



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

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DATE	COMM	ACTION
1/30/08	SM	Unfavorable
4/01/08	ED	Favorable

January 30, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 40 (2008)** – Senator Frederica Wilson
HB 1039 (2008) – Representative Carlos Lopez-Cantera
Relief of the Estate and the Family of Jaime Gough

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM FOR \$1 MILLION IN FUNDS OF THE MIAMI-DADE COUNTY SCHOOL DISTRICT FOR THE STABBING DEATH OF JAIME GOUGH, A STUDENT, AT SOUTHWOOD MIDDLE SCHOOL IN 2004.

FINDINGS OF FACT:

Introduction

A joint hearing with the House Special Master was held on this claim on December 22, 2006, at the Division of Administrative Hearings, Tallahassee, Florida, and again on December 14, 2007, by videoconference between Tallahassee and Miami, Florida.

The Claimant and His Death

Jaime Gough was a 14-year-old gifted eighth grade student attending Southwood Middle School in Pinecrest, Florida, a Miami-Dade County magnet school. An excellent student who played violin in the school orchestra, Jaime had been accepted to attend a high school International Baccalaureate program.

On February 3, 2004, Jaime was fatally stabbed allegedly by a fellow classmate Michael Hernandez, also 14 years old, in

a bathroom stall on the second floor of the school. Jaime died of 41 stab wounds. The criminal case against Michael Hernandez is pending.

After Jaime was stabbed, Student B. G. entered the bathroom and apparently saw Jaime's legs protruding under the stall door. He left the bathroom and told a friend who was waiting outside the bathroom what he had seen and also told a security person. He and his friend reentered the bathroom, he estimates two seconds later, and his friend opened the stall door and they saw Jaime's slouched and bloody body. This time the two screaming boys told the security person what they had seen and the security person told them to remain outside as he entered the bathroom.

Jaime was the son of Jorge and Maria Gough, who have been married for 17 years. He is also survived by his 13-year-old sister, who has received a scholarship from a small private school so that she does not have to attend the same school where her brother was killed or any other public school. Jorge Gough works at a marina cleaning and servicing boats. Maria Gough works as a housekeeper.

Settlement Agreement of 2005 and Addendum of 2007

In a pre-suit settlement agreement, dated August 17, 2005, the parties agreed that the Claimants would receive \$1.7 million, of which \$700,000 (\$200,000, the statutory limit, and \$500,000 in excess insurance coverage) has been paid. The School Board agreed not to oppose the claim bill and "to affirmatively assist Claimants in their application to the Legislature" but it "denied any liability." The School Board also represented in the agreement that it desired "to limit its exposure to a judgment. On November 19, 2007, in an Addendum to Settlement Agreement and Stipulation for Agreed Florida Claim Bill, requiring the Claimants to dismiss a pending public records lawsuit, the School Board admitted liability.

CLAIMANTS' POSITION:

The Claimants assert that the Miami-Dade County School Board was negligent for (1) failing to install metal detectors; (2) failing to take disciplinary action against Michael Hernandez for his past behavior and to recognize his propensity for violence; and (3) failing to adequately train hall monitors.

Evidence in Support of Claimants' Position

The President of the National Institute of School Safety discussed, at a School Board meeting in 1999, a pilot program to use metal detectors and/or x-ray machines that was proving successful in decreasing criminal incidents in schools in Chicago and Washington, D.C. At the end of the presentation, it was recommended that the School Board earmark funds for a similar program in three secondary schools in Miami-Dade County.

During the investigation into Jaime's death, several students told of seeing Michael viewing computer websites depicting pornography, decapitated people, vampires, ". . . skeletons and people being hanged and dead people and a baby getting killed." One student indicated that a teacher once saw Michael viewing a website that she indicated, in some unspecified way, that she did not like. One teacher indicated that Michael was weird.

Regarding Michael's behavior and disciplinary record at school, one student said that "the only trouble he's ever got into is because of talking." Another said that Michael punched a girl and left a red mark on her and was called out of computer class by security people.

Student R. W. said he would hang out with Jaime, Michael, and A. M. in the mornings before school started. The four of them would sneak into the school and go upstairs to drop off Jaime's violin and, by that time, "it was almost time for the kids to come up, so we just started walking to class." A. M. said Michael brought a screwdriver to a football game and poked him and Jaime with it, but did not injure them. A.M. also saw Michael with a four or five-inch knife at school the previous year. Another student said Michael told him that he always had a knife in his backpack but that he never saw one.

SCHOOL BOARD'S POSITION: In the 2005 settlement agreement, the School Board "denied any liability whatsoever for this incident." In the Addendum of 2007, the parties agreed that the claim bill should be amended to substitute the following language for the third whereas clause: "The parties stipulate to a factual basis to support conclusions of liability against the School Board and to the agreed upon amount of damages for purposes of passage of this Claims Bill." . . ."

Evidence in Opposition to Claimants' Position

There is no evidence whether the School Board ever earmarked funds for the pilot program or ever installed metal detectors in some secondary schools in Dade County. There is also no evidence that the School Board appropriated funds for or ordered the installation of metal detectors or X-ray machines at Southwood Middle School.

The facts that: 1) one teacher some how expressed disapproval of a website he viewed; 2) another thought he was "weird"; 3) he talked too much in class sometimes; and 4) he once punched a girl in computer class are factually insufficient to give actual or constructive notice that Michael Hernandez would become violent towards his apparent friend, Jaime.

CONCLUSIONS OF LAW:

The failure of the School Board to install metal detectors cannot be a basis for a finding of negligence. The legislative decision of the governmental entity to appropriate funds to build, expand or modernize a facility is immune from liability for negligence. Trianon Park Condominium Ass'n v. City of Hialeah, 468 So.2d 912 (Fla. 1985).

It was not foreseeable that Michael was dangerous based on what school personnel knew of his behavior. The failure of security personnel to effectively bar all access to the school prior to the official start of the school day, absent a showing of actual or constructive knowledge that the boys were sneaking in and that one of them was dangerous, also fails to constitute negligent supervision. The failure of the security guard to respond before the two boys returned to the bathroom, based on the boy's description of the time frame, also fails to demonstrate negligence or that quicker action could have saved the loss of Jamie's life. Guns, Violence, and Schools: The Results of School Violence--Litigation Against Educators And Students Shedding More Constitutional Rights at The School House Gate, 46 Loy.L.Rev. 389 (Summer 2000).

ATTORNEY'S AND LOBBYIST'S FEES:

Attorney's fees are set at 25 percent, in compliance with s. 768.28(8), F.S., or \$250,000, for a \$1,000,000 award. The lobbyist's fee is an additional 6 percent, or \$60,000. Costs are not included in the fees.

LEGISLATIVE HISTORY:

This is the second year that a claim bill has been submitted for Maria Gough and Jorge Gough, as a result of the death of their son, Jaime Gough.

RECOMMENDATIONS:

For the reasons stated above, I recommend that Senate Bill 40 (2008) be reported UNFAVORABLY.

Respectfully submitted,

Eleanor M. Hunter
Senate Special Master

cc: Senator Frederica Wilson
Representative Carlos Lopez-Cantera
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Tom Thomas, House Special Master
Counsel of Record