

A. BARRY CAPPELLO

April 6, 2007

File No. 06009.001

Via California Overnight

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

Re: Yoni Gottesman Drowning

Dear Attorney General Brown:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

CAPPELLO & NOEL LLP



A. Barry Cappello

Enclosures

cc: Oded and Anat Gottesman

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

EXHIBIT 1



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Thursday, November 9, 2006

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

Trial ordered for day-care operators in death of child

By: Associated Press

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

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

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

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

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."



