic status such as living in a mobile home with no working [*832] utilities, eighteen were prosecuted, translating to a staggering prosecution rate of 85.7%. n109

It might be possible that this disparity is the result of a correlation between socioeconomic status and some of the other factors that seem to affect prosecutorial decisionmaking. For example, if blue collar parents are more likely to leave a child in a car deliberately because of child care problems, then the disparity might be based on this factor and not on socioeconomic status. n110 But a multiple regression analysis confirmed that socioeconomic status was an independently significant factor in prosecutorial decisionmaking. n111 Even after controlling for the variables of leaving a child in a car deliberately or of using drugs or alcohol prior to forgetting the child, the variable of socioeconomic status proved to be statistically significant in terms of patterns of prosecutorial decisionmaking at more than a ninety-nine percent confidence level. n112

II. Should We Prosecute Parents?

The research discussed in the preceding section demonstrates that a significant number of children die as the result of negligence, in a wide range of circumstances. We saw that prosecuting individuals unrelated to the victim is commonplace; indeed, there is almost universal outrage when a child dies due to the negligence of a paid caregiver. n113 But the research also shows that contrary to public perception, parents are being prosecuted as well, although such prosecutions are very controversial. Now that we know such prosecutions occur, it seems time for a dialogue about whether such prosecutions are appropriate, so that future decisions about whether to prosecute in individual cases will be based upon more than the misperception that parental prosecutions occur only in negligible numbers.

Perhaps the most common objection raised to prosecuting parents whose negligence results in the death of a child revolves around the suffering [*833] of the responsible parent: surely the parent has already suffered enough. n114 It is unquestionably true that for most individuals there can be no greater pain than the loss of a child, and that the suffering endured by parents in this position is almost unimaginable. But should the suffering already endured by a potential defendant be the dispositive consideration when deciding whether or not to initiate a criminal prosecution, particularly when the suffering is the direct result of the defendant's actions? In other words, even if the suffering already endured by the defendant is relevant to the sentence she might receive upon conviction, should that suffering be considered with respect to the initial charging decision?

The relevance of defendant-created suffering is a question that lurks at the margins of criminal law; only a few legal scholars and philosophers have wrestled with the issue. n115 Suffering has typically been referenced in the contexts of conviction, sentencing, and clemency, but not in the realm of charging decisions. n116 In terms of convictions, commentators often have asserted that a defendant's suffering is one basis upon which juries may choose to nullify, but there has been very little discussion about whether this is an appropriate basis for the exercise of that power. n117 Indeed, the standard trial practice of instructing jurors that their deliberations should not be influenced by "prejudice, fear, sympathy, or favoritism" indicates [*834] considerable hostility to considering a defendant's suffering when determining his guilt or innocence. n118

In terms of sentencing, suffering is discussed as a sentencing factor by both utilitarians and retributivists. For example, utilitarian theorists weigh the defendant's suffering as one factor in the calculus when determining the appropriate sentence for a particular crime, but their concern is with the suffering created by the sentence imposed, not with the defendant's suffering triggered directly by his crime. n119 Retributivists rely on suffering in two different contexts. First, the imposition of punishment under traditional retributivist theory inevitably inflicts suffering on the offender. n120 But offenders are made to suffer because they deserve it; their breach of the social contract renders state condemnation and the resulting imposition of privations appropriate. This is not to suggest that retribution is the functional equivalent of revenge. The defendant's suffering here is the byproduct, and not the purpose, of the

punishment; punishment cannot be simply the gratuitous infliction of pain. Again, the discussion of suffering in this context refers to the suffering created by the punishment itself.

But second, and conversely, some philosophers, such as Kathleen Dean Moore, have argued that an offender's suffering, unrelated to his punishment, might be an appropriate basis under retributivist theory for granting leniency. n121 As a practical example, clemency has been granted in some cases involving battered women who kill their abusers, in part because such defendants were thought to have already suffered enough as a result of the [*835] prior beatings they had sustained. n122 But should clemency be granted if the defendant suffers emotional pain as a result of a crime she committed? To use the example of the battered wife, should she receive more lenient treatment from the criminal justice system because she is suffering from the loss of the spouse whose death she caused?

The extent to which we should take defendant-created suffering into consideration also could be conceptualized as a question of mercy, a topic that has lately received some welcome attention by the legal academy. n123 This Article will draw upon Robert Misner's helpful definition and use the term "mercy" to refer to the state's decision, based on the principle of compassion, either to forgo punishment entirely or to reduce the criminal sentence that would otherwise justly result from the offender's conduct. n124 Strikingly, the recent academic discussions of mercy have tended to revolve around the issues of sentencing and clemency, and not around whether the exercise of mercy might be appropriate at earlier stages of the criminal justice process. n125 This could simply be the result of oversight or, more plausibly, [*836] the conscious or unconscious assumption that the end stages of the criminal justice process are the appropriate stages in which to temper justice with mercy. n126

This last point suggests that we must grapple with two separate questions. The first is whether the defendant's suffering, when it is caused by the crime the defendant committed, should ever be a basis for forgoing or reducing punishment. The second question is whether his suffering, even if it should be used as a basis for reducing or forgoing punishment at the end of the criminal justice process, should be an acceptable basis for declining to charge a defendant with a criminal offense in the first instance. In other words, is there something unique about the charging decision itself, such that mercy based on a defendant's suffering should not be a mitigating factor in relation to the charging decision?

A. The Relevance of Suffering

As an initial matter, the relevance of the defendant's post-crime suffering, as an issue apart from the suffering inflicted by the punishment itself, is most typically debated within the confines of a retributivist theory of punishment. n127 Indeed, there has been some suggestion that for a pure utilitarian, perhaps the defendant's suffering is irrelevant because the primary concern of utilitarianism is the future consequences of any particular punishment. As Kathleen Dean Moore has argued, "because retributivists look back, they can see prior suffering. Utilitarians only look forward to judge the deterrent effect of punishment; their philosophical blinders take away hindsight." n128 Although I am not convinced that utilitarians would be so quick to dismiss any consideration of suffering, a defendant's suffering is nonetheless a concern primarily of retributive theorists, so it is on retributivism that I will focus.

The classic hypothetical that retributivist philosophers have used to wrestle with the relevance of suffering is the reckless driver who kills his own child. n129 Alwynne Smart suggests that "to impose the full penalty" [*837] available for such a crime "would be to impose a total amount of suffering quite out of keeping with the gravity of his crime" and that this case presents "a gap between moral justice and legal justice." n130 Kathleen Dean Moore uses Smart's hypothetical as one example of a class of cases where a pardon might be justified because the defendant has "already suffered enough" as a direct consequence of the crime committed. n131 Moore does note that pardoning an offender because of his suffering "disturbs a nest of problems, philosophical and otherwise," but nonetheless concludes that a pardon may be justified. n132

Before addressing my specific concerns about Smart and Moore's conclusions, it is necessary to pause for a moment to consider what a "retributive theory of punishment" means. Joshua Dressler suggests there are at least three different schools of retributivist thought. n133 The first and perhaps most vengeful version, a version Dressler describes as "assaultive retribution, public vengeance, or societal retaliation," is based on the notion that hating criminals is morally justifiable because of the damage they have inflicted upon society. n134 Because the wrongdoer has harmed society, it is just for the wrongdoer to be harmed in return. n135 Dressler describes the second variant as "protective retribution," meaning that punishment is inflicted "as a means of securing a moral balance in the society." n136 Punishment is thus the way an offender satisfies his moral debt to society. n137 Dressler's third [*838] variant is the "victim vindication" model set forth by Jean Hampton, in which punishment "evens the score" between the victim and the offender. n138 More recently, Dan Markel has set forth a "Confrontational Conception of Retribution," n139 in which we punish to achieve the "affirmation of moral agency; the effectuation of equal liberty under law; and the state's defense of its decision-making authority." n140

My own conception of retributivism, and the lens through which I will analyze the arguments made by Smart and Moore, is a variant of Jean Hampton's "victim vindication" model. For Hampton, a "wrongful action[] that merits retributive punishment" is one that "diminishes" the value of a victim. n141 The harm imposed upon a victim is two-fold. First, by choosing to injure the victim in some fashion, the wrongful actor suggests that the victim "is worth far less than his actual value," worthy of less dignity and respect than that conveyed by the intrinsic value possessed by all human actors. n142 Second, the wrongful actor conveys the message that his own worth is greater than that of the victim; his act attempts to elevate the worth of the wrongdoer over the worth of the victim. n143 Punishment is, therefore, "inflicted to nullify the wrongdoer's message of superiority over the victim, thus placing the victim in the position she would have been in if the wrongdoer had not acted." n144 Thus, "retribution is actually a form of compensation to the victim." n145

Where I perhaps diverge a bit from Hampton is to emphasize the global rather than the personal. There are some crimes where it is impossible to restore value to the victim. Homicide is the most obvious example because there is no victim left to whom value can be returned, but even with respect to other serious assaultive crimes, such as rape, the physical and emotional injuries can be so severe that the victim can never be made whole. Instead, the best we can do is to validate the worth of that victim within the eyes of society and condemn the horror of the crime perpetrated upon her. Hampton indeed acknowledges this purpose of punishment; she writes that "a decision not to punish wrongdoers such as the rapist is also [*839] expressive: it communicates to the victim, and to the wider society the idea that such treatment, and the status it attributes the victim, are appropriate." n146 In my conception of punishment, this expressive purpose is imperative: we use punishment to affirm both that our society cared about this victim and that we collectively are appalled by the wrongful treatment accorded her. n147 A decision not to punish based solely on the identity of the victim thus sends a pernicious message about the worth of this victim in the eyes of society: this life mattered less. n148 The respect we accord the living members of this category of victim thus inevitably is diminished as well.

It is through the lens of this expressive "victim validation" model that I turn to my concerns about Smart and Moore's conclusions. First, their accounts of our unlucky reckless driver are strikingly devoid of any reference to the unfortunate victim. This myopic focus on the defendant, to the exclusion of the victim, is a theme that runs throughout criminal law generally. n149 But it is a problem that is particularly pronounced in the context of intrafamilial crime.

By suggesting that mercy is warranted when the victim is the defendant's own child, Smart and Moore's hypothetical implicitly assumes that mercy, as reflected either by a jury's act of nullification or a decision to forgo or reduce punishment, would not be similarly warranted in a case where the defendant's reckless driving led to the death of an innocent, unrelated pedestrian. n150 What does that assumption say about the value that we attach to the life of the child relative? The nature of the conduct - reckless driving - is the same; the amount of harm caused - the death of an innocent - is the same. The only differences are the degree of familial relationship between the defendant and the victim and the extent to which that relationship, or lack thereof, causes the defendant to feel guilt or remorse or [*840] emotional pain as the result of his crime. We undoubtedly feel tremendous sympathy for the defendant who has killed his child, but the existence of the family relationship does not diminish either the severity of the conduct or the harm caused by that conduct. The position advanced by Smart and Moore holds that taking the life of a child relative warrants less punishment than taking the life of an unrelated stranger, which is a position that diminishes the worth and importance of the life of that child. n151

This problem can be analyzed from two different perspectives. A perspective that emphasizes equal justice under law should find differential treatment of our culpable parent offensive. The punishment an offender merits is affected under this perspective by offender-specific characteristics. Is this his first offense? Was his ability to choose whether or not to engage in criminal conduct affected by mental illness short of insanity or coercion? But these considerations are typically taken into account at the time of sentencing, not at the time of charging. Further, taking victim-specific considerations into consideration at the time a charging decision is made is even more discomfiting. We would find it offensive explicitly to argue that the killer of a businessman should be charged with first degree murder, and not the killer of a drug courier. Why should the killer of a child warrant preferential treatment at the time of charging? To forgo punishment of our reckless parent is to render our child victim less equal in the eyes of the law. And once we begin extending leniency to a killer based on characteristics of the victim, such as the degree of relationship to the defendant, how do we prevent decisionmakers from considering victim characteristics that would make us profoundly uncomfortable, such as race or socioeconomic status?

From a more pragmatic and less noble perspective, traditionally our chosen punishment has indeed reflected the worth we ascribe to the particular individual victimized. n152 Legislators enhance the punishment imposed against offenders who prey on especially vulnerable classes of victims, such as the elderly or the infirm, because they deem those acts to be particularly offensive. n153 Juries tend to reduce a defendant's punishment if a victim is viewed as

unworthy, for example because of involvement in the drug culture [*841] or a choice to engage in other risky behavior. n154 Society has made a collective judgment that the reckless hit-and-run driver described by Moore has committed a criminal offense worthy of punishment. To decline to impose any punishment on our reckless driver by failing to charge, because the identity of his victim has caused the driver to suffer more intensely, conveys the message that this particular victim is less worthy of protection, less deserving of reaffirmation. n155

The objection might be made at this point that showing leniency to our reckless driver does not diminish the worth of the child victim, but instead simply reflects an understanding of the unique circumstances of our particular defendant. But this objection leads to the problematic result of elevating the suffering of the parent over the worth of the life of the child in the charging calculus. n156 The fact that the parent is feeling emotional pain is given greater weight than the fact that a child's life unnecessarily has been lost. This is an example of a parent-centered view of family life that so often permeates the law. n157 A classic example of this phenomenon is the traditional deference shown by courts when parents refuse medical treatment for their children on religious grounds. Courts now routinely intervene when the denial of medical treatment would result in death or grievous bodily injury to the child. n158 However, if the dispute involves an injury or illness of a lesser magnitude, courts often remain unwilling to order medical treatment over a parent's objections if the parent refuses that treatment for his child on religious grounds. n159 We would never allow an adult to impose his religious [*842] beliefs on someone else's child or on another adult by refusing to allow potentially useful medical treatment. n160 Yet we willingly make that accommodation for a parent, even though the parent's refusal harms the child and not the parent himself. The rights and needs of the parent are given greater emphasis than the rights and needs of his own child.

Another striking example of this phenomenon is the acceptance of the "parental discipline defense" in child abuse prosecutions. As Deana Pollard has persuasively argued, "there is a fundamental flaw in child abuse jurisprudence because the analysis centers on the parent's motives in disciplining the child, instead of the harm done to the child." n161 In sum, the parental discipline defense elevates the right of the parent to discipline his child over the right of the child not to be subjected to physical force. We would never allow an adult to exercise comparable physical force against another adult or against someone else's child - any adult who took a belt to the backside to an unrelated adult or child would be facing swift and certain punishment. n162 Why is a child relative entitled to less protection than an unrelated adult? n163

Relatedly, Smart and Moore's position also undermines the importance of the status relationship between parent and child. n164 Presumably they [*843] would not argue for consideration of defendant-created suffering when a potential defendant runs over a nonrelative because the suffering in that instance is less severe, less painful to the defendant. There would thus be no argument based on defendant-created suffering that a daycare driver should not be prosecuted when he inadvertently leaves a child in a van. But prosecuting the daycare driver, and not the parent, has the perverse result of elevating the importance of a contractual duty over the duty that parents owe to their children. Surely parents, and not some caregiver whose duty arises only out of contract, have the greater responsibility to care for their children, and their failure to fulfill that obligation is more blameworthy because of the relationship, not less so.

Failure to charge our reckless parent therefore raises real concern about equality of treatment as between victims. The second criticism of Smart and Moore is that their willingness to excuse the parent who kills a child relative raises real concerns about equality of treatment as between defendants. Dan Markel makes the important point that giving a "punishment discount" to the driver who is unlucky enough to kill his own child, rather than a stranger, is to "privilege mere bad luck." n165 This is surely an uneasy basis on which to rest a substantial difference in treatment by the criminal justice system. n166 In our hypothetical, luck affects the outcome in terms of the identity of the victim killed, but it should not affect our evaluation of the parent's desert; that should be determined at the moment our parent chose to engage in the conduct of driving recklessly. n167

[*844] Equality concerns are further raised in the following sense. If we decide to allow suffering to be a mitigating factor, how do we decide which kinds of suffering should count and how much suffering is enough? n168 Even assuming that we should ignore suffering unrelated to the crime, criminal offenders undeniably experience suffering created as a direct result of their crimes in many contexts. Most defendants suffer financially, including the loss of an income, job, and a good reputation. n169 Many defendants also experience profound shame. Congressman Bill Janklow, whose reckless driving led to the death of a motorcyclist, faced the loss of his political career and the community stature he had worked a lifetime to build. n170 A husband who kills his wife in a fit of rage after discovering her infidelity and then is filled with remorse suffers the loss of a spouse and the potential loss of his children. n171 All defendants placed in pretrial detention suffer as a result of their loss of liberty and the resulting impact on family and employment relationships. n172 Yet in these contexts would we argue for the preclusion of punishment because a defendant is already suffering emotional or financial pain? One response could be that these losses do not approach the

pain caused by the loss of a child, but that argument presumes too much. First, it presumes that all parents are in fact devastated by the loss of a child, a view that unfortunately represents an unduly rosy view of parenthood. Second, it minimizes the very profound pain that defendants may feel in the other situations described above.

According preferential treatment on the basis of defendant-created suffering is also inconsistent with the principle that "rarely, if ever, does the criminal law embrace defendants who are to blame for creating their own [*845] defense." n173 We do not allow a defendant to escape criminal liability for killing a pedestrian if the accident was caused by defendant-created intoxication. n174 Similarly, we do not allow a defendant to raise a necessity or duress defense if he bears any fault for placing himself into the situation in which the need to assert such a defense arose. n175 Why, then, should a defendant escape liability if his reckless conduct, for which he has no defense or excuse, results in personal suffering? In all these instances, the defendant is responsible for creating the conditions upon which he relies to argue against prosecution.

Before we turn to the important objection that we should forgo punishment because parents already have sufficient incentives to avoid harming their children, let us return for a moment to retributive theory. Even if one believes that I have overemphasized victim validation as an important component of a retributive justification for punishment, granting preferential treatment to our reckless parent should be a matter of concern. If retribution is instead about "rectifying the balance" that the offender has disturbed by his transgression, the moral imbalance created by the wrongdoer is no less because of the existence of a family relationship with the victim. n176

Further, the authority of the state is necessary to restore the moral balance; it is simply not enough to say that the offender's internal suffering somehow restores the necessary equilibrium. As Jean Hampton has argued, "morality demands that the state inflict retribution for certain serious moral wrongs." n177 Indeed, the history of the criminal law reflects a progression away from privately imposed sanction and toward its replacement by punishment imposed by the state. It is only in public action to disapprove of [*846] wrongdoing that offender condemnation is adequate and victim validation complete.

B. The Importance of Family Ties

Perhaps the most powerful objection to prosecution is that it is unnecessary because parents already have sufficient incentives to avoid causing harm to their children and therefore prosecution can have no additional deterrent effect. n178 These incentives are thought to be two-fold: first, the love and obligation that a parent feels individually towards his children will cause him to behave responsibly, n179 and second, the expectations and constraints that society imposes on parents by defining what constitutes a "good parent" will further induce appropriate parenting choices. n180

But there are several rejoinders to this important argument. First, this objection does not account for the retributivist argument that we impose punishment because the offender deserves it, and not simply to further some other net societal gain like deterrence. But more fundamentally, the premises underlying the objection are often incorrect. Our society undeniably has a rose-colored view of parenthood; we desperately want to believe that all parents are good and loving individuals whose lives revolve around their children and who always act in their children's best interest. n181 But the prevalence of child abuse and neglect in our society shows this assumption is categorically untrue. n182 For example, the National Clearinghouse on [*847] Child Abuse and Neglect Information concluded that there were approximately 1400 child abuse and neglect fatalities in the United States in 2002, although that number is in all likelihood too low because these cases are traditionally underreported. n183 Moreover, even parents who do not act out of deliberate malevolence may neglect their children because of ignorance n184 or because their personality characteristics or background simply render them ill-equipped to undertake the enormously stressful and demanding job of parenting. n185

In the New York study of lack of supervision cases discussed earlier in this Article, n186 a significant percentage of the cases involved parents who left young children unattended or in the care of an unsuitable caregiver. In forty percent of the cases studied, the responsible parents indicated "they believed there was nothing wrong with what had happened." n187 Further, the social workers who were asked to review ninety-nine of the case records in detail concluded "that in more than half the cases ... the supervision problem was due to a lack of knowledge or poor judgment about the abilities or needs of children of a given age." n188 Shockingly, in fifteen percent of the cases, one of the reasons for the lack of supervision was "the parents' negative attitude towards the child." n189 Only seven percent of the cases involved an emergency situation where the usual child care arrangements had fallen through. n190

In terms of personality factors, social scientists have identified some typical characteristics of neglectful families. One researcher has suggested that some neglectful parents may have difficulty prioritizing their children's needs. n191 James Gaudin noted that neglectful parents are "typically lacking [*848] in psychological maturity" and "tend to be

impulsive, egocentric, and lack the ability to arrange their lives to meet their needs and the needs of their children."
n192

This research thus suggests that our reliance on the bonds of family affection to protect children is precarious at best. There are undoubtedly many families who lose a child due to negligence where the responsible party was the kind of parent who warranted our rose-colored view of parenthood, who was neither confused about appropriate standards of care nor immature but simply made a tragic mistake. But the quality of past parenting can best be taken into account at sentencing, once more is known about the family and the facts of the case. Taking these factors into account at charging tends to benefit white collar families, because of the pervasive tendency in our legal system to assume that wealthier families are "better," more loving families.

Some commentators object that prosecution imposes unnecessary suffering not only on a defendant, but also on his family. n193 But this is true in every criminal matter. Every criminal defendant is someone's child or spouse or parent. We typically do not allow the fact that a family will be deprived of its primary breadwinner to preclude prosecution for either the violent criminal or the white collar offender, although it may impact the sentencing decision. n194 Why should it suddenly become determinative in the charging decision in a case where a defendant has killed his own child?

Finally, there is the broader objection regarding punishment for negligent conduct generally. It is of course important to note that in some ways Smart's hypothetical simplifies the issues raised in this Article because she posits a reckless hit-and-run driver, whereas the parents studied here who inadvertently leave their children in a car are in most instances negligent rather than reckless. The issue of whether negligence is an appropriate basis [*849] for criminal liability is enormously controversial. n195 But as long as gross negligence continues to be an accepted basis for imposing criminal liability, the fact of a family relationship between the defendant and the victim should not affect our assessment of whether to charge the grossly negligent wrongdoer with a criminal violation.

C. The Charging Versus Sentencing Distinction

Let us leave for the moment the final resolution of whether these problems with granting leniency based on a defendant's suffering are insurmountable. n196 Even the reader who finds these points thought provoking is no doubt still wrestling with the undeniable emotional appeal of the reckless bereaved parent. We are still left with the second question: even if we assume that the defendant's suffering should play some mitigating role in determining the ultimate level of punishment that should be imposed, should the existence of suffering play a role in determining whether he should be charged with a crime in the first instance? Is there something unique about the nature of the charging decision, as opposed to the sentencing or clemency decision, that renders the exercise of mercy inappropriate at that stage of the criminal justice process?

Alwynne Smart implicitly acknowledges this possibility in her seminal article. She states that "it would be irresponsible to suggest that remorse was sufficient to absolve a man from the consequences of his crime" and that "to impose the full penalty" under the circumstances seems unduly cruel. n197 This certainly seems to suggest that some penalty is appropriate, but perhaps a lesser penalty than the full sentence authorized by law ought to be imposed. Similarly, Kathleen Dean Moore talks about Smart's hypothetical in the context of pardons, not in the context of whether prosecution at all is appropriate. n198 It is the more recent commentators, such as Jonathan Turley, who argue that even the initial decision to file charges is unjustifiable.

Indeed, there are a variety of factors that we take into account at sentencing for serious crimes that do not seem appropriately considered at the [*850] time of the charging decision. n199 The defendant's criminal history is one obvious example; we would never decline to charge a violent carjacker on the basis that this was his first offense, but the absence of a criminal record would certainly be an important factor in the sentencing calculus. n200 The defendant's age is another; a seventeen-year-old carjacker would almost certainly face the same initial charge as the thirty-five-year-old, but he might be able to convince a judge to impose a reduced sentence on the basis of his youth. n201 Remorse is another; the defendant who genuinely regrets committing his offense and accepts responsibility is likely to receive a better sentence than the unrepentant. n202 A defendant's family status might even play a role in some state systems; one researcher who interviewed a number of court personnel found they believed that "defendants who provide economic support or care for others deserve more lenient treatment [in terms of sentencing] than those without such responsibilities." n203

So why does a judge take these factors into account at sentencing? Criminal history, age, remorse, and family obligations are relevant to an evaluation of an offender's prospects for rehabilitation and need for specific deterrence. We believe the young, inexperienced, repentant offender is more amenable to treatment and thus less likely to re-offend. Offenders with family responsibilities are viewed as "more stable" with greater incentives to avoid re-offending. n204 In

stark terms, these offenders pose less of an ongoing danger to the community. These factors are not related, however, to the offender's core culpability for the crime: whether young or old, a rookie or career criminal, the nature of the offense committed by our violent carjacker is the same and the amount of harm caused by the conduct is the same. His moral desert is the same. The charging decisions for these different categories of offenders therefore are the same.

[*851] The identity of the victim of our reckless driver seems similarly related to the concerns about specific deterrence, rehabilitation, and recidivism. Indeed, the loss of a child would hopefully deter our driver from ever driving recklessly again. Because our reckless parent is unlikely to re-offend, perhaps a criminal sentence is not necessary to ensure his rehabilitation. n205 Thus, a punishment discount may be appropriate; that portion of the sentence that would ordinarily further his rehabilitation or deter future misconduct is not needed.

Sentencing also offers us the most appropriate opportunity to incorporate the important values of compassion, forgiveness, and mercy into the criminal justice system's decisionmaking about an individual defendant. n206 In practical terms, much more is known about a defendant, his background, and the circumstances of his crime at that stage of the case. In moral terms, choosing to charge, and then allowing compassion to influence our sentencing decision, makes a normative statement that the moral desert of the reckless parent in Smart's hypothetical is no less than that of the driver who kills a stranger - the nature of the act, the underlying mental state, and the amount of harm caused are all the same. Indeed, a compelling argument could be made that it is greater - a parent has a greater duty to his own child than to a stranger, and thus would ordinarily be under an obligation to be aware of his child's whereabouts, to take measures to ensure that his child is not running around the streets unattended, and so on. Choosing to charge the reckless driver who runs over his own child, or the grossly negligent parent who forgets his child in a car, acknowledges that the defendant has engaged in an act worthy of condemnation and expresses the moral judgment that this child's life was worth protecting, a life as important as the life of a stranger victim. Reducing the punishment ultimately imposed both reflects our compassion and acknowledges the reality that this offender is unlikely again to represent a danger to the community, and therefore no rehabilitation component of a sentence is warranted.

A reader might respond that holding open the promise of a sentence discount is of little comfort to our bereaved parent because mandatory sentencing guidelines have reduced judges' ability to dispense mercy, leaving prosecutors as the only state agents who can dispense leniency by declining to prosecute in the first instance. n207 As a practical matter, however, mandatory [*852] sentencing schemes generally do not apply to the charges of involuntary manslaughter or negligent homicide, leaving the dispensation of mercy at the sentencing stage a very real possibility. n208 Kevin Kelly, the Virginia father discussed at the beginning of this Article who was convicted of involuntary manslaughter, was sentenced to spend just one day in jail for the next seven years on the anniversary of his daughter's birthday and to perform community service. n209 Lori Kelly, who forgot to drop her two-month-old baby off at daycare, pled guilty to involuntary manslaughter and was sentenced to three years of probation and 120 hours of community service. She was also ordered to create a videotape to be shown at local hospitals about how to prevent comparable tragedies. n210 It is undeniably true that the indictment itself imposes tremendous costs and burdens on a defendant and that the provision of mercy at the time of sentencing cannot possibly ameliorate all those costs, but surely some adverse consequences are appropriate for causing the death of an innocent child. n211

III. Conclusion

Why are we so reluctant to prosecute parents when harm befalls their children as a result of parental negligence? One reason is that we persist in viewing wrongful acts committed against children as an intrafamily matter in which the state should intervene only reluctantly, and only when absolutely necessary. This general hesitance to intervene in family life, even to protect children, is a deeply ingrained historical tradition in this country. n212 [*853] Although it is certainly true that public concern is increasing about child abuse, n213 we still have not gone far enough. n214

Even when intervention is clearly necessary, such as when a child has suffered serious injury or even death, we persist in viewing the parent's actions as some sort of aberration or as a manifestation of some psychological malady rather than as a criminal act. Indeed, there is a fascinating contrast in this regard between our approach to crimes committed against women and crimes committed against children. Elizabeth Pleck succinctly captured the difference:

While reformers against child abuse opposed criminal sanctions against perpetrators, reformers against wife abuse and marital rape favored them and tried to pressure the police and courts to respond adequately to the complaints of women victims. The medical and social work professionals who dominated child abuse reform defined child battering as a psychological illness of the parents requiring social services and psychological treatment. The feminist activists and

lawyers who led the campaign against wife beating and marital rape rooted the problem in the inequality of women and the lack of proper law enforcement. n215

This view of the maltreatment of children as something other than a criminal act is a problem that is particularly pervasive in the realm of parental neglect cases.

Moreover, another reason we are so reluctant to prosecute in failure to supervise cases in particular is undoubtedly because these incidents are just as likely to occur in upper-and middle-income families as in poorer ones. If we are reluctant to view harms committed against children as criminal acts, we are even more reluctant to do so when the harmful act is committed in a home typically viewed positively by both society at large and the criminal justice system. n216 This bias in favor of homes and parents traditionally considered "good" is evident in a number of ways throughout the criminal justice system. For example, at the time of sentencing, "courts may assume that white middle-class mothers are both more amenable to nonjudicial social controls and more needed in the home by their children than other groups of mothers." n217 Indeed, the fact that so many of these [*854] cases involve the father as the responsible party is probably another factor in our hesitance to prosecute as well. We are far more forgiving of paternal mistakes in childrearing than maternal ones. n218

So what should we do when confronted with a child's death caused by parental negligence? The point of this Article is not to suggest that we engage in wholesale prosecution and incarceration of negligent parents. Instead, the existence of a family relationship between a defendant and a victim should not be treated as the dispositive consideration at the time of the charging decision. That relationship can appropriately be taken into consideration at the time of sentencing.

Parenting is undeniably one of the most difficult, demanding, unceasing jobs that an adult can undertake. Indeed, all parents of young children have endured heart-stopping moments in which a momentary distraction and loss of attentiveness have resulted in a child wandering off in a store or playing with a hazardous item in the home. Even in a world where we consider prosecution of negligent parents, this kind of simple negligence should not result in intervention by the criminal justice system. But prosecution is entirely appropriate when gross negligence or certainly recklessness is involved. n219 In the car cases discussed at the beginning of this Article, two-thirds of the incidents involved leaving the child alone in the car for three or more hours. Kevin Kelly did not bother to check on his daughter even once in a span of over seven hours. This degree of inattentiveness rises to the level of gross negligence that warrants prosecution.

Prosecution is an important tool for protecting children because of the concrete impact it can have in improving safety conditions for them; it can help to shape societal norms about what constitutes an appropriate standard of care. n220 In part, we do not leave two-year-olds bouncing around unrestrained in a car because our fellow commuters would look at us with horror if we did. Automobile safety is a classic example of evolving community norms that have led to better protection of children and a reduction in the [*855] incidence of child fatalities. n221 Prosecution can play an important role in reshaping these norms because our conception of what behavior is considered neglectful is shaped in part by the actions taken by the criminal justice system. n222 As prosecutions and the resulting publicity begin to increase, community members typically gain a greater understanding of safety norms and begin to modify their conduct to comply with those norms. n223

The title of this Article states that the case for prosecuting negligent parents is an uneasy one, and indeed it is. We obviously have tremendous compassion and sympathy for a parent who has suffered the unimaginable loss of a child, and it is entirely appropriate to incorporate that compassion into a sentencing decision. But we must have the greatest compassion for our children, who are utterly without resources to protect themselves. Charging a parent who has acted with gross negligence is one important tool that can both lead to the incorporation of more stringent safety norms to protect children and change our tendency to excuse parents who commit acts that would clearly be viewed as criminal if committed by a non-relative. Jane Murphy has suggested that "there is ... an emerging consensus about the centrality of protecting children as, perhaps, the core value that should be promoted by family law." n224 The protection of children must be one of the core values of criminal law as well.

Legal Topics:

For related research and practice materials, see the following legal topics:
 Family Law
 Family Protection & Welfare
 Children Abuse, Endangerment & Neglect
 Criminal Law & Procedure
 Criminal Offenses
 Crimes Against Persons
 Domestic Offenses
 Child Abuse
 Elements
 Criminal Law & Procedure
 Criminal Offenses
 Crimes Against Persons
 Domestic Offenses
 Child Abuse
 Penalties

FOOTNOTES:

n1. See Josh White & Eric M. Weiss, *Girl Was Left in Van More than 7 Hours*, Wash. Post, May 31, 2002, at B2.

n2. Jonathan Turley, Editorial, *A Tragedy, Not a Crime*, Wash. Post, June 9, 2002, at B8. Many commentators, both in law and philosophy, share Turley's concerns about prosecuting negligent parents. See, e.g., Daniel Kobil, *The Quality of Mercy Strained: Wrestling the Pardoning Power from the King*, 69 *Tex. L. Rev.* 569, 633 (1991) (suggesting punishment is unnecessary when a reckless hit-and-run driver kills her own child because she has already been punished enough); Ann-Marie White, *A New Trend in Gun Control: Criminal Liability for the Negligent Storage of Firearms*, 30 *Hous. L. Rev.* 1389, 1421 (1993) (arguing that parents should not be imprisoned if they negligently allow a child access to a firearm and the child is killed as a result because this "serves as a double penalty on the family"); Robert Bruce Brown, Note, *Negligent Homicide Prosecutions Stemming from Child Passenger Restraint Infractions: A Limit to Prosecutorial Discretion*, 40 *Wayne L. Rev.* 201, 218 (1993) (arguing that criminal prosecutions of parents who fail to secure their children in mandatory child restraint systems should be "soundly quashed"); see also Jeffrie Murphy, *Mercy and Legal Justice*, in *Crime and Punishment: Philosophic Explorations* 454, 457 (Michael J. Gorr & Sterling Harwood eds., 1995) (stating "it is no doubt our conviction" that a defendant convicted of vehicular homicide for killing his own child "has already suffered a great deal" and that "the infliction of any additional misery by the state would be gratuitous and cruel"); Alwynne Smart, *Mercy*, 43 *Philosophy* 345, 348 (1968) (suggesting mercy is appropriate in a case where a reckless driver has killed his own child).

n3. See Nat'l Safe Kids Campaign, *Report to the Nation: Trends in Unintentional Childhood Injury Mortality, 1987-2000* (2003), available at http://www.usa.safekids.org/content_documents/nskw03_report.pdf.

n4. For a number of reasons, it is extremely difficult to ascertain precisely how many child deaths are the result of parental negligence. See *infra* text accompanying notes 24-33.

n5. In contrast, there has been a little empirical research about criminal justice outcomes in cases involving fatal child abuse. One study considered seventy-two child abuse fatalities received at one children's hospital between 1965 and 1984. The researchers concluded that charges were filed in less than half the cases, and convictions were obtained in only one-third of those cases. See Jacy Showers & Julio Apolo, *Criminal Disposition of Persons Involved in 72 Cases of Fatal Child Abuse*, 26 *Med., Sci. & L.* 243, 243 (1986). The authors concluded that "it is relatively simple for a parent or caretaker to kill a young child without criminal consequences." *Id.* at 246.

n6. See, e.g., Christine Alder & Ken Polk, *Child Victims of Homicide 20* (2001) (stating, without citation, that prosecutions are "uncommon" when a child dies as the result of parental negligence, for example by being left unattended in a bathtub or in a house where a fire later broke out); Franklin E. Zimring, *Legal Perspectives on Family Violence*, 75 *Cal. L. Rev.* 521, 532 (1987) (asserting, without citation, that "thousands of children die accidentally each year because negligently supervised by parents, but only a trickle of cases are prosecuted in the United States").

n7. See, e.g., Mai Tran & Christine Hanley, *Professor Won't Be Charged in Death of Son Left in Hot Car*, L.A. Times, Oct. 4, 2003, at B6 (reporting statement of district attorney that he "changed his mind" about prosecuting a father who accidentally left his infant alone in a car for hours after reviewing other cases across the country and concluding that parents were typically not charged).

n8. Because several organizations keep comprehensive records on this particular type of tragedy, I was able to examine all cases occurring between January 1998 and December 2003 to determine whether there were any recurring patterns in prosecutorial decisionmaking. For example, was the decision to prosecute Mr. Kelly really an aberration? Are parents who are in fact prosecuted typically sentenced to jail? Is parental negligence in this context treated differently than nonparental negligence?

n9. The term "gross negligence" in this paper refers to "conduct that represents a gross deviation from the standard of reasonable care. Put more precisely, a person is criminally negligent if he takes a substantial, unjustified risk of causing the social harm that constitutes the offense charged." Joshua Dressler, *Understanding Criminal Law* 130 (3d ed. 2001). Ordinarily only gross negligence will justify the imposition of criminal punishment; simple negligence is left to the realm of the civil tort system. *Id.* at 129-30. In some of the cases discussed later in this Article, the parents were arguably reckless and not merely grossly negligent. See *infra* text accompanying notes 99-101. Because recklessness is an even more culpable mental state than gross negligence, the arguments made in this Article in favor of charging negligent parents apply with equal, if not greater, force to reckless parents.

n10. See Turley, *supra* note 2. See generally John Rawls, *The Practice of Punishment, in Crime and Punishment: Philosophic Explorations*, *supra* note 2, at 337 (discussing the two classic "justifications of punishment").

n11. Indeed, the need for general deterrence is especially evident in the factual scenario that is the basis of this Article's empirical research - the scenario of children dying of hyperthermia when left unattended in a motor vehicle. A survey of 700 parents found that ten percent thought it was acceptable to leave young children alone in a car, a figure that rose to twenty percent among young parents. See Alan Gathright & Marshall Wilson, *Leaving Children in Cars OK to Many; 20% of Young Parents Surveyed Approve*, *S.F. Chron.*, July 26, 2001, at A17.

n12. See Ruth Teichroeb, *Cases Among Toughest to Prosecute: "Juries Don't Want to Believe a Parent Could Kill a Child"*, *Seattle Post-Intelligencer*, Nov. 1, 2002, at A1 (reporting that "prosecutors across Washington say child homicides are among the toughest cases to prove beyond a reasonable doubt" and that "when young children die because of parental neglect, the chance of convicting a parent is so small prosecutors rarely file any charges").

n13. See Myrna Dawson, *Rethinking the Boundaries of Intimacy at the End of the Century: The Role of Victim-Defendant Relationship in Criminal Justice Decisionmaking over Time*, *38 Law & Soc'y Rev.* 105 (2004). In her study of more than 1000 homicide cases in the city of Toronto, Dawson found that defendants who killed family members - a group which she defined as including parents, children, and other relatives but not intimate partners - "received sentences close to two and a half years shorter than for those who killed strangers." *Id.* at 125. Unfortunately, Dawson does not further distinguish by victim identity within her family member category - it is certainly possible that defendants who killed their parents were treated very differently than defendants who killed their children. One particularly interesting finding was that the discrepancy was greater for defendants who killed family members than for those who killed intimate partners (who on average received a sentence only one year shorter than defendants who killed strangers). *Id.*

n14. See Leonore M.J. Simon, *Therapeutic Jurisprudence: Sex Offender Legislation and the Antitherapeutic Effects on Victims*, *41 Ariz. L. Rev.* 485, 493-95 (1999) (discussing preferential treatment given to family sex offenders in the state of Washington).

n15. See Bureau of Justice Statistics, U.S. Dep't of Justice, *Child Victimized: Violent Offenders and Their Victims* 17 (1996), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cvvoatv.pdf> (stating that "in 1994 over 70% of the murders of infants were carried out by a family member," while only 3% of murders of those aged 15 to 17 were committed by a family member). The report also noted that "less than 10% of inmates serving time for the rape or sexual assault of a child reported that the victim had been a stranger to them." *Id.* at 11; see also Howard N. Snyder, U.S. Dep't of Justice, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics* 10 (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/saycrle.pdf> (reporting that for sexual assault victims under the age of six, forty-nine percent were sexually victimized by a family member and only three percent were assaulted by a stranger).

n16. The moral force of the criminal law has long been recognized. See, e.g., Johannes Andenaes, *The General Preventative Effects of Punishment*, 114 *U. Pa. L. Rev.* 949, 950-51 (1966) (discussing the "moral influence" of the criminal law); Frank O. Bowman, *The Quality of Mercy Must Be Restrained, and Other Lessons in Learning to Love the Federal Sentencing Guidelines*, 1996 *Wis. L. Rev.* 679, 742 ("The criminal justice system ... also serves the educational function of putting into highly visible action the moral vision of the community."); John L. Diamond, *The Myth of Morality and Fault in Criminal Law Doctrine*, 34 *Am. Crim. L. Rev.* 111, 112 (1996) (noting that "criminal law can be perceived usefully as a constellation of symbolic behavioral guideposts that project value and directional mandates").

n17. See Lloyd Ohlin & Michael Tonry, *Family Violence in Perspective*, in *Family Violence* 1, 1 (Lloyd E. Ohlin & Michael H. Tonry eds., 1989); see also Douglas J. Besharov, "Doing Something' About Child Abuse: The Need to Narrow the Grounds for State Intervention," 8 *Harv. J.L. & Pub. Pol'y* 540, 542-50 (1985) (describing legislative developments since the early 1960s). Ohlin and Tonry trace the beginning of this phenomenon to the publication in 1962 of a seminal article on "The Battered Child Syndrome." For discussions of the treatment of family violence by the American criminal justice system prior to 1960, see Elizabeth Pleck, *Criminal Approaches to Family Violence, 1640-1980*, in *Family Violence*, supra, at 19-57; Mason P. Thomas, *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 *N.C. L. Rev.* 293 (1972). Both Pleck and Thomas also note that improving medical technology led to increasing awareness of the problem of child abuse. Pleck, supra, at 47; Thomas, supra, at 329-30.

n18. See Zimring, supra note 6, at 525 (noting that we continue to give the values of family privacy and autonomy more weight in the child neglect context than in the child abuse context).

n19. See, e.g., Annette R. Appell, *Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System*, 48 *S.C. L. Rev.* 577 (1997); Judith Areen, *Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases*, 63 *Geo. L.J.* 887, 894-917, 926 (1975) (tracing the "history of neglect intervention," including the treatment of poor families); Marsha Garrison, *Why Terminate Parental Rights?* 35 *Stan. L. Rev.* 423, 432-36 (1983) (discussing "family law of the poor," which has "seldom deferred to parental rights" and noting how "neglect proceedings are still brought almost exclusively against poor parents"); Jane C. Murphy, *Legal Images of Motherhood: Conflicting Definitions from Welfare Reform, Family, and Criminal Law*, 83 *Cornell L. Rev.* 688, 702-12 (1998); Thomas, supra note 17, at 315-22 (discussing early cases involving the use of neglect laws against poor families and children); Ann Shalleck, *Child Custody and Child Neglect: Parenthood in Legal Practice and Culture*, in *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood* 308, 308-27 (Martha Albertson Fineman & Isabel Karpin eds., 1995); see also Pleck, supra note 17, at 45 (noting the concerns of Progressive Era reformers at the turn of the century with poverty and neglect). It is important to note that poor families are also treated differently than wealthier families in cases of fatal neglect, a problem discussed infra text accompanying notes 104-112.

n20. For example, relying only on published opinions will fail to capture the large universe of child neglect cases that are resolved via a guilty plea. The research discussed in Part I.C showed that of the sixty-three

hyperthermia incidents where the government obtained a conviction, at least forty-four involved guilty or no contest pleas, or 69.8 %.

n21. Admin. for Children & Families, Dep't of Health & Human Servs., *Child Maltreatment 2002*, at xiv (2002), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm02/cm02.pdf>.

n22. One recent and extremely comprehensive book about child neglect, for example, barely mentions the role of the criminal justice system. See *Neglected Children: Research, Practice and Policy* (Howard Dubowitz ed., 1999); see also Cheryl L. Meyer & Michelle Oberman, *Mothers Who Kill Their Children: Understanding the Acts of Moms from Susan Smith to the "Prom Mom"* 95-122 (2001) (discussing fifty-seven child deaths resulting from maternal negligence, but focusing on method of death and "profile" factors of perpetrators rather than on criminal justice outcomes); Ania Wilczynski, *Child Homicide* 12, 26 (1997) (noting that "we know very little at all about how child-killers are dealt with by the criminal justice system" and that negligence deaths in particular are "rarely mentioned in the filicide literature").

n23. See, e.g., Alder & Polk, *supra* note 6, at 20 (suggesting, without citation, that such cases have traditionally been treated as "accidents" rather than as examples of criminally culpable conduct). Unfortunately, Alder and Polk only devote one paragraph to these cases in their 171 page discussion of child homicide victims. See also Wilczynski, *supra* note 22, at 26 (referring to a "rare instance" of a successful prosecution in a parental negligence case); Zimring, *supra* note 6, at 532 (asserting, without citation, that "only a trickle of cases are prosecuted in the United States" and that such prosecutions seem "inappropriate").

n24. James M. Gaudin, *Effective Intervention with Neglectful Families*, 20 *Crim. Just. & Behav.* 66, 67 (1993); see also James Garbarino & Cyleste C. Collins, *Child Neglect: The Family with a Hole in the Middle*, in *Neglected Children: Research, Practice and Policy*, *supra* note 22, at 1 ("Much as we may use the phrase "child abuse and neglect," the overwhelming focus of child maltreatment research, theory, and practice is on abuse, not neglect."); Leslie Margolin, *Fatal Child Neglect*, *Child Welfare*, July-Aug. 1990, at 309-10 (noting that "most of the literature on child fatalities caused by maltreatment has dealt with physical abuse" rather than with deaths caused by neglect).

n25. See Barbara L. Bonner, Sheila M. Crow & Mary Beth Logue, *Fatal Child Neglect*, in *Neglected Children: Research, Practice and Policy*, *supra* note 22, at 156, 160-61 ("The actual number of children who die as a result of neglect each year is not known."). Bonner, Crow, and Logue identify several reasons for this problem. First, complete information about the circumstances surrounding a death may not be available. *Id.* at 160. The authors give the example of a child who dies in a fire. The death may simply be classified as an accident, without information being made available about whether the child was left home unattended at the time. They also suggest that the current vital statistics system is inadequate and too narrowly focused on physical abuse. *Id.* at 161. Despite these significant hurdles, Bonner, Crow, and Logue rather hesitantly conclude that there are probably around 650 child deaths per year due to neglect in the United States. *Id.* at 160.

n26. See Wilczynski, *supra* note 22, at 26; see also Bonner, Crow & Logue, *supra* note 25, at 158 ("Legal definitions of neglect ... vary widely among jurisdictions."); Gaudin, *supra* note 24, at 66 ("There is ... a lack of consistency among researchers on conceptual and operational definitions for subtypes of neglect."); Margolin, *supra* note 24, at 309-10 (noting some researchers "interpret[] neglect fatalities as an extreme consequence of deprivation" but at least one other researcher "suggests that most fatalities from neglect resemble common accidents such as drowning"). Indeed, this is a problem even for the *Child Maltreatment* series published annually by the Department of Health and Human Services Administration for Children and Families. The most recent version available, for the year 2002, concludes that 896,000 children were the victims of abuse or neglect in 2002, with sixty percent being the victim of the neglect. Approximately 1400 of these children died. Admin. for Children & Families, *supra* note 21, at iii, xiv, xvii. But neglect is defined simply as "[a] type of maltreatment

that refers to the failure of the caregiver to provide needed, age-appropriate care although financially able to do so or offered financial or other means to do so." *Id.* at 100. It is thus impossible to know whether deaths due to parental negligence are included in these statistics, and indeed the answer probably varies by state.

n27. For a detailed discussion of the definitional problem in child neglect research, see Susan J. Zuravin, *Child Neglect: A Review of Definitions and Measurement Research*, in *Neglected Children: Research, Practice and Policy*, *supra* note 22, at 24-42.

n28. See Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control, *Water-Related Injuries: Fact Sheet*, <http://www.cdc.gov/ncipc/factsheets/drown.htm> (last visited Dec. 4, 2005). This actually represents a slight decline from the previous year; the National Safe Kids Campaign estimated that 943 children ages fourteen and under died from drowning in the year 2000. See Nat'l Safe Kids Campaign, *supra* note 3. "Children ages 1 to 4 are at greatest risk of drowning." *Id.* at 9.

n29. See Nat'l Safe Kids Campaign, *Preventing Accidental Injury: Firearms*, http://www.usa.safekids.org/tier2_rl.cfm?folder_id=172 (last visited Dec. 4, 2005).

n30. See Nat'l Safe Kids Campaign, *supra* note 3, at 13.

n31. *Id.* (also reporting that 1654 children were killed in car accidents in 2000). These statistics refer to children killed as passengers, not drivers.

n32. See, e.g., Kenneth W. Feldman, *Accidental Injuries*, *APSAC Advisor*, Winter 1994, at 15 (stating that "inadequate barriers to toddlers and young children combined with lapses in caretaker supervision were the primary predispositions" for childhood drownings).

n33. For example, James Gaudin, in his comprehensive 1993 report on child neglect issued by the Department of Health and Human Services, only cites two studies of fatal child neglect: Leslie Margolin's and an unpublished manuscript by J.D. Alfaro. James M. Gaudin, Jr., U.S. Dep't of Health & Human Servs., *Child Neglect: A Guide for Intervention* 21 (1993). The lack of empirical evidence regarding the involvement of the criminal justice system in child neglect cases was noted as far back as 1975. See Michael Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards*, 27 *Stan. L. Rev.* 985, 1026 *n.218* (1975).

n34. Margolin, *supra* note 24, at 311.

n35. *Id.* at 312.

n36. Indeed, "the fatal neglect was most often a preventable accident associated with a single, life-threatening incident." Gaudin, *supra* note 33, at 21 (discussing Margolin's study).

n37. Margolin, *supra* note 24, at 312, 317.

n38. *Id.* at 314.

n39. *Id.* at 315.

n40. *Id.* at 315, 316. Other children died from hyperthermia after climbing into a car, from ingesting prescription medication or other dangerous substances, from sleeping in makeshift cribs, or because their caregivers delayed in seeking medical care or failed to follow medical orders. *Id.* at 315-16.

n41. *Id.* at 313.

n42. *Id.* at 317; see also Ross A. Thompson, Preventing Child Maltreatment Through Social Support 93 (1995) (collecting other studies supporting the premise that maltreating families "are less likely to be intact" and "likely to have more children"). Thompson also collects a number of studies concluding that "family education and income (together with unemployment and underemployment, poor and/or public housing, welfare reliance, single parenting, and more dangerous neighborhoods) are strong correlates of child maltreatment." *Id.* at 92.

n43. Margolin, *supra* note 24, at 318.

n44. See Mary Ann Jones, Parental Lack of Supervision: Nature and Consequence of a Major Child Neglect Problem 1-3 (1987). The New York Department of Social Services defines lack of supervision as leaving a child "alone or not completely attended for any period of time to the extent that his or her need for adequate care goes unnoticed or unmet, and the child is harmed or exposed to hazards which could lead to harm." *Id.* at 2.

n45. *Id.* at 7.

n46. *Id.* at 8; see also Margolin, *supra* note 24, at 309 (noting that "fatalities appear to result from neglect at approximately the same frequency as from physical abuse"). Jones concludes it is difficult to know whether the reason for the relatively high fatality rates is because lack of supervision cases are more inherently dangerous or because only the lack of supervision involving actual harm tends to be reported. *Jones, supra* note 44, at 62.

n47. *Jones, supra* note 44, at 8; see also Gaudin, *supra* note 33, at 16 ("Numerous studies have discovered that neglectful families on the average have more children than nonneglecting families.").

n48. *Jones, supra* note 44, at 8.

n49. See Meyer & Oberman, *supra* note 22, at 32, 99. Meyer and Oberman also identified nineteen cases of deaths resulting from maternal "neglect-commission," where mothers inadvertently killed their children in an effort to stop them from crying, for example by shaking or smothering them. *Id.* at 101-02.

n50. *Id.* at 99.

n51. *Id.* at 99-101.

n52. *Id.* at 96. By "power and privilege issues," Meyer and Oberman meant they approached the cases with special attention to "the life situations of the mothers committing these acts," specifically to whether these mothers were members of "disenfranchised groups within American society." *Id.*

n53. *Id.* at 97-98.

n54. *Id.* at 103.

n55. *Id.* at 112-15.

n56. See generally Pleck, *supra* note 17, at 33, 38 (finding only two reported cases dealing with child abuse prior to the Civil War and only nine appellate decisions on abuse between 1862 and 1874).

n57. See Donna Rosenberg, Fatal Neglect, *APSAC Advisor*, Winter 1994, at 38-40. Kevin Kelly's case would be an example of a failure to supervise case.

n58. In two of the cases, it was impossible to determine the basis of the criminal charges from the opinion.

n59. In fourteen cases, the parents chose not to provide medical care because of their religious beliefs.

n60. Two of these cases also involved an allegation that the parent failed to obtain appropriate medical care after the abuse. For discussions of prosecutions of passive parents, see Bryan A. Liang & Wendy L. Macfarlane, Murder by Omission: Child Abuse and the Passive Parent, 36 *Harv. J. on Legis.* 397 (1999); Dorothy E. Roberts, Motherhood and Crime, 79 *Iowa L. Rev.* 95 (1993); Jean Peters-Baker, Note, Punishing the Passive Parent: Ending a Cycle of Violence, 65 *UMKC L. Rev.* 1003 (1997).

n61. These cases ranged from the hyperthermia deaths discussed *infra* Part I.C of this Article to falling asleep in a cold car with a baby to failing to secure a child in a safety restraint system. Another author identified six instances where relatives have been prosecuted for causing a child's death by failing to secure him or her with safety restraints. Three of these cases resulted in some criminal conviction. See Robert Bruce Brown, Negligent Homicide Prosecutions Stemming from Child Passenger Restraint Infractions: A Limit to Prosecutorial Discretion, 40 *Wayne L. Rev.* 201, 206-09 (1993) (describing cases).

n62. For example, one judge acknowledged the importance of general deterrence in imposing a short jail sentence on a mother who failed to secure her three year old in a seatbelt and then failed to notice when she fell out of the car. The judge remarked "I think the facts of the case justified sending a message to the public that you need to protect your children... There is nothing I could have done to punish that woman anymore than she has been punished." See *Suarez v. State*, No. 05-03-00096-CR, 2003 WL 23025024, at 6 (Tex. Ct. App. Dec. 30, 2003).

n63. *People v. Rodriguez*, 8 *Cal. Rptr.* 863, 868 (Ct. App. 1960).

n64. *People v. Torres*, 634 *N.Y.S.2d* 354, 355 (App. Div. 1995).

n65. *Id.* at 357. Strikingly, the court made almost no references to the most poignant victim in this case, the dead baby.

n66. See Trish Hollenbeck, Prosecutor: Jury Influenced Decision, *Joplin Globe* (Mo.), Aug. 23, 2001, at 1A (copy on file with the author). For the idea of incorporating case narratives, I am indebted to Victoria Nourse's wonderful article, *Passion's Progress: Modern Law Reform and the Provocation Defense*, 106 *Yale L.J.* 1331 (1997).

n67. In these cases, children die from heat stroke as the temperature rises inside the car. A recent study done by a geosciences researcher at San Francisco State University showed that the temperature inside a parked car with closed windows rose nineteen degrees in as little as ten minutes. After one to two hours had elapsed, the temperature had risen between forty-five and fifty degrees. Because children are unable to regulate their body temperatures as efficiently as adults, their bodies succumb to heat at a much quicker rate. See Jan Null, *Hyperthermia Deaths of Children in Vehicles Summary Sheet* (2005), <http://ggweather.com/heat>.

n68. See Jan Null, 2003 Hyperthermia Fatalities: Children in Vehicles (2003), <http://ggweather.com/heat/hyperthermia2003.htm> (collecting 2003 cases). Indeed, children are left in cars so often that in the first six months of 2001, firefighters in Dallas, Texas responded to "more than 200 calls about children being left unattended in vehicles." Robert Tharp, *Hearing on Tot's Siblings Delayed: Boy's Death in Car Leads to Custody Case*, *Dallas Morning News*, June 6, 2001, at 21A.

n69. See, e.g., Null, *supra* note 67; 4 R Kids Sake, <http://www.4rkidsake.org> (last visited Sept. 17, 2005); Kids in Cars: Keeping Kids Safe in or Around Vehicles, <http://www.kidsincars.org> (last visited Sept. 17, 2005). Janette Fennell, Terrill Struttman, and Tammy Russell have done a remarkable job with their organizations, all of which arose out of their own personal tragedies, and I would like to express my gratitude for their work.

n70. For example, the scenario of a child dying as a result of a parent's failure to seek medical treatment is often cast in terms of negligence. See, e.g., *Walker v. State*, 763 P.2d 852 (Cal. 1988) (permitting involuntary manslaughter case to proceed against Christian Scientist mother, where allegation was based on theory that mother was criminally negligent for failing to seek medical treatment for her daughter). However, these decisions typically result from a parent's deliberate choice not to seek treatment as the result of religious beliefs, and thus involve intentional rather than negligent conduct.

n71. Some incidents involved multiple victims, multiple defendants, or both. The statistics that follow are therefore based on number of incidents, and not on number of victims or defendants or prosecutions. I chose the year 2003 as the ending point of my study because incidents that occurred in 2004 or 2005 might not yet have worked their way through the criminal justice system.

n72. Another recent study looked at hyperthermia cases occurring between 1995 and 2002. This study did not consider criminal justice outcomes at all, but instead attempted to identify common circumstances leading up to the fatalities in order to make recommendations for prevention, such as changes to automobile design. This study examined 159 total incidents, involving 171 victims. Twenty-seven percent of the incidents involved a child who climbed into a car while playing and seventy-three percent involved children who were left by their parents in a car. See Anara Guard & S. Gallagher, *Heat Related Deaths to Young Children in Parked Cars: An Analysis of 171 Fatalities in the United States, 1995-2002*, 11 *Injury Prevention* 33 (2005). This study found that deaths occurred in forty-one of the fifty states, so this cause of death is a pervasive problem. *Id.* at 34.

n73. I want to extend my deepest thanks to both Jan Null and Anara Guard, who were extraordinarily generous in sharing data with me. Null focuses on these cases from the perspective of vehicle heating dynamics; Guard evaluates them from a public health perspective (for example, could changes be made in daycare policies that would reduce the incidence of deaths?).

n74. Indeed, the initial news report is filed long before a decision regarding prosecution is made. Imagine a child dies on day one. The initial newspaper or television report about the death would appear on day two. A prosecution decision would ordinarily not be made for weeks or even months, at which time additional media reports might follow.

n75. Indeed, one newspaper editor whom I interviewed told me that he would have little information about a child's race or class at the time the report of a death came into the newsroom and the decision was made to report upon the case. Telephone interview with Ken Otterbourg, Managing Editor, Winston-Salem Journal, in Winston-Salem, N.C. (Aug. 10, 2005) [hereinafter Telephone Interview]. He also told me that he could not think of a reason why any case involving a child's death in a car would not be considered newsworthy and thus be reported by his paper. *Id.* The issue of selection bias has been much in the news lately, as some have questioned why missing persons cases involving young white women receive more attention than cases involving people of color. See, e.g., Rick Lyman, *Missing Woman's Case Spurs Discussion of News Coverage*, N.Y. Times, Aug. 7, 2005, at 116. When I asked Mr. Otterbourg about that controversy, he told me that when newspapers make reporting decisions, they view dead people - and especially dead children - much differently than missing persons. Telephone Interview, *supra*.

n76. The main way in which selection bias might realistically come into play is in the twelve cases involving parents as potential defendants where I was unable to obtain prosecution data. It is certainly possible that these cases fell off the radar screen because prosecution was not pursued. I do not believe that is necessarily a fair assumption, however; in some of the cases where I ultimately obtained information, I learned the media had fallen silent because the prosecutor and the defendant had reached a confidentiality agreement. These cases also fell remarkably evenly across the different groups: I was unable to ascertain prosecution data for three cases involving mothers, three cases involving fathers, and two cases involving both parents as potential defendants, so I do not believe the absence of information about this small group of cases skews the data.

n77. There is also certainly no reason to believe that two fellow academic researchers, Anara Guard and Jan Null, are skewing their data in favor of prosecuted cases or white collar defendants.

n78. I also excluded three additional cases. The first, a 2001 case in which a child died after her father parked the car and committed suicide just outside it, was excluded because there was obviously no possibility of prosecution in that case. See *Child Dies in Car After Dad Hangs Himself from Tree: The Father Left Directions, But Deputies Could Not Find the Spot Before the Toddler Died of Exposure*, Orlando Sentinel, June 8, 2001, at A17. The second was a 1998 case where a father failed to get medical treatment for his infant daughter after finding her alive in the family car, because the prosecution rested on the failure to obtain treatment rather than on the negligence involved in leaving her unattended in the car in the first instance. See *Ohio v. Bittner*, No. CA2001-01-009, 2002 WL 4493 (Ohio Ct. App. Dec. 31, 2001). Finally, in one additional case, I was unable to ascertain enough facts even to be sure of the identity of the responsible party. In that Mississippi case, an initial news report suggested that both the mother and grandmother were the responsible parties; each left the car and believed the other had removed the child. See *Child's Death Third Related to Heat Wave*, Com. Appeal (Memphis, Tenn.), July 22, 2000, at DS3. I was unable to ascertain any other details about this case, and because the mother was not the sole responsible party, or even necessarily the primary responsible party, have not included it in the statistics involving the treatment of cases against mothers.

n79. Although I did not attempt to ascertain the outcomes in this category of cases in the same exhaustive detail as the cases that were included in the database, the incidents which resulted in prosecution generally seemed to involve some sort of aggravating factor. For example, three children died in St. Louis, Missouri, after climbing into a car on August 13, 2001. Their primary caregiver that day, the mother of two of the victims, was charged with felony child endangerment, a decision which I would suggest rested in part on the number of victims and in part on the extreme youth of the children - two were two years old and one was only one year old - which made it unreasonable for them to be unsupervised for any length of time. She ultimately pled guilty and received a five year suspended sentence and four years of probation. See Tim Bryant, *Woman Who Let Small Children Play Unsupervised Is Sentenced to Probation for Their Deaths*, St. Louis Post-Dispatch, Dec. 15, 2001, at 21.

n80. Nine of the incidents involved grandparents.

n81. In some of the incidents, it was unclear how long the child was left in the car.

n82. The right-hand number here reflects the number of cases about which I was able to obtain information. So of the forty-six cases involving a mother as a potential defendant, I was able to obtain information about the charging decision in forty-three of the cases. I was able to learn whether or not the defendant was convicted in twenty-three of the twenty-five cases in which charges were brought, and so on.

n83. See, e.g., Hannah Sampson, *Dad Charged in Death of Son Left in Hot Car*, Miami Herald, July 21, 2004, at 1B (citing statement of Janette Fennell, founder of Kids and Cars, that parents are rarely prosecuted); see also Stephanie Armagost, *An Innocent Mistake or Criminal Conduct: Children Dying of Hyperthermia in Hot Vehicles*, 23 *Hamline J. Pub. L. & Pol'y* 109, 111 (2001) (asserting that since 1980, charges were filed in only 36.5% of cases where children died in automobiles from heat and that convictions resulted in only 14.6% of cases). This perception extends to other contexts in which a child dies as a result of parental negligence. In 2002, for example, a New York court stated that

criminal prosecutions are rarely brought against gun owners who have lost a close relative because of an accidental shooting. Prosecutors always have discretion over whether or not to press charges, but in many instances they do not want to aggravate an already tragic situation by commencing a criminal prosecution. Many believe there is no greater punishment than the knowledge that one contributed irresponsibly to the death of a closely-related child.

State v. Heber, 745 N.Y.S.2d 835, 839-40 (App. Div. 2002).

n84. It is of course possible that prosecution rates are different for other kinds of deaths resulting from parental negligence, such as deaths from drowning; this question is ripe for future research. At a minimum, my review of reported case law suggests that prosecutions for other causes of death are certainly not unprecedented.

n85. I defined prosecution as the formal initiation and pursuit of charges by the prosecutor's office or as the convening of a court martial. In a few instances, the police arrested an individual at the scene but the prosecutor declined to pursue the case or the grand jury refused to return an indictment. These examples were not coded as prosecuted cases.

n86. In comparison, a 2002 study examining the work of state courts concluded that only sixty percent of arrested homicide suspects and only forty-four percent of arrested robbery suspects are convicted. See Court Statistics Project, *Examining the Work of State Courts*, 2002, at 89 (2003).

n87. See, e.g., Marc L. Miller & Ronald F. Wright, *Criminal Procedures: Cases, Statutes, and Executive Materials* 993 (2d ed. 2003) (noting that more than 90% of federal criminal charges are typically resolved via a plea bargain rather than a trial); Court Statistics Project, *supra* note 86, at 61 ("Approximately 3 percent of [state] criminal cases were resolved by trial in 2001.").

n88. I was unable to determine whether the convictions in three cases were the result of a guilty plea or trial.

n89. See Frank Witsil, *Sentenced Mom Takes Blame for Kids' Deaths*, *Detroit Free Press*, Sept. 23, 2004, at 1A.

n90. In one case, the defendant is still awaiting sentencing.

n91. Mothers were therefore 37.5% more likely to be prosecuted than fathers. Because of the small sample size, this differential is not statistically significant under a chi-square analysis, but is nonetheless suggestive of a general trend that some legal scholars have identified of treating mothers more harshly than fathers at some stages of the criminal justice system when harm befalls their children. See generally Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 *Vand. L. Rev.* 1665, 1681 (1990) ("So often lawyers push to blame mothers in order to excuse fathers."); Jane C. Murphy, *Legal Images of Motherhood: Conflicting Definitions from Welfare "Reform," Family, and Criminal Law*, 83 *Cornell L. Rev.* 688, 713 (1998) (arguing "the law holds mothers, as opposed to fathers, responsible for harm and violence to their children"); Roberts, *supra* note 60, at 96, 110 (arguing that "criminal law is more likely to impose an affirmative duty on mothers than other classes of people" and that "courts hold mothers responsible for violence in the family"). But see Wilczynski, *supra* note 22, at 118 (suggesting that, based on a sample of British cases, women are less likely to be prosecuted than men for a child's death because female child killers are typically viewed as "mad" while male child killers are viewed as "bad"). Wilczynski further notes that female defendants who are prosecuted are more likely to use "psychiatric pleas" than male defendants and more likely to receive sentences involving psychiatric treatment. *Id.* at 118-19.

n92. I was unable to obtain sentencing information for one case.

n93. Prosecutions were thus brought against both parents in six of the twelve incidents.

n94. See *Judge's Decision Correct: Prosecutors Should Not Appeal in Child Death Case*, *News-Press* (Fort Myers, Fla.), Dec. 16, 2002, at 6B, available at <http://www.news-press.com/news/opinion/021216deadchild.html>. In this case, the parents neglected to take their youngest child, a twenty-three-month old, out of the family van after the family returned home from church. The parents laid down with their other four children for a nap, apparently assuming someone else had taken their youngest into the house and put him down for a nap in another room. They did not look for him or check on him for five hours, until they were getting ready to return to church. See Sharon Turco, *Autopsy: Toddler Dies of Heat Stroke*, *News-Press* (Fort Myers, Fla.), July 30, 2002, at 1A.

n95. Five of the cases involved multiple defendants, so these twenty-eight incidents involved thirty-four potential defendants. The statistics in this section are not based on the number of defendants, but on the number of incidents. Also, one incident involved both a victim's father and a family friend as defendants. Because presumably the father was primarily responsible for the safety of his child during an outing, I have included that incident in the statistics for fathers rather than for unrelated defendants.

n96. Two of the cases apparently remain pending as of the date of this Article.

n97. These results were consistent with those found by Ania Wilczynski in a study of child homicides in Australia. Wilczynski concluded that "non-familial killers" of children were more likely to be convicted and to be sentenced to prison than parents who killed their children. Wilczynski, *supra* note 22, at 174-79.

n98. A chi-square analysis confirmed that the difference in prosecution rates for parents and nonrelatives is statistically significant at a ninety-nine percent confidence level; the p-value was 0.0011.

n99. See Matthew Dolan, *Seaman Who Left Son in Car Sentenced to 9 Years in Prison*, *Virginian-Pilot* (Hampton Roads, Va.), Jan. 21, 2004, at B1; Louis Hansen, *Navy Lowers Charge from Murder in Baby's Death; Manslaughter Alleged Against Child's Mother*, *Virginian-Pilot* (Hampton Roads, Va.), May 3, 2003, at B1. Moore's case also involved an allegation that she had burned her child with an iron in an earlier incident.

n100. See John Masson, "I Didn't Know ... They Would Die": Charges Reduced for Mom Who Left Kids in Hot Car, *Detroit Free Press*, July 11, 2002, at 1A; Zlati Meyer, *Stiffer Charge OK'd in Hot-Car Deaths*, *Detroit Free Press*, June 30, 2004, at 1D; Frank Witsil, *Sentenced Mom Takes Blame for Kids' Deaths*, *Detroit Free Press*, Sept. 23, 2004, at 1A.

n101. The Guard and Gallagher study found twenty-seven percent of the incidents they studied involved caregivers who left the child in the car deliberately. See Guard & Gallagher, *supra* note 72, at 35. This statistic clearly suggests that prosecution may have both a deterrent and educative effect.

n102. See Steve Brewer, *Mother Gets 12 Years in Baby's Death: 8-month-old Boy Was Left in Hot Car*, *Houston Chron.*, Mar. 14, 2000, at A13.

n103. See John Woolfolk, *Dad Avoids Jail in Death of Baby Left in Hot Car: Community Service Sentence May Include Public Safety Video*, *San Jose Mercury News*, Nov. 23, 2002, at 1A.

n104. See John Woolfolk, *Father of Boy Left in Car Guilty of Manslaughter*, *San Jose Mercury News*, July 20, 2002, at 1A.

n105. See Mai Tran & Christine Hanley, *Professor Won't Be Charged in Death of Son Left in Hot Car*, *L.A. Times*, Oct. 4, 2003, at B6. One of the more striking aspects of the district attorney's decision was his statement that he "changed his mind" about prosecuting after reviewing other cases across the country and concluding that parents were typically not charged. *Id.* This assessment was clearly inaccurate.

n106. This finding is consistent with that in a study conducted by anthropologist Anna Lowenhaupt Tsing; Tsing concluded, albeit without citing statistics, that middle-class white women charged with "endangering newborns in unassisted births" were treated more favorably than lower income women and women of color. See Anna Lowenhaupt Tsing, *Monster Stories: Women Charged With Perinatal Endangerment*, in *Uncertain Terms: Negotiating Gender in American Culture* 282, 298 n.1 (Faye Ginsburg & Anna Lowenhaupt Tsing eds., 1990) (reviewing twenty-five cases that took place between 1984 and 1988); see also Steven Barnett Boris, *Stereotypes and Dispositions for Criminal Homicide*, 17 *Criminology* 139, 149 (1979) (concluding in a study of homicide

cases that "unemployed offenders have their cases prosecuted to a significantly greater extent than do higher status - employed - offenders"); Roberts, *supra* note 60, at 107-08 (discussing Tsing's study).

n107. It is important to note that characterizing socioeconomic status is necessarily somewhat subjective. For example, I classified incidents where a parent was a truck driver or a convenience store clerk as working in a blue collar profession or having a lower socioeconomic status, and incidents where a parent was working as a police officer as having a higher socioeconomic status, but I recognize it is possible that some might disagree with those characterizations. I had also very much hoped to examine whether race played a factor in charging decisions, but I was unable to ascertain that information for a sufficient number of cases. For a discussion of the role race plays in the child welfare system, see Dorothy E. Roberts, *Child Welfare and Civil Rights*, 2003 *U. Ill. L. Rev.* 171.

n108. The fact that so many of these child deaths occurred in middle-or upper-class homes is surprising. For example, a study of child homicides conducted in Ottawa, Canada, although unfortunately based on a very small number of cases, found that none of the deaths occurred in families with a "high" socioeconomic status. 46.2% of the deaths occurred in families with an average socioeconomic status and 53.8% in families with a low socioeconomic status. Dominique Bourget & John M.W. Bradford, *Homicidal Parents*, 35 *Can. J. Psychiatry* 233, 234 (1990); see also Rosalie Anderson, Robert Ambrosino, Deborah Valentine & Michael Lauderdale, *Child Deaths Attributed to Abuse and Neglect: An Empirical Study*, 5 *Child. & Youth Servs. Rev.* 75, 82 (1983) (reviewing child abuse and neglect deaths over a three-year period in Texas and concluding, albeit tentatively because of the small sample size, that only 9.6% of the involved families could be classified as white collar where income statistics were available).

n109. A chi-square analysis also confirmed that the difference in the prosecution rates for blue collar and white collar parents is statistically significant at greater than a 99.9% confidence level; the p-value was 0.00001156.

n110. It is of course also possible that this disparity might in part be explained by the fact that white collar defendants often have access to better lawyers, a variable not taken into account here because of insufficient information.

n111. A logistic regression is used because the dependent variable only has two possible values; either the defendant is prosecuted or he is not. For a detailed discussion of logistic regressions, see G.S. Maddala, *Limited-Dependent and Qualitative Variables in Econometrics* 22-27 (1983).

n112. The p-value was 0.0040. The detailed multiple regression results are on file with the Author and are available upon request.

n113. See, e.g., Press Release, Office of the Shelby County Dist. Attorney Gen., *Three Indicted by Grand Jury for First Degree Murder of Child Left in Daycare Van* (Aug. 7, 2003), available at <http://www.scdag.com/archive/803.htm#daycare1> (citing statement of district attorney that "these indictments should send a strong message to the daycare industry that if neglect of duty results in the injury or death of an innocent child, those responsible will be prosecuted to the furthest extent of the law").

n114. See, e.g., Turley, *supra* note 2.

n115. Alwynne Smart and Kathleen Dean Moore are two of these philosophers, whose writings will be discussed in greater detail below. For some legal references to suffering, see, for example, Kobil, *supra* note 2, at 633 (suggesting that a defendant's suffering might be an appropriate basis for granting clemency under a retributive approach); Dan Markel, *Against Mercy*, 88 *Minn. L. Rev.* 1421, 1437 (2003); Samuel H. Pillsbury, *Emotional Justice: Moralizing the Passions of Criminal Punishment*, 74 *Cornell L. Rev.* 655, 672 (1989) (noting that "sympathizing with an offender based on his suffering may lead to excusing an offense when little or no excuse should be available under retributive principles"). Jeffrie Murphy, who works at the intersection of law and philosophy, has done some marvelous work in this area. See, e.g., Jeffrie Murphy & Jean Hampton, *Forgiveness and Mercy* (1988); Murphy, *supra* note 2, at 454.

n116. Similarly, the related values of "apology and remorse factor in most significantly at sentencing." Stephanos Bibas & Richard A. Bierschbach, *Integrating Remorse and Apology into Criminal Procedure*, 114 *Yale L.J.* 85, 98 (2004).

n117. See, e.g., Clay S. Conrad, *Jury Nullification: The Lawyer's Challenge*, 24 *Champion* 30, 35 (2000) (suggesting that a defense lawyer pursuing a nullification strategy argue to the jury that the defendant is a victim or that the defendant has already suffered enough); Nancy J. King, *Silencing Nullification Advocacy Inside the Jury Room and Outside the Courtroom*, 65 *U. Chi. L. Rev.* 433, 479-80 (1998) (including the extent of the defendant's suffering in a list of reasons that might lead a jury to nullify). Interestingly, Professor King suggests that some of the reasons in this list might be considered "bogus" reasons for nullification, although it is unclear whether she would characterize the defendant's suffering as a "bogus" or legitimate reason. She further adds that it would be difficult in any event to develop a meaningful basis for distinguishing between "acceptable and unacceptable reasons for acquittal." *Id.* at 481; see also Andrew D. Leipold, *Rethinking Jury Nullification*, 82 *Va. L. Rev.* 253, 302 n.188 (1996) (citing some examples where the jury nullified because of the defendant's suffering). Professor Leipold suggests that the defendant's suffering might be an appropriate basis for nullification in some circumstances, but adds, without extensive discussion, that this would be highly controversial. *Id.* at 315.

n118. See, e.g., *Criminal Jury Instructions for the District of Columbia No. 2.02*, at 60 (Barbara E. Bergman ed., 4th rev. ed. 2004); see also Steven P. Garvey, "As the Gentle Rain Falls from Heaven": Mercy in Capital Sentencing, 81 *Cornell L. Rev.* 989, 989-90 (1996) (discussing case of *California v. Brown*, in which the Supreme Court upheld the use of such an instruction); Robert Weisberg, *Apology, Legislation, and Mercy*, 82 *N.C. L. Rev.* 1415, 1430-31 (2004) (same).

n119. See Garvey, *supra* note 118, at 1013 (suggesting that "the only relevant inquiry for a utilitarian sentencer is whether the punishment she imposes, taking into account the suffering of the defendant offset against the benefits his suffering brings to society, will produce a net increase in overall utility"); Louis Michael Seidman, *Soldiers, Martyrs, and Criminals: Utilitarian Theory and the Problem of Crime Control*, 94 *Yale L.J.* 315, 320 (1984) (suggesting that for a utilitarian, "since everyone's welfare is included in the social calculus, the cost of crime prevention includes not only enforcement costs (police) and process costs (courts), but also the suffering imposed upon criminals made to undergo punishment"). The Federal Sentencing Guidelines essentially reject this kind of extensive consideration of the defendant's suffering in setting a sentence. See generally Bowman, *supra* note 16, at 695-704 (discussing the sentencing factors that the Guidelines allow a judge to consider).

n120. See, e.g., John Rawls, *Two Concepts of Rules*, 64 *Phil. Rev.* 3, 4-5 (1955) ("It is morally fitting that a person who does wrong should suffer in proportion to his wrongdoing."); see also R.A. Duff, *Justice, Mercy, and Forgiveness*, 9 *Crim. Just. Ethics* 51, 52 (1990) (noting "the central retributivist intuition that 'the guilty deserve to suffer'" and that punishment is "the infliction of suffering on the criminal").

n121. Kathleen Dean Moore, *Pardons: Justice, Mercy, and the Public Interest* 11 (1989); see also Markel, *supra* note 115, at 1428 n.22 (discussing Moore's theory).

n122. See Joan H. Krause, *Of Merciful Justice and Justified Mercy: Commuting the Sentences of Battered Women Who Kill*, 46 *Fla. L. Rev.* 699, 762-63 (1994) (suggesting this is an appropriate basis on which to consider a reduction in sentence). Another example could be forgoing punishment of a criminal who is terminally ill. See, e.g., Duff, *supra* note 120, at 59 ("If a criminal is suffering seriously (if he is grievously ill, perhaps, or recently bereaved - the suffering need not itself be a result of his crime), we might, and perhaps should, come to see him from the perspective of compassion and mercy rather than from that of retributive justice."). Jeffrie Murphy and Jean Hampton suggest that a merciful judge might reduce an embezzler's sentence out of compassion for his suffering when his crime "had cost him his career, his marriage, his social standing, ... [and] his savings." Murphy & Hampton, *supra* note 115, at 159. Murphy and Hampton further note, however, that "this leniency risks undermining both the deterrent message and the expression of the value the wrongdoer has transgressed." *Id.* Moore might take issue with the first two examples in this footnote because they are unrelated to the crime committed, although she would presumably agree with the example cited by Murphy and Hampton.

n123. See, e.g., Markel, *supra* note 115, at 11-12; cf. Garvey, *supra* note 118, at 991 n.9 (collecting sources on mercy); Robert L. Misner, *A Strategy for Mercy*, 41 *Wm. & Mary L. Rev.* 1303, 1306-07 (2000) (suggesting that the topic of mercy has long been neglected by legal commentators and policymakers).

n124. Misner, *supra* note 123, at 1322.

n125. Indeed, the titles of the articles are illustrative. See, e.g., Frank O. Bowman III, *The Quality of Mercy Must Be Restrained, and Other Lessons in Learning to Love the Federal Sentencing Guidelines*, 1996 *Wis. L. Rev.* 679; Garvey, *supra* note 118; Michael Heise, *Mercy by the Numbers: An Empirical Analysis of Clemency and Its Structures*, 89 *Va. L. Rev.* 239 (2003); Colloquium, *The Jurisprudence of Mercy: Capital Punishment and Clemency*, 82 *N.C. L. Rev.* 1279 (2004); Eric L. Muller, *The Virtue of Mercy in Criminal Sentencing*, 24 *Seton Hall L. Rev.* 288 (1993). Robert Weisberg's article provides another example: when discussing what an act of mercy "actually does," he states that "technically, it can vacate a conviction, release a person from prison, protect the convicted from collateral consequences of conviction, or spare the condemned from death." Robert Weisberg, *Apology, Legislation, and Mercy*, 82 *N.C. L. Rev.* 1415, 1416 (2004); see also Misner, *supra* note 123, at 1323 n.85 (noting that commentators on mercy "have "centered their attention on the judgment of the sentencing judge"). Two recent articles represent an exception to this general trend. Dan Markel, for example, acknowledges that both prosecutors and grand jurors might exercise mercy in declining to bring charges against an individual. See Markel, *supra* note 115, at 1439 (observing that mercy "can appear throughout the life cycle of a crime"); see also Misner, *supra* note 123, at 1306 n.25 (noting that the exercise of mercy by prosecutors in charging decisions is "tolerated readily" but rarely discussed). Misner further suggests that mercy might be utilized by legislators in defining criminal justice policy, such as the appropriate policies for drug crimes. See *id.* at 1386.

n126. See generally Markel, *supra* note 115, at 1473-77 (noting that retributivism does not preclude the exercise of "justice-enhancing discretion," either to correct error or possibly to limit the application of overly broad criminal statutes to conduct that is not actually harmful, but treating this as distinct from the granting of mercy for compassion-based reasons).

n127. See, e.g., Murphy, *supra* note 2, at 455 (stating that mercy "requires a generally retributive outlook on punishment and responsibility").

n128. Moore, *supra* note 121, at 168.

n129. Alwynne Smart is often credited as the originator of this hypothetical, which has subsequently been utilized by a variety of scholars. Smart, *supra* note 2, at 348; see also Kobil, *supra* note 2, at 633 (suggesting that a defendant's suffering might be an appropriate basis for granting clemency under a retributive approach and citing a reckless driver who has killed her own child as an example); Andrew Leipold, *supra* note 117, at 315 (suggesting that a jury might be inclined to nullify in a case where a defendant's reckless driving led to the death of her infant son). Jeffrie Murphy uses a similar hypothetical, although he compares Smart's unfortunate driver to a defendant who kills in cold blood. See Murphy & Hampton, *supra* note 115, at 170; see also Muller, *supra* note 125, at 300, 323-25 (discussing the Murphy hypothetical). Professor Muller suggests that the first defendant, "who has lived through the horror of accidentally killing his own child, is less morally culpable than" the second defendant. *Id.* at 300. But surely that is because of the difference in the nature of the conduct - an accidental or reckless killing versus a purposeful one - and not because of the identity of the victim. To argue otherwise would diminish the worth of the victim.

n130. See Smart, *supra* note 2, at 348.

n131. Moore, *supra* note 121, at 168-69. Moore suggests that suffering resulting from the crime itself, which she characterizes as "natural suffering," would be an appropriate basis for a pardon, as long as the suffering was not the intended consequence of the crime. Suffering unrelated to the crime - such as the recent loss of a parent or financial ruin - should not mitigate punishment because it bears no relevance to the offender's desert for the particular crime committed. See *id.* at 169-71.

n132. *Id.* at 169.

n133. See Dressler, *supra* note 9. John Cottingham has suggested there are nine different versions of retributivist thought. See John Cottingham, *Varieties of Retribution*, 29 *Phil. Q.* 238 (1979).

n134. See Dressler, *supra* note 9, at 17. Dressler cites Sir James Fitzjames Stephens as one of the proponents of this variety of retributivism. See 2 James F. Stephens, *A History of the Criminal Law of England* 81 (London, MacMillan 1883).

n135. Dressler, *supra* note 9, at 17.

n136. *Id.*

n137. *Id.* at 18. Dressler points us to Herbert Morris, who argued that

it is just to punish those who have violated the rules and caused the unfair distribution of benefits and burdens. A person who violates the rules has something others have - the benefits of the system - but by renouncing what others have assumed, the burdens of self-restraint, he has acquired an unjust advantage ... Justice - that is punishing such individuals - restores the equilibrium of benefits and burdens by taking from an individual what he owes, that is, exacting the debt.

Herbert Morris, *Persons and Punishment*, 52 *Monist* 475, 478 (1968). For a critique of Morris's argument, see Jean Hampton, *Correcting Harms Versus Righting Wrongs: The Goal of Retribution*, 39 *UCLA L. Rev.* 1659, 1660-61 (1992).

n138. Dressler, *supra* note 9, at 18.

n139. Dan Markel, *Are Shaming Punishments Beautifully Retributive?: Retributivism and the Implications for the Alternative Sanctions Debate*, 54 *Vand. L. Rev.* 2157 (2001).

n140. *Id.* at 2202.

n141. Hampton, *supra* note 137, at 1672, 1674.

n142. *Id.* at 1677.

n143. *Id.*

n144. *Id.* at 1698.

n145. *Id.*

n146. *Id.* at 1684; see also Jean Hampton, *The Moral Education Theory of Punishment*, in *Crime and Punishment: Philosophic Explorations*, *supra* note 2, at 358 (suggesting that enforcement of the criminal law "conveys an educative message not only to the convicted criminal but also to anyone else in the society who might be tempted to do what she did").

n147. For other discussions of what Dan Kahan deems the "expressive dimension of punishment," see Dan M. Kahan, *What Do Alternative Sanctions Mean?*, 63 *U. Chi. L. Rev.* 591, 594-605 (1996). See also Joel Feinberg, *The Expressive Function of Punishment*, 49 *Monist* 3 (1965), reprinted in Joel Feinberg, *Doing and Deserving: Essays in the Theory of Responsibility* 95 (1970).

n148. See Kahan, *supra* note 147, at 598 (describing "the expressive view" that "unduly lenient punishment reveals that the victim is worthless in the eyes of the law").

n149. See, e.g., Bibas & Bierschbach, *supra* note 116, at 108 (noting that "a focus on the individual offender to the exclusion of victims, society, and their relationship with the offender" is "symptomatic of a deeper strain of thinking that runs throughout contemporary criminal law scholarship").

n150. To be clear, my concern here is with treatment of child victims who are related to the defendant. If our reckless driver killed a child whom he did not know, I have no doubt that the vast majority of commentators would be calling for imposition of the maximum penalty. See generally Scott E. Sundby, *The Capital Jury and Empathy: The Problem of Worthy and Unworthy Victims*, 88 *Cornell L. Rev.* 343, 346-47 (2003) (describing a study in which fifty-three percent of capital jurors interviewed indicated that they would be more likely to sentence a defendant to death if the case involved a child victim).

n151. Cf. Andrew von Hirsch, *Doing Justice: The Choice of Punishments* 73 (1976) (arguing that "understating the blame [involved in a criminal offense] depreciates the values that are involved: disproportionately lenient punishment for murder implies that human life - the victim's life - is not worthy of much concern").

n152. See Murphy & Hampton, *supra* note 115, at 141 (arguing that "how society reacts to one's victimization can be seen by one as an indication of how valuable society takes one to be"); *id.* at 159 (noting that granting leniency based on an offender's suffering "risks undermining" both deterrence and norm expression).

n153. See James R. Acker & C.S. Lanier, "Parsing This Lexicon of Death": Aggravating Factors in Capital Sentencing Statutes, *30 Crim. L. Bull.* 107, 149-51 (1994) (providing examples). A far more ignoble example is the research suggesting that defendants who kill white victims are statistically more likely to receive the death penalty than defendants who kill African American victims. See David C. Baldus et al., *Law and Statistics in Conflict: Reflections on McCleskey v. Kemp*, in *Handbook of Psychology and Law* 251, 259 (D.K. Kagehiro & W.S. Laufer eds., 1992).

n154. See Sundby, *supra* note 150, at 357 (noting that juries were less likely to impose a death sentence if victim was "viewed as "too careless or reckless").

n155. See Bibas & Bierschbach, *supra* note 116, at 122-23 (arguing that "excusing [an offender] from punishment belittles the crime and the harm"); Murphy & Hampton, *supra* note 122, at 130 ("Punishment symbolizes the reassertion of the victim's value.").

n156. For a discussion of the interaction between value choices and the law, see generally Jane C. Murphy, *Rules, Responsibility, and Commitment to Children: The New Language of Morality in Family Law*, *60 U. Pitt. L. Rev.* 1111, 1133 (1999) (discussing Martha Minow's argument that laws are never "value-neutral"). Murphy writes that "each time the government, through its lawmakers, decides to regulate or refrain from regulating, a choice in values is made." *Id.* The same is true of decisions whether or not to prosecute. See also Katharine T. Bartlett, *Re-Expressing Parenthood*, *98 Yale L.J.* 293, 311 (1988) ("The regulation of, and the failure to regulate, family matters ... reflect public decisions about the family.").

n157. See generally E. Wayne Holden & Laura Nabors, *The Prevention of Child Neglect*, in *Neglected Children: Research, Practice, and Policy*, *supra* note 22, at 174, 184 (noting that one aspect of a program to prevent child neglect must be "advocating for a change in cultural norms and public laws that portray family matters as private and children's rights as secondary to the parental right to privacy in childrearing matters").

n158. See James G. Dwyer, *Parents' Religion and Children's Welfare: Debunking the Doctrine of Parents' Rights*, *82 Cal. L. Rev.* 1371, 1396-1405 (1994) (discussing free exercise cases involving parental refusals to obtain medical care for their children because of the parents' religious beliefs).

n159. See *id.* at 1399 (stating that "no court has decided that it is constitutionally permissible to override the religious objections of parents to medical treatment when the danger is of less serious injury"). Professor Dwyer gives as examples a Pennsylvania court's decision not to override a parent's refusal to consent to surgery to correct a severe case of scoliosis, which had the potential to leave the child bedridden, and cases in which courts uphold parental refusals to vaccinate against potentially fatal childhood illnesses. See *id.* at 1399-1401.

n160. See *id.* at 1403-04, 1407 (arguing that any adult who tried to compel another adult to refuse medical treatment or otherwise act in accordance with particular religious tenets would find her case summarily dismissed). For an extensive critique of Professor Dwyer's theories, focusing on his arguments regarding parents' decisionmaking about their children's education and religious training, see Stephen G. Gilles, Hey, Christians, Leave Your Kids Alone!, 16 *Const. Comment.* 149 (1999).

n161. Deana Pollard, Banning Child Corporal Punishment, 77 *Tul. L. Rev.* 575, 644-45 (2003). Professor Pollard's article contains an excellent discussion of different approaches states take in evaluating parental claims that the injuries they inflicted upon their children should not be considered child abuse because they were simply disciplining their children. *Id.* at 635-47. She also notes that despite mounting evidence about the dangers posed by spanking, ninety percent of American parents still hit their children. *Id.* at 577.

n162. See Zimring, *supra* note 6, at 523-24 (using a hypothetical to suggest that if a stranger slapped a child, it would be considered assault and battery, but the matter would be treated very differently by the legal system if a mother slapped her own child).

n163. The criminal justice system's tradition of dismissing the horror of abuse and neglect perpetrated against children has been replicated in other fields as well. Swiss psychologist Alice Miller has made a similar point in the context of psychoanalysis, arguing that it has "concealed and denied the realities of child abuse and children's sufferings." See Marie Ashe & Naomi R. Cahn, Child Abuse: A Problem for Feminist Theory, 2 *Tex. J. Women & L.* 75, 94 (1993). Ashe and Cahn's article contains an extensive discussion of Miller's critique of traditional psychoanalytic theory, and of feminist theory as well, for failing to grapple with the reality of child abuse. *Id.* at 93-97. For examples of Miller's work, see Alice Miller, *Thou Shalt Not Be Aware: Society's Betrayal of the Child* (Hildegard Hannum & Hunter Hannum trans., 1984); Alice Miller, *Banished Knowledge: Facing Childhood Injuries* (Leila Vennewitz trans., 1990).

n164. In *Jones v. United States*, 308 *F.2d* 307, 310 (D.C. Cir. 1962), a federal court set forth the traditionally recognized circumstances in which an individual will be found liable for failing to comply with a duty owed to others: when the parties are in a status relationship, such as parent/child or husband/wife; when a statute imposes a duty of care; when a party has assumed a contractual duty to care for another; or when a party has voluntarily assumed the care of another individual and secluded him so as to prevent others from rendering aid.

n165. See Markel, *supra* note 115, at 1462. As Markel acknowledges, the criminal justice system undeniably "privileges bad luck" in other contexts. See *id.* This phenomenon is perhaps most obvious in the realm of attempt law. An offender will typically receive a lesser sentence for an attempted crime than for a completed crime, even though pure luck may have been entirely responsible for the failed effort. Markel argues that we should not use mercy to "exacerbate [luck's] pernicious role." *Id.* I would further add that in the context of attempts, the differential treatment is based in large part on the difference in the actual harm caused. The unlucky reckless driver who kills his own child has certainly not caused a lesser harm than the driver who kills a stranger. See also Stephen J. Morse, Reasons, Results, and Criminal Responsibility, 2004 *U. Ill. L. Rev.* 363, 378-85 (arguing why we should "try as much as possible to wring luck out of decisions about blame and punishment").

n166. One response could be that the driver who has killed his own child is still suffering, even after his sentence is commuted. But the driver who has killed a stranger and thus remains in jail for the duration of his sentence is obviously suffering the very real loss of liberty and all the other deprivations that go along with prison life from which the first driver is now free. See generally Markel, *supra* note 115, at 1455-56 ("If everyone is entitled to the same package of liberties safeguarded by political and legal institutions, it is hard to see how granting mercy to some offenders but not to others effectuates this ideal.").

n167. See Morse, *supra* note 165, at 383 (arguing that "results should not matter to desert"). Further, even if results should matter in our evaluation of an offender's desert, is the identity of the victim a morally and legally relevant aspect of a result?

n168. See Moore, *supra* note 121, at 169 (noting that "defining exactly what kinds of suffering count to reduce punishment" is one of the "primary" philosophical issues raised by her analysis).

n169. Martha Stewart, for example, was forced to resign from the executive position she held at the company she had founded. See Kathleen Day, *The Strength of Stewart's Convictions: Director's Role to End Soon for Company Founder*, Wash. Post, Mar. 9, 2004, at E1.

n170. See T.R. Reid, *Parties Expect Janklow's Collision to End His Career*, Wash. Post, Aug. 22, 2003, at A8 (discussing political consensus that the accident, regardless of whether or not he was prosecuted, would end Janklow's "storied political career"). It is interesting to note that Janklow, who was ultimately convicted of felony manslaughter and sentenced to jail, pleaded for leniency at his sentencing based on his suffering, arguing that "my political career is wrecked" and "I can't be punished any more than I've punished myself." T.R. Reid, *Janklow Sentenced to 100 Days in Jail*, Wash. Post, Jan. 23, 2004, at A3. The judge was unsympathetic, pronouncing that "the citizens of South Dakota expect justice." *Id.*

n171. See generally Krause, *supra* note 122, at 762 (noting that battered women who kill their abusers may experience suffering because "they killed the men they loved").

n172. See, e.g., Ronald F. Wright & Marc L. Miller, *Criminal Procedures: Cases, Statutes, and Executive Materials* 760 (1st ed. 1996) (noting that pretrial detainees "lose income, ... suffer dislocation and sometimes even permanent rupture in their family lives, ... [and] suffer social stigmatization and loss of self-respect" (citing Vera Inst. of Justice, *Fair Treatment for the Indigent: The Manhattan Bail Project* (1972))).

n173. Nourse, *supra* note 66, at 1334-35; see also Paul H. Robinson, *Causing the Conditions of One's Own Defense: A Study in the Limits of Theory in Criminal Law Doctrine*, 71 *Va. L. Rev.* 1 (1985).

n174. See, e.g., Dressler, *supra* note 9, at 322-23 (discussing the principle that voluntary intoxication is generally not a defense to criminal liability).

n175. See *id.* at 289, 299 (noting that in order to raise a necessity defense, "the defendant must come to the situation with clean, sometimes immaculate hands" and that a "duress defense is unavailable to a defendant if she was at fault for being in the coercive situation").

n176. See von Hirsch, *supra* note 151, at 51 (discussing how punishment "rectifies the balance" in "the Kantian sense"); see also Morris, *supra* note 137, at 483 (arguing that punishment's "justification was related to maintaining ... a fair distribution of benefits and burdens").

n177. Hampton, *supra* note 137, at 1701 (emphasis added). Hampton argues that "the modern state ... is the only institutional voice of the community's shared moral values. Serious crimes represent serious attacks on those moral values ... and thus the state is the only institution that can speak and act on behalf of the community

against the diminishment accomplished by the crime." *Id.* at 1694; see also Herbert Morris, *On Guilt and Innocence: Essays on Legal Philosophy and Moral Psychology* 104 (1976) (arguing that "feeling guilty" does not have "the significance carried by punishment inflicted by others"). Dan Markel argues that the state "plays the role of the exclusive decisionmaker (at least with respect to punishment) because it, and it alone, has the capacity for legitimacy among all actors in society in a way that various communal institutions could not" and because even "victimless" crimes are "a rebellion against the government's rule-making authority." Markel, *supra* note 139, at 2199-200.

n178. See Judith G. McMullen, *Privacy, Family Autonomy, and the Maltreated Child*, 75 *Marq. L. Rev.* 569, 592 (1992) (discussing our "deeply ingrained" presumption that "parents will usually act in the best interests of their children"). McMullen cites all the way back to William Blackstone for this proposition, arguing that "Blackstone noted that Providence had enforced parental duties more effectively than could laws by "implanting in the breast of every parent that natural ... or insuperable degree of affection, which not even the wickedness, ingratitude, and rebellion of children, can totally suppress or extinguish." *Id.* at 593 (quoting William Blackstone, *The Rights of Parent and Child*, in 1 *Commentaries on the Laws of England* 434, 435 (Neill H. Alford, Jr. et al. eds., 1983); see also Marsha Garrison, *Autonomy or Community?: An Evaluation of Two Models of Parental Obligation*, 86 *Cal. L. Rev.* 41, 73 (1998) (discussing the "tendency to assume that family relations are governed by altruism rather than the constraints of formal justice," especially in relation to the "parent-child tie").

n179. See Ira C. Lupu, *The Separation of Powers and the Protection of Children*, 61 *U. Chi. L. Rev.* 1317, 1323-24 & n.16 (1994) (noting that even "the Framers themselves likely subscribed to the late-eighteenth-century view that family members shared a natural loyalty and affection").

n180. See Elizabeth S. Scott & Robert E. Scott, *Parents as Fiduciaries*, 81 *Va. L. Rev.* 2401, 2435 (1995) ("Informal social norms play an important part in shaping parents' recognition that their role is defined by serious obligation and subordinated self-interest."); cf. Seidman, *supra* note 119, at 335 (arguing that it is "obvious" that many people "would refrain from criminal conduct even if there was no chance of punishment, simply because they believe that the conduct is morally reprehensible").

n181. See Thomas, *supra* note 17, at 293 (noting "our reluctance to believe that parents - whom we expect to love and protect their offspring - could maltreat or abuse their own children, sometimes even fatally"). Thomas further notes that "our laws and legal systems have developed over hundreds of years around the expectation that parents will love and protect." *Id.*

n182. See, e.g., Lupu, *supra* note 179, at 1324 ("It is now clear that the psychological influences at play in family life are not limited to the positive sentiments of affection and concern."). There are of course a tremendous variety of social, economic, and psychological factors that may contribute to a parent neglecting a child. See, e.g., Patricia McKinsey Crittenden, *Child Neglect: Causes and Contributors*, in *Neglected Children: Research, Practice, and Policy*, *supra* note 22, at 47-67 (discussing, inter alia, low socioeconomic status, social isolation, and "poor interpersonal relationships"), Martha Farrell Erickson & Byron Egeland, *Child Neglect*, in *The APSAC Handbook on Child Maltreatment* 4, 13-15 (John Briere et al. eds., 1996) (citing various environmental and psychological factors that might play a role in neglectful families, including, inter alia, parental depression, poverty, and lack of a support network).

n183. See *Admin. for Children & Families*, *supra* note 21, at xvii, 132.

n184. *Jones*, *supra* note 44, at 24.

n185. See McMullen, *supra* note 178, at 594 (suggesting that "adverse early life experiences or extreme stress" can result in poor parenting).

n186. See *supra* text accompanying notes 44-48.

n187. *Jones, supra* note 44, at 24.

n188. *Id.*

n189. *Id.* For a concrete example of this phenomenon, see *Harrington v. State*, 547 S.W.2d 616 (Tex. 1977). In a statement given to the police after she was arrested for allowing her two-year-old daughter to starve to death, the defendant said "she was a 'bad mother' and just did not like small children." *Id.* at 618.

n190. *Jones, supra* note 44, at 26-27.

n191. See Gaudin, *supra* note 24, at 71.

n192. *Id.*; see also Gaudin, *supra* note 33, at 15 (noting that some studies have found that neglectful parents "lack knowledge of and empathy for children's age-appropriate needs" and "have more unrealistic and more negative expectations of their children than nonneglecting parents"). Gaudin adds that "many neglectful mothers are indeed psychologically immature and childlike in their inability to consider the needs of others, postpone gratification of basic impulses, and to invest themselves emotionally in another person." *Id.* at 14. In a study of low-income neglectful mothers in Philadelphia, Norman Polansky concluded that a significant percentage suffered from a syndrome he called "apathy-futility" syndrome, which is marked by, *inter alia*, "feelings of futility" and "lack of competence in many areas of living." Norman Polansky et al., *Damaged Parents: An Anatomy of Child Neglect* 39, 40, 110-11 (1981).

n193. See, e.g., Thomas, *supra* note 17, at 341 (arguing that even in cases of physical abuse, prosecution of parents is usually not appropriate because "fines reduce limited family financial abilities" and "imprisonment separates parent and child"); White, *supra* note 2, at 1423 (arguing that "parents do not deserve the harsh conditions of imprisonment").

n194. See Roberts, *supra* note 60, at 104-05 (suggesting that some judges treat women more leniently than men at the time of sentencing because they are "reluctant to deprive children of a provider or caregiver" and consider "caretaking to be more indispensable than economic support to children's welfare").

n195. For some examples of this debate, see H.L.A. Hart, *Punishment and Responsibility* (1968); Jerome Hall, *Negligent Behavior Should Be Excluded from Penal Liability*, 63 *Colum. L. Rev.* 632 (1963); Samuel H. Pillsbury, *Crimes of Indifference*, 49 *Rutgers L. Rev.* 105 (1996); Kenneth W. Simons, *Culpability and Retributive Theory: The Problem of Criminal Negligence*, 5 *J. Contemp. Legal Issues* 365 (1994).

n196. There is obviously a vigorous debate about whether the dispensation of mercy is appropriate at all within the criminal justice system, let alone in the circumstances that are discussed in this Article. For some examples of this debate, see, for example, Markel, *supra* note 115, at 1464-77; Misner, *supra* note 123, at 1303.

n197. Smart, *supra* note 2, at 348 (emphasis added).

n198. Moore, *supra* note 121, at 168.

n199. It is certainly possible that the factors discussed in this paragraph might be taken into consideration at the time of the charging decision for petty crimes, such as shoplifting. But the death of a child would certainly not fall into the category of a petty offense.

n200. See U.S. Sentencing Comm'n, Sentencing Guidelines Manual 4A1.1-4B1.5 (2004) [hereinafter Sentencing Guidelines] (discussing treatment of criminal history).

n201. For example, the Supreme Court has concluded that the Eighth Amendment bars imposition of the death penalty on a defendant who committed his crime before the age of eighteen. See *Roper v. Simmons*, 543 U.S. 551 (2005).

n202. See Sentencing Guidelines, *supra* note 200, 3E1.1. Whether this is a valid practice is another question. Professors Bibas and Bierschbach argue in a compelling recent article that "psychology, psychiatry, sociology, and criminology have not empirically linked expressions of remorse and apology to a decreased need for specific deterrence of particular offenders." See Bibas & Bierschbach, *supra* note 116, at 106. Bibas and Bierschbach further suggest consideration of remorse and acceptance of responsibility at sentencing seems inconsistent with classic forms of retributivist philosophy. *Id.* at 106-09.

n203. Kathleen Daly, Structure and Practice of Familial-Based Justice in a Criminal Court, 21 *Law & Soc'y Rev.* 267, 273 (1987). It is important to note that Daly's work was based on a relatively small sample size of thirty-five court employees. *Id.* at 271.

n204. *Id.* at 273-74.

n205. Whether a criminal sentence ever in fact contributes to rehabilitation is a topic for another day.

n206. See generally Jeffrie G. Murphy, Forgiveness and Resentment, 7 *Midwest Stud. Phil.* 503, 510 (1982) (suggesting that a defendant's suffering might sometimes warrant forgiveness, because "suffering is redemptive" and "tends to ... humble" the offender, thus restoring the equilibrium between offender and victim (emphasis omitted)).

n207. Mandatory sentencing schemes have greatly reduced judicial discretion in sentencing by restricting the factors a judge may consider in setting a sentence. See, e.g., Bowman, *supra* note 16, at 695-704 (discussing the limited sentencing factors that the Guidelines allow a judge to consider); Misner, *supra* note 123, at 1376 (observing that mandatory sentencing schemes have constrained the exercise of judicial discretion). Misner argues that recent sentencing schemes have left prosecutors as the state agents with the power to dispense mercy. Misner, *supra* note 123, at 1377.

n208. Indeed, a quick survey of states with negligent homicide statutes, involuntary manslaughter statutes, or both revealed only a handful had mandatory minimum sentences for those particular crimes; the longest minimum sentence was two years. In addition, there are other charging options available to prosecutors in these cases that would increase sentencing flexibility, such as a prosecution for child endangerment or even for the specific crime of leaving a child unattended in a motor vehicle.

n209. See Josh White, VA Father Gets Scant Jail Time in Death: Judge Sympathizes over Loss of Girl Left in Van, *Wash. Post*, Feb. 22, 2003, at A1.

n210. See Mother Gets Probation, Community Service in Son's Death (Idaho News Channel 7 television broadcast July 30, 2003) (copy on file with author).

n211. See, e.g., R. Michael Cassidy, Toward a More Independent Grand Jury: Recasting and Enforcing the Prosecutor's Duty to Disclose Exculpatory Evidence, *13 Geo. J. Legal Ethics* 361, 403 (2000) ("There are substantial costs associated with indictment which will not be remedied even by a subsequent acquittal, such as the expense of mounting a defense and the ongoing damage to one's reputation.").

n212. See, e.g., Murphy, *supra* note 156, at 1165 ("One of the most deeply embedded principles in American family law is the principle of family autonomy, which limits the state's intervention in the affairs of the intact family."); Carl E. Schneider, Moral Discourse and the Transformation of American Family Law, *83 Mich. L. Rev.* 1803, 1835-39 (1985) (discussing the "legal tradition of noninterference in the family"); Scott & Scott, *supra* note 180, at 2406 (noting that courts, media and academic commentators have begun to argue that "the latitude given to parents in rearing their children is...excessive, allowing some parents to inflict unmonitored and unsanctioned harm on their children" and that "the tradition of legal protection of parental rights has deep historical roots").

n213. See Scott & Scott, *supra* note 180, at 2435 (referencing the increasing concern about child abuse).

n214. See generally Murphy, *supra* note 156, at 1205 (arguing that "there is still an enormous gap between ... rhetoric and the existence of policies that protect children").

n215. Pleck, *supra* note 17, at 49-50; see also Besharov, *supra* note 17, at 553 ("Most Americans believe that child maltreatment is primarily a social and psychological ill and that treatment and rehabilitation, not punishment and retribution, are the best means of protecting endangered children.").

n216. See generally Ashe & Cahn, *supra* note 163, at 99 (discussing prosecutions in child abuse cases and noting that "decisions concerning prosecutions will tend to reflect race, class, and gender biases of prosecutors who have tended to be white, middle-class, and male").

n217. Roberts, *supra* note 60, at 106; see also Barbara F. Reskin & Christy A. Visher, The Impacts of Evidence and Extralegal Factors in Jurors' Decisions, *20 Law & Soc'y Rev.* 423, 431 (1986) (concluding that "if defendants seemed attractive or were employed, jurors were less likely to believe they were guilty").

n218. See generally Appell, *supra* note 19, at 584-85 (discussing how fathers are subject to "lower expectations" in the child protection system than mothers).

n219. Whether the conduct underlying a particular fatality rises to the level of gross negligence will necessarily need to be determined on a case-by-case basis. I would suggest that some relevant factors would include the amount of time the child was left in the car, whether the parent would have been responsible for meeting any of the child's needs during the time the child was in the car (a factor which makes failing to attend to the child for a number of hours even more problematic), any reasons explaining why the child was left behind on this particular occasion, and any drug or alcohol use by the parent prior to leaving the child.

n220. Bonner, Crow & Logue, *supra* note 25, at 169 ("As case law accumulates, precedent is set and community standards for definitions of neglect evolve. Thus, in addition to punishing neglecting parents and protecting other children in the home, prosecution plays an important role at the societal level in addressing issues of neglect.").

n221. Garbarino & Collins, *supra* note 24, at 11 ("In the United States of the 1950s, there were no minimal standards of care for children in automobiles. By the 1980s, knowledge had stimulated changes in community values, and now it is considered neglectful to permit a young child to ride in a car without a car seat.").

n222. See Kyron Huigens, *Dignity and Desert in Punishment Theory*, 27 *Harv. J.L. & Pub. Pol'y* 33, 48 (2003) (arguing that we are "formed by the criminal law" and that "our characters, desires, and motivations are formed by the rational debate, deliberation, decision, and reflection involved in the choice and execution of criminal law norms").

n223. One group of child fatality researchers have argued: "As case law accumulates, precedent is set and community standards for definition of neglect evolve... . Prosecution plays an important role at the societal level in addressing issues of neglect." Bonner, Crow & Logue, *supra* note 25, at 169.

n224. Murphy, *supra* note 156, at 1128 (emphasis omitted).