



**THE FLORIDA SENATE**  
**SPECIAL MASTER ON CLAIM BILLS**

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DATE	COMM	ACTION
12/1/04	SM	Fav/1 amendment

December 1, 2004

The Honorable Tom Lee  
President, The Florida Senate  
409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 22 (2005)** – Senator Walter G. “Skip” Campbell, Jr.  
Relief of Monika Davis

**SPECIAL MASTER’S FINAL REPORT**

THIS IS A VIGOROUSLY CONTESTED \$173,416.16 EXCESS JUDGMENT CLAIM TO COMPENSATE M.D., A MINOR, THROUGH HER MOTHER AND LEGAL GUARDIAN, MARY HALL, FOR INJURIES SUSTAINED AS A RESULT OF THE ALLEGED NEGLIGENCE OF THE PALM BEACH COUNTY SCHOOL DISTRICT IN FAILING TO MAINTAIN ADEQUATE SUPERVISION OF M.D., AN EXCEPTIONAL EDUCATION STUDENT. THE CLAIM WOULD BE PAID FROM THE SCHOOL DISTRICT’S RESERVE ACCOUNT FOR CONTINGENCIES. THE SOVEREIGN IMMUNITY CAP, PURSUANT TO §768.28, F.S., HAS BEEN EXHAUSTED.

FINDINGS OF FACT:

**The Incident**

On or about September 22, 2000, between approximately 12:00 noon and 12:45 p.m., the claimant was the victim of a sexual battery by A.B., a minor, at William T. Dwyer High School in Palm Beach County. Both the claimant and the perpetrator, A.B., were students in attendance at school at the time of the alleged incident. The claimant and the perpetrator were exceptional student education (ESE) students and were classified as trainable mentally handicapped. The claimant was 19 years old at the time of

the alleged incident but had the cognitive ability of a 5-year-old.

### **Witnesses**

#### ***The claimant***

The claimant informed Detective Boyle that on September 22, 2000, in school, A.B. ordered her to remove her bra.<sup>i</sup> He began to kiss and suck her breast.<sup>ii</sup> A.B. ordered her to pull down her pants and spread her legs at which point he proceeded to place his finger into her vagina.<sup>iii</sup> He pulled down his pants and told the claimant to put her hand on his penis which she did.<sup>iv</sup> A.B. ordered her to cut her pants with scissors so he could rub her thigh.<sup>v</sup>

#### ***A.B., the perpetrator***

A.B. confessed to putting his hand down the claimant's panties.<sup>vi</sup> He put his finger in her private area.<sup>vii</sup> He took her hand and put it on his private area.<sup>viii</sup> He touched her breasts, her chest, and her private area.<sup>ix</sup>

#### ***D.R., an ESE student***

D.R. reported to Detective Boyle that he saw A.B. reach into the claimant's shirt and fondle her breast.<sup>x</sup> He also witnessed A.B. pull down the claimant's pants and put his hand between her legs.<sup>xi</sup>

#### ***Pamela Evert, substitute teacher***

Pamela Evert was a substitute teacher with the Palm Beach County School District on September 22, 2000. She was assigned to classroom 1220 to supervise two ESE students who did not attend a class field trip.<sup>xii</sup>

Mr. Andy Rolph came into Ms. Evert's classroom and asked Ms. Evert to come into his classroom and watch his students.<sup>xiii</sup> He entered her classroom at approximately 12:10 to 12:15 p.m. and stayed for approximately two minutes.<sup>xiv</sup> Accordingly, for a few minutes, the claimant and her perpetrator were unsupervised.

Ms. Evert proceeded to Mr. Rolph's classroom (classroom 1222) with her two students. She was in classroom 1222 from approximately 12:15 to 12:45 p.m.<sup>xv</sup> The claimant sat in front to the left of Ms. Evert.<sup>xvi</sup> Ms. Evert testified that A.B. was walking around but was never near the claimant.<sup>xvii</sup> After returning to her classroom with three students, A.B., the

claimant, and another student, Ms. Evert noticed a cut in the claimant's pants.<sup>xviii</sup> Ms. Evert testified that it was impossible that the incident occurred in her presence.<sup>xix</sup>

***Mr. Andrew Rolph, ESE teacher***

Mr. Rolph testified that he covered classroom 1221 from 12 to about 12:45 p.m. in room 1221.<sup>xx</sup> Mr. Rolph testified that he did not go to Ms. Evert's classroom.<sup>xxi</sup>

***Ms. Ellen VanArsdale, school principal***

Ms. VanArsdale, the school principal, suspended A.B. for the alleged incident because he initiated or at least engaged in sexual activity on school campus.<sup>xxii</sup>

Ms. VanArsdale investigative notes revealed that Mr. Rolph indicated to Ms. Stursberg at the beginning of the school year that A.B. was a sexual predator at another school.<sup>xxiii</sup>

***Detective John Boyle, Palm Beach Gardens Police Department***

Detective Boyle was the investigating officer. He testified that the claimant advised him that A.B. told her to pull up her shirt and bra, proceeded to suck on her breast, fondled her vagina over her pants, ordered the claimant to pull down her pants and spread her legs, and digitally penetrated the claimant's vagina.<sup>xxiv</sup> Detective Boyle also testified that the claimant informed him that A.B. pulled his pants down, told her to touch his penis to which she complied, and cut her pants with scissors to place his hand between her pants and rub her thigh.<sup>xxv</sup> He testified that he did not receive a complaint of penile penetration.<sup>xxvi</sup>

***Mary Hall, the claimant's mother***

Ms. Hall testified that she examined the claimant's vagina following the incident and discovered a cloudy fluid on her vagina and her pubic hairs.<sup>xxvii</sup> Part of her underwear was covered in a reddish brown color that resembled blood.<sup>xxviii</sup> She put the garments in a plastic bag, tied it up tight, and hid it in the closet.<sup>xxix</sup> Ms. Hall testified that another boy was bothering her in summer camp in July 2000, prior to the alleged incident.<sup>xxx</sup> The boy allegedly wanted to touch her breasts; however, she did not report the incident to the school district.<sup>xxxi</sup>

***Lillie Mae Davis, the claimant's aunt***

Ms. Davis testified that the claimant's bra was under her breast when she arrived home from school.<sup>xxxii</sup> In addition, the claimant informed her that an individual sucked on her breast.<sup>xxxiii</sup> The individual inserted his finger in the claimant.<sup>xxxiv</sup> In addition, the individual cut her pants.<sup>xxxv</sup> Ms. Davis called the school and spoke to a Ms. Daniels, who informed her to take the claimant to Columbia Hospital.<sup>xxxvi</sup> Ms. Davis testified that she heard Ms. Hall indicate there was some whitish substance on the claimant's panties and vagina.<sup>xxxvii</sup>

**Records**

***School district records of A.B.***

Records obtained from A.B.'s prior school in the Palm Beach County School District indicate that A.B. was charged with sexual battery on January 28, 1999, and was suspended. Furthermore, the principal at the school suspended A.B. for sexual harassment on three other occasions on September 15, 1998, November 9, 1998, and March 15, 1999.

***The claimant's Individual Education Plan***

The claimant's individual education plan (IEP) indicates that the claimant needs constant supervision.

**Claimant's Prior Psychological Medical History**

The claimant has permanent psychological problems that predate the sexual battery. The claimant suffered from depression, paranoid schizophrenia, and moderate mental retardation.<sup>xxxviii</sup> Her psychosis is an element of her schizophrenia.<sup>xxxix</sup> As early as 1993, the claimant sought medical intervention for her preexisting conditions.

***Fair Oaks Hospital***

The claimant was admitted to Fair Oaks Hospital on March 12, 1993. She presented with a history of self-injurious behavior and sexual abuse by her biological father. In the last year, she has regressed. She has demonstrated an increased appetite and weight gain along with patterns of head banging, self-inflicted biting, masturbation, and a lack of dressing or grooming skills. The claimant's mother denies any pattern of aggression and agitation by the claimant. Following treatment, the claimant was discharged on

March 27, 2003, with a diagnosis of developmental disorder, sexual abuse, and severe psychosocial stressors.

***New Horizons of the Treasure Coast***

The claimant presented to New Horizons on June 21, 1993, upon referral by the school district. The claimant was constantly masturbating and was aggressive, violent, exposed herself, and got angry. She was noted to be overweight.

On July 7, 1993, the claimant was actively hallucinating and attempted to strike her therapist. On July 19, 1993, the claimant's mother related that the claimant had an angry outburst at a mall and was screaming and striking her mother and aunt. The claimant's mother further related that the claimant had engaged in inappropriate dancing behavior with a man.

On October 13, 1993, there was noted significant improvement in the claimant as she was very talkative and coherent. However, there was concern that the claimant's mother was not consistent in giving the claimant her medication.

***1994-2000, A Gap in Medical Treatment***

From 1994 to June 2000, there are no medical records indicating the claimant needed or received medical treatment for her preexisting conditions. Dr. Mark Agresti, M.D., testified that the claimant was likely having problems during this period but the claimant's mother was able to manage those problems.<sup>xi</sup> These problems would consist of periods of depression, psychosis, agitation, bizarre or inappropriate behavior, and talking to herself.<sup>xii</sup> The claimant was not having violent attacks or inappropriate rages.<sup>xiii</sup>

***45<sup>th</sup> Street Mental Health Center, Inc., Dr. Sultana***

The claimant next sought medical treatment in July 2000. She presented to Dr. Sultana on July 7, 2000, with a chief complaint of self-injurious behavior as she was biting her hand. She did not speak much and answered questions in one or two words following a delay. The claimant was observed to laugh at times when she is not speaking with others. She reported crying on a daily basis. The mother reported that the claimant began crying after the death of her grandmother on April 24, 2000, whose health problems

precluded previous medical treatment for the claimant. She reported being able to take care of herself by taking showers, and was learning to cook at school. The claimant's mother did not wish to give the claimant medication.

The claimant returned on September 5, 2000, with her mother. The mother reported that the claimant had improved some and had not bit her hand in the past month. She was not talking to herself and was sleeping better. She was diagnosed with self-injurious behavior and moderate mental retardation.

### **September 22, 2000 Medical Treatment *Columbia Hospital***

The claimant presented on September 22, 2000, at Columbia Hospital with a chief complaint of being sexually battered at school. Hospital personnel contacted the police who stated they would be at the school speaking with teachers before coming to the Hospital. Several hours later, the police and a victim service worker came to the emergency room and spoke with the claimant and her family. According to hospital staff, the police had advised that the claimant did not require a rape kit but a general exam by a medical doctor. However, when the doctor went to speak with the claimant, the claimant and her family had left.

### **Claimant's Post Sexual Battery Medical History**

A few days following the sexual battery on September 22, 2000, the claimant reported to Dr. Sultana that she had been raped.<sup>xliii</sup> However, Dr. Sultana referred her to the emergency room as her health center did not treat rape victims.<sup>xliv</sup>

### ***45<sup>th</sup> Street Mental Health Center, Inc., Dr. Sultana***

The claimant returned to Dr. Sultana on October 7, 2000, with a chief complaint of crying and inappropriate laughing spells. She was noted to have a labile mood with hallucinations. She returned on October 31, 2000, appearing agitated and angry. The claimant's mother reported that the medication helped a great deal but that the agitation and anger was the claimant's typical behavior. Although the claimant was not biting herself, she appeared preoccupied and may have been experiencing auditory hallucinations.

The claimant was involuntarily admitted to Columbia Hospital

on February 5, 2001, under the Baker Act, for assaulting her mother. She had become more violent towards her mother and herself. According to the claimant's mother, the claimant may have been responding to the death of her grandmother or to an alleged rape she suffered in September. She was not able to appropriately respond to questions. According to Ms. Hall, the claimant weighed over 200 pounds. Dr. Sultana diagnosed the claimant with psychotic disorder, self-injurious behavior, moderate mental retardation, and difficulty functioning in a group setting. Following medical treatment and therapy, she was discharged a week later.

The claimant returned for a follow-up on April 11, 2001. She did not verbally communicate but shook her head when asked about any behavioral problems. There had not been any angry or violent outbursts. However, she continued to talk to herself. Dr. Sultana added schizophrenia, undifferentiated, to her working diagnosis.

The claimant continued to treat with Dr. Sultana through September 5, 2001. She had improved with less anger outbursts, less depression, but significant weight gain.

On September 22, 2001, the claimant presented by way of Baker Act for striking her mother in the face. The claimant's mother reported that the claimant's behavior had deteriorated dramatically the past week. She was sexually preoccupied, making sexual advances toward school mates, including pulling her breast out and asking males to suck. In addition, the claimant's mother reported that she had to assist the claimant with daily living activities such as toileting. The claimant was also incontinent at times. Medical staff noted that the claimant was answering questions inappropriately and smiling inappropriately. The claimant admitted hearing voices. Following treatment, the claimant was discharged on September 28, 2001.

On October 4, 2001, the claimant returned with her mother. The claimant was laughing uncontrollably without a stimulus.

***Mark G. Agresti, M.D.***

Dr. Agresti first saw the claimant on May 10, 2001. She presented with a chief complaint of being raped on the school bus and at the school. Dr. Agresti noted that the

claimant was an obese female, who possessed poor concentration, low intelligence, and fair memory.

The claimant reported at least five forced sexual encounters with A.B. She reported that on two occasions, A.B. inserted his penis inside her and ejaculated. The claimant's mother reported that the claimant's panties on those occasions were soiled with semen. Since the abuse began, the claimant had gained 40 pounds, had difficulty sleeping, experiences flashbacks of abuse, had become fearful and anxious, had nightmares, had become much more tearful, had become clingier with her mother, had become easily startled, had become more sad, and talked to herself more frequently. Prior to the abuse, the claimant was more functional and independent. The claimant had been treating with Dr. Sultana since July of 2000. The claimant was on medications for her insomnia, agitation, irritability, and aggression. Dr. Agresti formulated a working diagnosis of paranoid schizophrenia, posttraumatic stress disorder, major depression, mild mental retardation, obesity, and rape.

The claimant continued to treat with improvement in her mood with the prescription of additional medication. However, she remained sad, angry, and had flashbacks and nightmares.

She returned on August 23, 2001, with reports of striking her dog and having periods of uncontrollable rage. She continued to treat with Dr. Agresti through August 21, 2002, with continued complaints of flashbacks, nightmares, anger outbursts, aggression, and incontinence. Dr. Agresti noted the claimant's continued discussion of sexually charged topics including her rape.

The claimant returned on September 25, 2002, with her mother. She was more functional and hopeful. She remained in distress concerning her sexual abuse.

The claimant continued to treat with Dr. Agresti through October 9, 2003, with continued periods of regression, flashbacks, rage, and agitation.

The claimant presented on November 11, 2003, with her aunt and mother. She reported feeling better with more appropriate behavior. The claimant continued to treat with

the claimant until October 5, 2004, with some improvement.

***Phillip W. Esplin, Ph.D.***

At the request of the respondents, the claimant submitted to an independent medical examination with Dr. Esplin, a psychologist, on June 4, 2002. Dr. Esplin noted that the claimant's overall affect was flat although he noted an increase in animation at times. Dr. Esplin opined that the claimant appeared to be aware that the sexual abuse allegations were potentially more important to the claimant's mother. He opined that she may be embellishing the scope of events that allegedly occurred in the classroom. Dr. Esplin determined that the claimant has a limited capacity to be an accurate historian and that she is at an increased risk of suggestion by "external factors." Dr. Esplin opined that there was no evidence of acute psychotic processes, schizophrenia, or indications that the claimant was responding to hallucinations or internal stimuli. Dr. Esplin opined that the claimant's mother's reactions to the alleged sexual battery have a greater adverse impact on the claimant than the events themselves. He determined that the claimant would need to be placed in a group home with supervised sheltered workshop experiences with regular visitation by the claimant's mother and aunt. Dr. Esplin determined that the need for the group home was not secondary to the sexual battery. Finally, Dr. Esplin opined that the alleged sexual conduct in the classroom did not appear to reach the level of a psychologically traumatic event.

**Expert Medical Testimony**

***Dr. Sultana, M.D.***

Although Dr. Sultana did not know within a reasonable degree of medical certainty or probability the cause of the claimant's regression, Dr. Sultana opined that the claimant's regression in February 2001 was related to the rape.<sup>xlv</sup> Unfortunately, this reflects some confusion in Dr. Sultana's testimony. For example, Dr. Sultana testified that the claimant's condition had not changed from the date of the first visit in July 2000 to April 2001.<sup>xlvi</sup> Yet, Dr. Sultana noted a significant deterioration in the claimant's behavior over the course of treatment including agitation and aggression that resulted in hospitalization.<sup>xlvii</sup>

Dr. Sultana testified that the claimant would, prior to the

alleged incident, need some type of structured living arrangements.<sup>xlviii</sup> In addition, the claimant, as of July 2000, would have needed a sheltered workshop and supervised care.<sup>xlix</sup> Dr. Sultana testified that the medication could have caused the claimant's weight gain.<sup>l</sup> Dr. Sultana testified that there could be some regression associated with removing the claimant from the school environment.<sup>li</sup>

***Dr. Agresti, M.D.***

Dr. Agresti testified that the claimant's aggression and violence has always been in her history but that it is more severe and frequent following her sexual battery.<sup>lii</sup> Prior to the sexual battery, she was more functional; she was dressing and cleaning herself, and interacting more appropriately at school.<sup>liii</sup> Her need for supervision has significantly increased since the sexual battery.<sup>liv</sup> She has since become unmanageable.<sup>lv</sup> Prior to the sexual battery, the claimant needed a specialized school and someone to be around when she came home.<sup>lvi</sup> A group home prior to the sexual battery may have been beneficial but Dr. Agresti would not have recommended a group home because the claimant was being well managed at home.<sup>lvii</sup> She now needs more intensive care through a residential facility.<sup>lviii</sup>

Dr. Agresti testified that the claimant's posttraumatic stress disorder secondary to the sexual battery is likely a permanent condition because of her prior medical history and her lack of sufficient resources or support network.<sup>lix</sup> Dr. Agresti testified that claimant would need approximately \$132,000 for rehabilitation a year, \$113,000 for living expenses, and \$3600 for the cost of medication for life.<sup>lx</sup> The cost of services would be between \$300,000 and \$10 million.<sup>lxi</sup>

***John Williams, D.Ed., Vocational Expert***

Mr. Williams testified that the claimant, from a functional standpoint, would need the same services before and after the sexual battery.<sup>lxii</sup> In addition, Mr. Williams testified that the claimant's medical needs in terms of assisted living facilities are offered for free through Medicaid.<sup>lxiii</sup>

**Lay Testimony**

***Mary Hall***

The claimant's mother, Ms. Hall, testified that the claimant has changed substantially following her sexual battery. Prior

to the battery, the claimant was more functional. However, Ms. Hall now has to clean the claimant's room, wash her clothes many times because of the incontinence, purchase adult diapers for the claimant, and never leave her alone.<sup>lxiv</sup> She no longer cooks or dresses herself.<sup>lxv</sup> Her anger outbursts are more severe.<sup>lxvi</sup> She curses, has anxiety attacks, and sleeps for many hours.<sup>lxvii</sup> She has gained approximately 150 pounds.<sup>lxviii</sup>

### **Proceedings History**

In October 2002, a 6-day jury trial was conducted in the Circuit Court of the Fifteenth Judicial Circuit of Palm Beach County. The jury returned a verdict for the claimant in the amount of \$256,941. In addition, the respondent was assessed taxable costs in the amount of \$16,475.16. The jury awarded \$6,941 in past medical expenses, \$200,000 for future medical expenses, and \$50,000 for past pain and suffering. Significantly, the jury did not award any damages for future pain and suffering. No appeal was taken and the time for filing an appeal has passed. The school district tendered \$100,000 pursuant to §768.28, F.S.

### **CONCLUSIONS OF LAW:**

The claimant bears the burden of proof for each element of the claim of negligent supervision based on a preponderance of evidence. Negligence has four elements:

#### **Duty**

The Palm Beach County School District is required to provide for the proper accounting for all students of school age, for the attendance and control of students at school, and for the proper attention to health, safety, and other matters relating to the welfare of students.<sup>69</sup> As employees of the school district, teachers and principals share the legal duty to properly account for or supervise all students at the school. In the instant case, the claimant was in attendance on September 22, 2000 at Dwyer High School, the date of the incident. The Palm Beach County School District is required to properly supervise the claimant. In addition, the principal and teachers at William T. Dwyer High School shared that legal duty to properly supervise the claimant. This legal duty is not contested by the respondent.

#### **Breach**

The claimant has proved by a preponderance of the evidence that the respondent breached its legal duty to

properly supervise the claimant. First, the school district, through its employees, failed to supervise or properly supervise the claimant. Second, the school district, through its employees, knew that A.B. was a sexual predator, and could have reasonably foreseen that the sexual battery could have occurred.

The school failed to properly supervise the claimant. According to the claimant's IEP, the claimant needed constant supervision. However, Mr. Rolph left his classroom of eight students, including the claimant and the perpetrator, unsupervised for a few minutes.<sup>70</sup> This lack of supervision provided a window of opportunity for the sexual battery to occur. Mr. Rolph's testimony that he did not leave his classroom and that Ms. Evert was in his classroom the entire time is not credible. Following the period of unsupervision, the school did not properly supervise the claimant. Notwithstanding that a teacher was present in the classroom, the sexual battery continued or occurred. This indicates a lack of adequate supervision. Finally, the school principal conducted an investigation and determined that another window of opportunity occurred for the sexual battery when the students were sitting at a computer.<sup>71</sup>

The failure to properly supervise the claimant is exacerbated by the knowledge or failure to know that A.B. was a sexual predator. The school district knew or should have known that A.B. needed additional supervision due to his history of inappropriate sexual conduct prior to September 22, 2000. The school principal's investigation revealed that some of the teachers involved knew of A.B.'s prior sexual battery history and actually labeled him a sexual predator.<sup>72</sup> In addition, the school district was in possession of his disciplinary records which indicated that he had been suspended on at least three occasions for sexual battery or sexual harassment at his previous school.<sup>73</sup> Accordingly, the evidence is irrefutable that the school was on notice that a sexual battery could occur without adequate supervision.

### **Proximate Cause**

The school district's breach of its duty to properly supervise the claimant and the perpetrator was the sole, precipitating direct cause of the sexual battery committed on the claimant. Both the claimant and the perpetrator have cognitive abilities well below their stated ages. There are no intervening

causes. The claimant has successfully demonstrated by a preponderance of the evidence that but for the school district's negligence the sexual battery would not have occurred.

### **Damages**

The claimant has successfully demonstrated by a preponderance of evidence that the claimant has suffered a sexual battery and endured damages as a result of the school district's negligence. In particular, the claimant has suffered an exacerbation of her prior medical conditions.

#### A.B. sexually battered the claimant on school grounds

I find that A.B. sexually battered the claimant to include fondling and sucking her breasts, digitally penetrating the claimant, and forcing the claimant to place her hand on his penis on September 22, 2000. I accept that the claimant has proven by a preponderance of the evidence that such sexual battery had occurred. In particular, the claimant relies on the claimant's statements to her mother and medical providers, the confession of A.B. under interrogation by the police, and the eyewitness testimony of D.R., another ESE student present in the classroom. While each of these elements may be challenged on their own, the totality of the facts demonstrates that the claimant was sexually battered by A.B. on school grounds on September 22, 2000. The ability of certain witnesses, particularly of the claimant, A.B., and D.R., to provide an accurate account is suspect.<sup>74</sup> However, there is sufficient corroborating evidence present to demonstrate the accuracy of the sexual battery accounts including the cut pants, the actions of the claimant's mother, and the expert testimony of the medical providers, to provide a sufficient indicia of witness statement reliability that the sexually battery did occur. In addition, the eyewitness testimony is consistent reducing the likelihood that a version of events was suggested by external factors. Finally, I accept the testimony of Dr. Sultana that the claimant did report the rape in September 2000 to Dr. Sultana, notwithstanding that this fact is not recorded in her medical records.<sup>75</sup>

I find that a sexual battery as opposed to a vaginal rape occurred. The only evidence offered by the claimant to support penile penetration of the claimant is the fluids allegedly found in the claimant's vagina and pubic hairs.<sup>76</sup> However, Detective Boyle testified that he did not receive a

complaint of penile penetration. Accordingly, the police did not instruct the hospital to conduct a rape kit examination. The claimant's mother, upon discovering the alleged fluids, did not return to the hospital and demand a rape examination. The claimant's testimony concerning her demands for a rape examination do not comport with the police or the hospital records. Finally, the claimant did not save the undergarments so they could be tested. Accordingly, the claimant has not met her burden in establishing by a preponderance of the evidence that the claimant was vaginally raped. In any event, vaginal penetration is not a condition precedent for establishing a claim for sexual battery.<sup>77</sup>

The claimant has preexisting psychological problems

Having met the burden of establishing that a sexual battery has occurred, we must now address the issue of damages as a result of the battery. The claimant had psychological problems prior to the sexual battery. As early as 1993, the claimant suffered from depression, self-injurious behavior, obesity, inappropriate sexual conduct or exposure, aggression, hallucinations, and responding to internal stimuli.<sup>78</sup> Accordingly, the evidence is irrefutable that the present sexual battery did not cause these psychological problems. Dr. Agresti testified that the claimant suffered from periods of depression, paranoid schizophrenia, and moderate mental retardation.<sup>79</sup> These conditions are permanent in nature.<sup>80</sup>

Exacerbation of previous conditions

However, Dr. Agresti also testified that her underlying psychological problems, including her aggression and violence, became much more severe and frequent following her sexual battery.<sup>81</sup> According to Dr. Agresti, the claimant became less manageable and needed more medical intervention and treatment.<sup>82</sup>

Ultimately, Dr. Sultana testified that, although she did not know within a reasonable degree of medical certainty or probability the cause of the claimant's psychological regression, the claimant's regression in February 2001 was related to the rape.<sup>83</sup>

The claimant's need for medical treatment significantly increased to the point where she needs a group home or

assisted living facility to provide appropriate care.<sup>84</sup> Estimated costs for this intervention and treatment were well within the jury's finding for future medical treatment. Notwithstanding that many of these services are provided for free under Medicaid, the record reflects that the claimant has been on a waitlist for those services for approximately three years.<sup>85</sup>

Accordingly, I find that the claimant has met her burden of demonstrating that the sexual battery has caused an exacerbation of the claimant's underlying psychological condition and that this exacerbation requires psychiatric treatment and intervention.

ATTORNEYS FEES:

Attorney's fees are limited to 25 percent of recovery pursuant to §768.28, F.S. The claimant's attorney has acknowledged this limitation through his contract with the claimant.

COLLATERAL SOURCES:

The claimant has been tendered \$100,000 in satisfaction of the sovereign immunity cap pursuant to §768.28, F.S. The claimant submitted a Medicaid waiver on July 31, 2001, to participate in the Developmental Services Home and Community-Based program. However, the Department of Children and Families indicated that there were insufficient funds and an available opening to comply with the waiver.

RECOMMENDATIONS:

I recommend approval of the claim bill with a title amendment to eliminate a reference to a "vaginal rape" as opposed to a "sexual battery" to correspond with the correct terminology in the criminal code.

In all other aspects, I recommend that Senate Bill 22 (2005) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Lowell D. Matthews, Jr.  
Senate Special Master

cc: Senator Walter G. "Skip" Campbell, Jr.  
Faye Blanton, Secretary of the Senate  
House Claims Committee

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- <sup>1</sup> Probable Cause Affidavit of Detective Boyle
- <sup>2</sup> Id.
- <sup>iii</sup> Id.
- <sup>iv</sup> Id.
- <sup>v</sup> Id.
- <sup>vi</sup> Confession of A.B., p. 13.
- <sup>vii</sup> Id.
- <sup>viii</sup> Id. at p. 19.
- <sup>ix</sup> Id.
- <sup>x</sup> Probable Cause Affidavit of Detective Boyle
- <sup>xi</sup> Id.
- <sup>xii</sup> Deposition of Ms. Evert, p. 22, lines 5-8.
- <sup>xiii</sup> Id. at p. 23, lines 22-24.
- <sup>xiv</sup> Id. at p. 26, line 10, to p. 27, line 16.
- <sup>xv</sup> Id. at p. 39, lines 13-15.
- <sup>xvi</sup> Id. at p. 49, lines 3-4 and p. 50, line 1.
- <sup>xvii</sup> Id. at p. 50 lines 17-22.
- <sup>xviii</sup> Id. at p. 65, lines 1-4.
- <sup>xix</sup> Id. at p. 77, lines 8-12, p. 81, lines 11-15.
- <sup>xx</sup> Deposition of Mr. Rolph p. 16, lines 20-22.
- <sup>xxi</sup> Id. at p. 23, lines 13-21.
- <sup>xxii</sup> Deposition of Ms. VanArsdale, p. 40, lines 22-25; p. 41, lines 3-4.
- <sup>xxiii</sup> Principal VanArsdale's investigative notes.
- <sup>xxiv</sup> Deposition of Detective Boyle, p. 11, lines 9-25.
- <sup>xxv</sup> Id. at p. 12, lines 1-17.
- <sup>xxvi</sup> Deposition of Detective Boyle, p. 23, lines 8-11.
- <sup>xxvii</sup> Deposition of Mary Hall, p. 29, lines 17-20.
- <sup>xxviii</sup> Id. at p. 86, lines 24-25.
- <sup>xxix</sup> Id. at p. 58, lines 1-4.
- <sup>xxx</sup> Id. at p. 124, lines 1-7.
- <sup>xxxi</sup> Id. at p. 125, lines 13-22.
- <sup>xxxii</sup> Deposition of Ms. Davis, p. 69, lines 15-22.
- <sup>xxxiii</sup> Id.
- <sup>xxxiv</sup> Id. at p. 84, lines 4-6.
- <sup>xxxv</sup> Id. at p. 69, lines 15-22.
- <sup>xxxvi</sup> Id. at p. 73, line 18 to p. 74, line 22.
- <sup>xxxvii</sup> Id. at p. 96, lines 23-25.
- <sup>xxxviii</sup> Deposition of Dr. Agresti, p. 51, lines 23-24; and p. 52, lines 7-9.
- <sup>xxxix</sup> Id. at p. 52, line 2.
- <sup>xl</sup> Id. at p. 47, lines 8-14.
- <sup>xli</sup> Id. at p. 50, lines 21-25.
- <sup>xlii</sup> Id. at p. 47, lines 8-14.
- <sup>xliiii</sup> Trial testimony of Dr. Sultana, p. 63, lines 11-15.
- <sup>xliiv</sup> Deposition of Dr. Sultana, p. 13, lines 7-10.
- <sup>xliv</sup> Id. at p. 66, line 16, through p. 68, lines 5-17.
- <sup>xlvi</sup> Id. at p. 74, lines 19-21.
- <sup>xlvii</sup> Id. at p. 91, lines 9-18.
- <sup>xlviii</sup> Id. at p. 30, lines 5-9.
- <sup>xlix</sup> Id. at p. lines 8-10.
- <sup>l</sup> Id. at p. 98, lines 14-24.
- <sup>li</sup> Id. at p. 104, lines 11-20; and Trial Testimony of Dr. Sultana, p. 58, lines 5-12.

<sup>lii</sup> Deposition of Dr. Agresti, p. 75, line 21, through p. 76, line 2.

<sup>liii</sup> Id. at p. 51, lines 1-9.

<sup>liv</sup> See id. at p. 82, lines 22-23.

<sup>lv</sup> Id. at p. 76, line 11-12.

<sup>lvi</sup> Id. at p. 82, line 24, through p. 83, line 2.

<sup>lvii</sup> Id. at p. 89, line 10, through p. 90, line 19.

<sup>lviii</sup> Id. at p. 83, line 7-14.

<sup>lix</sup> Id. at p. 139, line 24, through p. 140, line 5.

<sup>lx</sup> Trial testimony of Dr. Agresti, p. 43, lines 18-21.

<sup>lxi</sup> Id. at p. 43, lines 6-12.

<sup>lxii</sup> Deposition of Mr. Williams, p. 105, lines 2-8.

<sup>lxiii</sup> Id. at p. 110, lines 15-21.

<sup>lxiv</sup> Deposition of Mary Hall, p. 115, lines 5-22.

<sup>lxv</sup> Id. at p. 116, line 5; and p. 118, lines 1-2.

<sup>lxvi</sup> Id. at p. 121, lines 15-17.

<sup>lxvii</sup> Id. at p. 122, lines 13-18.

<sup>lxviii</sup> Id. at p. 123, lines 7-9.

<sup>69</sup> Sections 1001.42(6)(a), and 1003.31, F.S., and ss.1006.07-1006.09, F.S.

<sup>70</sup> Deposition of Ms. Evert, p. 27, lines 10-16.

<sup>71</sup> Investigative notes of Principal Ellen VanArsdale

<sup>72</sup> Id.

<sup>73</sup> A.B. was suspended on January 29, 1998, for sexual battery, sexual harassment, and a sexual offense. A.B. was suspended on September 15, 1998, for battery and sexual harassment. A.B. was suspended on November 9, 1998, for sexual harassment and disrespectful language. A.B. was suspended on March 15, 1999, for insubordination and sexual harassment.

<sup>74</sup> See Deposition of Dr. Bush, p. 37, lines 1-8.

<sup>75</sup> See Trial testimony of Dr. Sultana, p. 55, lines 3-8.

<sup>76</sup> In addition, the aunt testified she heard the claimant's mother talking about the alleged fluid while bathing the claimant following the hospital visit. See Deposition of Lillie Mae Davis, p. 96, lines 23-25. This, of course, is hearsay testimony offered to show that indeed the fluid was present rather than Ms. Hall's reaction to same.

<sup>77</sup> See s. 794.011(1)(h), F.S.

<sup>78</sup> Medical records of Fair Oaks Hospital dated March 12, 1993 through March 27, 2003. Medical records of New Horizons of the Treasure Coast dated June 21, 1993 through October 13, 1993.

<sup>79</sup> Deposition of Dr. Agresti, p. 51, lines 23-24.

<sup>80</sup> Id. at p. 52, lines 7-9.

<sup>81</sup> Id. at p. 75, line 21 to p. 76, line 2.

<sup>82</sup> See id. at p. 76, lines 11-12; and p. 82, line 22, to p. 83, line 14.

<sup>83</sup> Deposition of Dr. Sultana, p. 66, line 16, to p. 68, line 22.

<sup>84</sup> Deposition of Dr. Agresti, p. 83, lines 7-14.

<sup>85</sup> Correspondence from the Department of Children and Families to Mary Hall dated July 31, 2001.