

SUMMARY OF INVESTIGATION FOR SUNNYVALE I.S.D.

Harold D. Jones
Anderson + Jones, pllc
August 6, 2008

1. Who are you and your firm; how are you qualified to head up this investigation?

I am a lawyer. I have practiced law for 17 years. I have been Board Certified in Labor and Employment Law for 12 years—I was certified the first year I was eligible. I was a National Merit Scholar at Abilene Christian University from 1984-1988 and a Regents Scholar from 1988-1991 at Texas Tech University School of Law (where I was a published editor on the law review). My wife, my three children, and I live in North Dallas.

I have served in an investigative capacity on dozens of occasions for over fifteen school districts and ten municipalities, many of them complicated and publicized.

After being a partner at another firm for ten years, I helped form Anderson + Jones PLLC in 2005. I am AV-rated by Martindale-Hubbell. I have been named a Texas Super Lawyer these past two years by Texas Monthly. Anderson + Jones PLLC is a full-service law firm with eight full-time attorneys. The associate I selected to work with me on this investigation is Ashley Goodwin. She is a litigator with specialized interrogation training and has worked with sexual abuse victims previously. She possesses the right temperament and intelligence for this investigation, in my assessment.

2. Did you or anyone in your firm have any ties to anyone in Sunnyvale ISD prior to beginning this investigation?

No. We had never represented Sunnyvale ISD, nor had we ever done an investigation for Sunnyvale ISD. We had never worked with any of the administration or staff when they were at other districts. I knew no-one in the District. I have only known one person who lived in Sunnyvale. My associate knew no-one from Sunnyvale.

3. When did you begin the investigation?

June 2, 2008.

T 972.789.1160
F 972.789.1606

One Galleria Tower
1355 Noel Road, Suite 1900
Dallas, Texas 75240
www.andersonjoneslaw.com



4. Who hired you?

The District itself, through Superintendent Doug Williams.

5. How were you chosen?

My understanding is that Doug Williams obtained my name from a retired superintendent who recommended me as an independent investigator.

6. Who did you work for?

The District. Only the District. We did not work for any particular person or part of the District. Our guiding principles were to uncover the truth and make recommendations—in the best interest of the District and the District’s children.

7. What questions were you supposed to answer?

We were asked to investigate (a) the truth about allegations of inappropriate student-on-student actions in the Middle School athletic program; (b) whether the initial investigation led by ex-Principal Diana Freeman was effective; (c) the quality and quantity of flow of information within the District once allegations surfaced; (d) the effectiveness of the District’s response to the problem; (e) factors that may have led to the problem; (f) recommendations about accountability for the past; and (g) recommendations about future steps to minimize the risk of reoccurrence.

8. What were your answers to those questions?

In short form, (a) there was extremely inappropriate behavior in the athletic program; (b) the initial Freeman investigation was ineffective; (c) the flow of information within the District was poor; (d) *nevertheless, the District’s remedy was effective*; (e) there were several factors that contributed to the problem including poor athletic department leadership, a difficult locker room configuration, and insufficient discipline of bullies; (f) we made numerous personnel and non-personnel recommendations; and (g) we are optimistic that the District has now taken (and will continue to take) the right steps to minimize the risk of reoccurrence.

9. What type of knowledge did you have about the situation before you began the investigation?

Absolutely none.

10. How did you choose your witnesses?

Purely by relevance—and without any interference by the District. Our first witness was Doug Williams, and his answers to our questions led us to Zach Hobbs, Diana Freeman, Mike Krone, and on and on. In the end, we spoke to dozens of people, including students, parents, teachers, staff, coaches, administrators, and IT experts. No-one led us to any particular person. No-one suggested a particular order.

We had some practical limitations due to the school year ending and the desire (not necessarily the absolute need) for parental consent. In addition, we respected the request by the Sheriff’s Department that we be sensitive about questioning potential victims on the same day or near to the same day that they had done so.

11. How did you conclude who you believed?

Fortunately, the choice between competing stories was not as critical to this investigation as it is usually. This is because we were able to confirm the initial issue rather easily: that there had indeed been inappropriate conduct in the athletic department of the middle school—the aggressors confirmed many of the allegations, although in some cases they did so to deflect blame. Still, there was a clear, repetitive confirmation of sexually intimidating and violent behavior in the locker room during first period P.E. athletics.

We did have to weigh credibility at times when interviewing staff, particularly coaches, about information flow, timelines, and actions taken or not taken by other employees. Also, some of the denials of aggressors strained our credulity. However, we were able to increase our ability to weigh truth through the review of thousands of e-mails and other documents, and unfettered access to the facilities. To the extent we had to decide between stories, we used our best and experienced judgment in interrogation techniques, looking for both internal and external consistency, body language clues, common sense, and knowledge of the “rest of the story.”

12. Who did you use as liaison in the District?

Newly hired High School Principal David Johnson, since he was not involved in the events at issue, having been hired after the initial investigation and remedy.

13. How did you conduct your interviews?

Almost all the interviews were conducted on school premises—in either the principal’s or assistant principal’s offices. Every effort was made through District liaison to obtain parental consent for every student interview. Every witness was assured that they could leave or not answer questions, should they choose to do so. The interviews were voluntary.

Both my associate and I took notes of each interview. After interviews, we compared notes and, with very few immaterial exceptions, they matched almost identically. The interviews ranged in length from 15 minutes or so, up to an hour or more.

14. Did you do any inspections?

Yes. We inspected the middle school locker room on multiple occasions. We took approximate measurements. We inspected every nook and cranny of the locker room. We inspected all the rooms and passageways near the locker room.

We inspected the playing fields. We inspected the gym. We inspected the cafeteria and student patterns from cafeteria to locker room and gym at various times. We inspected the hallways. We inspected various classrooms.

We walked the routes of specific coaches from class to locker room.

15. Did you review documents?

We inspected blueprints and plans. We reviewed yearbooks. We reviewed Board meeting notes. We reviewed thousands of e-mails between personnel as well as outside e-mailers communicating with District personnel. We reviewed crisis plans. We reviewed Principal Freeman’s old office and computer. We reviewed personnel files and discipline files. We reviewed criminal records.

We reviewed Facebook and Myspace pages. We reviewed policies and handbooks. We reviewed student statements. We reviewed calendars.

16. Did you have restrictions in your investigation?

None, other than restrictions from parental consent issues or restrictions we placed on ourselves out of decency or time considerations.



17. How long did your investigation last?

To some extent it is still going on, although we are no longer gathering facts. The fact-finding portion of the investigation happened in two “waves.” The first was in June—and lasted almost all of that month.

The second happened in July, after the Board asked us to delve more deeply into locker room supervision issues, which required us to draw distinctions between staff/teacher performance and responsibility. Since that time, we have remained as a resource, completing and refining recommendations, findings, and reports.

18. Did you find that anything bad happened?

Yes. We found that behavior in the middle school athletic program crossed some very important lines.

19. When did you find that out?

Early in our investigation – in June. We obtained corroboration from the aggressors themselves, who either admitted to conduct they committed, or consistently named the same set of boys as repeat aggressors and described their bad actions. The Sheriff’s Department was already fully informed of the allegations—thus, our reports went only to the Board.

20. What kind of bad things happened?

Sunnyvale is a small, somewhat close-knit community. For two reasons, I am reluctant to go into details of the worst behavior. First, I am mindful of the effect it might have on the victims of harassment, as well as their families. Second, there may be criminal proceedings for some of the aggressors, and they should have a fair trial without prejudice.

That being said, it does appear that on repeated occasions, groups of 8th graders physically beat up 7th graders in athletics P.E. and forced them to endure harassment of a very severe nature, all the way from fully-clothed group “humping” from behind (pelvic thrusts) up to attempted non-genital penetration (still clothed) of multiple 7th graders by groups of 8th graders on multiple occasions. We did *not* receive any reports of attempted *unclothed* penetration.

Disturbingly, the aggressors used the word “rape” to describe their actions, “sacrifice” to describe their victims, and (with discrepancies about who was most to blame and who the ringleaders were) admitted the attempts to us.

It is unclear if any of these attempts were successful. Guilt or innocence of these exact allegations is for the criminal process to determine. However, even the *attempts* to penetrate and the humping behavior violates every acceptable standard of conduct.

21. Who did these things?

We found that a core group of five boys was invariably involved in the misconduct, and that several other boys may have facilitated it as well.

22. Did any of these kids have a history of serious misbehavior?

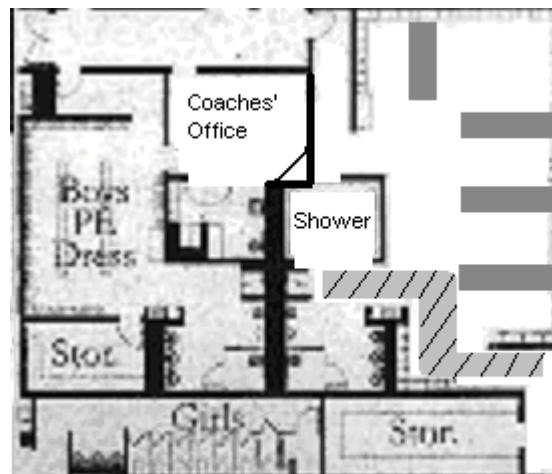
Four of the five did.

23. Who were the victims?

It is unclear how many 7th graders (or 8th graders) suffered from this type of outrage. It appears the number of 7th graders who were at least beat or slapped is quite large, but the number who suffered attempted penetration or penetration itself may be less than five.

24. Where did the bad acts occur?

The reports are that the acts almost always happened in the western part of the athletic locker room as shown here:



There was one report of a “coning” in the gym. There was another report of a “humping” on the field.



25. Are you sure?

We are sure that even the boys accused of wrongdoing admit to (and confirm others' involvement in) sexually and violently inappropriate actions against other students. The allegations are credible; and the only issue is how severely the victims were hurt.

26. How many kids are in that period?

There appears to be up to forty-eight (48) 8th graders and as many as twenty-seven 7th graders at various times in the first period athletics, for a "high" population of approximately 76 kids.

27. Where was the supervision?

During the majority of first period athletics, coaches were with or around the students. However, there were dressing-out times in the beginning and end of the period when parts of the locker room were unsupervised; coaches were in their office nearby. The dilemma the coaches faced was that it could be considered inappropriate to "watch" kids changing. On the other hand, they should have been more present in the locker room.

28. Was there something about the locker room that made it hard to see and hear things?

Yes, the configuration created blind spots. This is being changed. Also, if the coaches' office door was closed, it was almost impossible to hear sounds distinctly in the locker room.

On June 4, 2008, Principal Johnson and I closed the door in the coaches' office and had another person stand in the place where some abuse apparently occurred, and, in an ascending volume, yell out. Even at the highest volume, Johnson and I could barely hear the sound. This was in a completely quiet locker room without anyone in it, with full echo and a lack of music or lockers opening and shutting or the noise of having kids moving around and talking.

29. How was the scheduling of coaches set up?

Scheduling of coaches in the locker room depended largely on the sport season. During football season (the first third of the year), scheduling seemed more organized and coherent, and the same is true of off-season (the last third).

However, the coaches' scheduling during basketball appears to have been disorganized and difficult to recreate. There was a lack of documentation and order in the system throughout the year, but especially so in the basketball season, when it appears the majority of the problems occurred.

The ultimate responsibility to set up an orderly, intelligible scheduling system for coaches to supervise kids in the locker room was the Athletic Director's.

30. Were there policies in place that outlawed this behavior?

Yes. FNCC (LEGAL) prohibits hazing. Policies DH, FFG, and FFH forbid harassment. The Code of Conduct and Student Handbook each outlaw harassment, bullying, and hazing. The District's Title IX policies prohibit sexual harassment and set up procedures for reporting and investigation.

While some of these policies could be streamlined or made more user-friendly, the policies were not a major part of the problem: they were sufficient to prohibit this behavior.

31. When did the District first find out about this problem?

April 13, 2008. A parent made the initial report to Superintendent Doug Williams of "hazing" in the locker room on April 13, 2008. The parent made that report by telephone. Williams told Freeman and Hobbs to investigate and report back to him. Williams also informed Krone of the parent's report. Freeman decided on the format and scope of the investigation, which took place from April 14th to 15th.

We have been unable to find any evidence that any student complained or reported sexual harassment in the first period athletics locker room to any employee at the District prior to April 13th.

32. How did they investigate it?

Then-Principal Diana Freeman was given this responsibility. Freeman headed up the investigation. Written statements were obtained by seven boys (three from 7th grade, four from the 8th grade). Freeman did not make a written report back to Williams. Nor did she pass on the written statements to Williams (until much later, when a criminal investigation had been launched). Freeman did not direct any sharing of the statements gained.

Freeman concluded and reported orally to Williams that the situation was indeed merely "normal bullying."

Freeman’s investigation was not well done at all.

33. What is “normal bullying” and does the District accept “normal bullying?”

The District does not want any bullying in its schools. “Normal” bullying is not a District concept—it is Freeman’s faulty conclusion. Clearly, even though Freeman concluded that the bullying in the locker room had not crossed lines into sexual assault or sexual harassment, and described it (erroneously) as merely “normal bullying,” the District reacted fast and worked very hard (and successfully) to eradicate the problem they thought they had.

Obviously, there *are* important lines that demarcate a distinction between a simple shove or push by a larger kid on a smaller kid, on one end of the bullying spectrum, and “group, forced humping” with attempted penetration, on the other end. That being said, the District is committed to eradicating bullying, to the extent it is able, from the District, through training, discipline, recognition, and supervision.

34. What did the District do in response to the Freeman report?

The coaches enacted a solution that removed a number of 8th graders from the athletics locker room and all athletics for three to four weeks, dependent on their good behavior. Evidently, there were others that were “on the bubble.” The coaches took more kids out of the period than were accused of the hazing/humping issues. Any kid with a discipline problem in any class (not just athletics) was removed from the locker room and lost all athletic privileges.

Coach Wright relentlessly followed up with the faculty and repeatedly e-mailed them asking for any discipline problem with any of his athletes, no matter how small. Coach Arden followed suit with his 9th grade students even though no 9th graders were not involved in the hazing, and indeed did not even have class at the same time. The suspension from athletics lasted three to four weeks, depending on good behavior.

35. Did the District’s initial response prevent additional occurrences?

Yes. *Thankfully, everyone we talked to – including the victims – confirmed that the “sexual intimidation” behavior in the locker room was stopped by the expulsions and increased supervision.* As one victim put it: “I was happy they were gone. It did stop the problem. All the other 8th graders are scared of getting kicked out of athletics.”

36. Who did you find to be at fault?

Obviously, the primary fault lies with the aggressors who did the bullying and crossed those important lines of sexual, physical, and psychological dignity. In some cases, there may be shared responsibility for creating this lack of respect for others on families-of-origin of the aggressors, although this can become complicated.

However, the District wanted our assessment about how they could improve and necessarily this included our informed and independent judgment about personnel and their relative performance in keeping kids safe. We found that the Athletic Director failed to exercise the right level of leadership to create and keep the athletics locker room an open, educational environment free of harassment. Specifically, Athletic Director Krone's complete lack of a written or oral plan to schedule coaches seamlessly in the locker room and hold them accountable for doing that was a critical lapse.

Other employees have been given specific goals for improvement in communication and supervision to lessen the chances for harassment, but employees at positions above Krone were entitled to rely on him leading the coaches and the coaches below him were entitled to rely on his leadership. His leadership was lacking in critical ways. The leader of the locker room going forward could not be the same leader who let this happen on his watch.

37. How did you distinguish between the responsibilities of the various people?

The roles of the employees dictated their responsibilities. The location and type of harassment made certain areas of responsibility relevant. The locker room and supervision of the locker room was the key issue. We did not find proof that any employee literally saw or heard the worst kinds of abuse. Thus, we were left to evaluate the degree of leadership in the locker room supervision. The person most able to have prevented the harassment was Krone.

As far as the aftermath, Freeman distinguished herself (negatively) with her shoddy investigation, while Coach Wright and Arden distinguished themselves (positively) with their response.

Williams was entitled to rely on both Krone and Freeman to properly discharge their roles and responsibilities. Each failed in important ways.

38. How many Board meetings have you attended?

Three closed sessions.

T 972.789.1160
F 972.789.1606

One Galleria Tower
1355 Noel Road, Suite 1900
Dallas, Texas 75240
www.andersonjoneslaw.com

39. Did you report to the Sheriff's Department?

No, nor did we receive reports from the Sheriff's Department..

40. Did you coordinate with the Sheriff's Department?

Only to the extent that "double booking" of witnesses was avoided. We had a different focus and task.

41. Did you make recommendations—and what were they?

We made seven personnel recommendations and 14 non-personnel recommendations.

The personnel issues are not permitted to be disclosed in this forum, except it is already known that we recommended that the Athletic Director (Mike Krone) not continue as Athletic Director—whereupon he resigned that role and was reassigned to a position that does not include supervision of other coaches or of middle school students. The non-personnel recommendations were as follows:

- 100% COACH PRESENCE IN THE LOCKER ROOM (POST A DUTY SHEET EACH DAY).
- LEADERSHIP TO MAKE THE ATHLETICS LOCKER ROOM MORE LIKE A CLASSROOM.
- LIMIT LOCKER ROOM TIME WITH EFFICIENT LEADERSHIP (AND LOCK IT UP WHEN NOT IN USE).
- REGULAR "WALK THROUGH" EVALUATIONS OF THE LOCKER ROOM BY ADMINISTRATORS TO GRADE COACHES' MANAGEMENT.
- LOCKER ROOM RECONFIGURATION TO OPEN UP SIGHT LINES. (REDUCTION OF ROWS OF LOCKERS, REDUCTION OF SHOWER ROOM, DUTCH DOOR TO OFFICE, COACHES' CORNER IN WESTERN ALCOVE).
- BEEFED UP HAZING AND RECORDS POLICY.
- HAZING/BULLYING CURRICULUM FOR ALL STUDENTS (GRADES 6-10).
- ANTI-HAZING AND HARASSMENT STAFF/FACULTY TRAINING (WITH CLEAR FLOW CHARTS FOR REPORTING CHAINS AND TRAINING ON HOW TO RECOGNIZE SIGNS OF ABUSE).

T 972.789.1160
F 972.789.1606

One Galleria Tower
1355 Noel Road, Suite 1900
Dallas, Texas 75240
www.andersonjoneslaw.com



- MORE EFFECTIVE DISCIPLINE FOR HAZING AND BULLYING—CATCHING ANTI-SOCIAL BEHAVIOR BEFORE IT ESCALATES.
- FORMALIZE STUDENT LEADER INPUT WITH AN HONOR OR LEADERSHIP COUNCIL FOR ATHLETES.
- IMPROVED AND FORMALIZED INCIDENT/INTERVIEW DOCUMENTATION.
- UPGRADE OF E-MAIL SYSTEM AND SERVER.
- COUNSELING SERVICES FOR VICTIMS OF HAZING, BULLYING OR HARASSMENT.
- CONVENE AN “ADMINISTRATOR SWAT TEAM” TO DEAL WITH PARTICULARLY DIFFICULT BULLYING ISSUES.

42. Has the District followed those recommendations?

Yes, it is our understanding that each one has been adopted.

43. Did you talk to media? Why?

Yes. While it was (and still is) impossible to divulge the full scope of our investigation, it was important to respond to media inquiries, because this matter is in the public interest and had we not responded to media inquiries, the chances of accuracy would have decreased.

We never thought of our role as to promote secrecy, but we do have to respect the process and the privacy of children.

44. Have you been accurately quoted by media?

For the most part yes, but the Dallas Morning News has made a couple of errors.

45. How much did your firm charge for this investigation?

We have worked “by the hour.” My hourly rate for this investigation is \$330/hour, Ashley Goodwin’s rate is \$175/hour, and the rates of the paralegals (who worked mostly on document review and management) ranged from \$95 to \$130/hour.

These are rates well within the norm for investigations of this complexity and scope. Since the investigation is not final, the total of fees is not known, but



clearly the District will have devoted tens of thousands of dollars to this investigation.

46. Why couldn't the District have just investigated itself?

First, the District had already tried that and not done very well. The Freeman investigation was botched, in our opinion. Second, it is difficult for a District to investigate its own performance, mistakes, and knowledge. Third, it takes specific training and experience to manage an investigation of this scale. Fourth, the community of Sunnyvale deserved an independent inquiry. Finally, the Board needed an independent, unprejudiced investigation in order to feel confident in its conclusions.

47. Why not just wait for the Sheriff's Department finish up their investigation?

The issues are entirely different.

48. Did you make any recommendations on student discipline?

No, the specifics of student discipline are a matter for the District.

49. Should kids be disciplined?

Certainly. Multiple students admitted to multiple, serious infractions of the rules governing school conduct.

50. Why wasn't Mike Krone terminated?

We did not find that Krone was literally culpable for the harassment.

Rather, we found that his lack of effective leadership of the other coaches, coupled with an inefficient system of planning and communication, contributed to this problem.

51. Why did you recommend that Krone be moved to the elementary school?

We did not recommend a specific reassignment. We recommended that he not serve as Athletic Director in the District any longer, and that he not supervise middle or high school students.

It was our assessment both that (a) it is much less likely that the same type of harassment would occur in elementary school environments, and (b) if Krone is



not a leader of other coaches, but instead led by a good Athletic Director or others, he could perform adequately.

52. Will criminal charges be filed?

We simply do not know. This is in the hands of the prosecutors.

53. Why do you think the victims didn't complain earlier?

Sexually-oriented harassment or abuse, particularly when it is same-sex in nature, is typically the kind of action that results in a high degree of shame in the victim, and often is hidden for years. These boys did not wait that long, in reality.