CITY OF NEW YORK
THE SPECIAL COMMISSIONER OF INVESTIGATION
FOR THE NEW YORK CITY SCHOOL DISTRICT

Who's Protecting The Children?

An Investigation Into The Failure of PS 188 Personnel To Safeguard An Abused Student

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July 1997

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Introduction

On May 29, 1997, Milagros Mota was arrested for assaulting her daughter, a seven-year-old first grader ("Student A") at PS 188 in District 21 in Brooklyn. The physical abuse the mother inflicted included burning the girl with a cigarette lighter. At the time of arrest, police observed the burn and bruises on the girl's body, and a huge discoloration under her eye. The following day, Mota's live-in boyfriend, Marcos Villegas, was also arrested for assault as a result of hitting Student A with a heavy leather belt having a large metal buckle.

While it is hard to imagine a mother inflicting such pain on her own daughter, the inaction and indifference of school authorities is equally incomprehensible. Yet, various staff members at PS 188 observed indications of abuse to Student A as early as the fall of 1996 and took no action. In September and October 1996, her classroom teacher observed unexplained bruises on three different occasions. In January 1997, the school nurse treated the girl for an open head wound. Again, in April, the nurse discovered "physical abuse marks" on Student A's buttocks. In addition, teachers noted behavioral problems likely related to the physical torment and emotional trauma she was experiencing at home. Although PS 188 staff passed this information among themselves, and chose to share their observations with the mother, no one contacted child protection or law enforcement authorities to intercede on behalf of the child.

On May 27, 1997, her classroom teacher, an assistant principal, the school nurse, and the principal saw a burn mark on the girl's hand, bruises on her body, and a welt under her eye. This was at least the sixth time school staff observed signs of abuse. Nevertheless, they allowed her to go home – after alerting her mother to their awareness of the abuse! Not surprisingly, that night, the girl received an additional beating at the hands of her mother.

It was only after Student A failed to come to school the next morning that one of them contacted the New York State Central Register for Child Abuse and Neglect ("the hotline").

May 27, 1997: Abuse Is Detected for the Sixth Time

On Tuesday, May 27, 1997, Student A told her teacher, Lucille Della Cava, that her hand hurt. Della Cava noticed a "blister type burn" on the girl's hand and also a mark under her eye. Student A showed the teacher bruises and marks on her arms. Della Cava said that she had not noticed bruises before because Student A usually wore long sleeved blouses and pants to school.[1]

On the way to the principal's office with Student A, Della Cava was stopped by Assistant Principal Arthur Levitt. However, after he learned about Student A's injuries, he directed the teacher to take the girl to the nurse's office.

In Della Cava's presence, Nurse Rita Edwards examined Student A, noting the burn, bruises on the arm and legs, and discoloration under the eye.[2] The girl pointed to each wound and described its source. Although she claimed some of the bruises occurred while fighting with her siblings, she said her mother burned her hand with a cigarette lighter and threw a sneaker at her, which landed under the eye. She also described being hit with a belt by her "step-father."[3] Edwards told Della Cava that "the principal has to call BCW."[4] Della Cava returned to her class, while Edwards reported the results of her examination of the girl to both Levitt and PS 188 Principal Augusto Martinez, and repeated her conclusion that "this has to be called in."

The Child Abuse Hotline Is Not Called

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[1] Student A had only been assigned to Della Cava's class earlier in May. The girl's siblings verified that her mother would make her wear pants which hid the marks of abuse.

[2] Edwards is an employee of the New York City Department of Health.

[3] This is actually Marcos Villegas, her mother's live-in boyfriend.

[4] Edwards is referring to the State Central Register child abuse hotline. When the hotline is called, appropriate agencies such as the Administration for Children's Services (ACS), formerly the Bureau of Child Welfare (BCW), are notified.

Incredibly, despite the fact that a teacher, an assistant principal, a nurse, and the principal of the school were now aware that a child under their care had been abused at home, no one made a report to the hotline. Their excuses for this failure vary, but none are compelling.

According to classroom teacher Della Cava, Nurse Edwards told her that "the principal" needed to call "BCW," meaning the child abuse hotline. Therefore, assuming it was someone else's responsibility, Della Cava took no action herself.

Nurse Edwards said that she notified her supervisor at the New York City Department of Health, who advised her that calling the hotline, as well as taking pictures of Student A's injuries, were the responsibilities of the school. Therefore, she notified administrators of the results of her examination and recommended that the hotline be called, but did not report the abuse herself.

Assistant Principal Levitt acknowledged that he learned from Della Cava and Edwards that Student A had been injured by her parents and that he had seen her bruises. He also believed the nurse told him that "it has to be called in." Nevertheless, he did not call the hotline because, in his words, "no one told me to."

Principal Martinez acknowledged learning that Student A was abused and remembered being told by Edwards: "This is bad." Martinez said he told Edwards to call the hotline and directed Assistant Principal Sarah Grossman – an individual who was previously not involved in the matter – to make sure the hotline was called. Yet, he took no steps himself. Martinez defended his failure to make the call – as well as his failure to personally ensure it was done – by explaining that he was very busy as a result of the imminent visit by the Brooklyn Borough President who was scheduled to dedicate a playground at the school.

On May 27th, Grossman was monitoring the lunchroom which was in chaos. A substitute teacher had collapsed after being hit by a door, and Grossman administered an ice pack until the Fire Department arrived to tend to the teacher. She was further distracted by a

student who was stabbed with a pencil by another student. In the midst of all this, Grossman recalls that Martinez gave a direction to "call it in," after Nurse Edwards said something about abuse and Student A. Grossman claimed to have never been fully briefed on the situation. Nevertheless, she insisted that she made several attempts to carry out Martinez's instructions.[5] According to Grossman, Edwards gave her a telephone number which she called repeatedly, without answer.[6] She never got through to the hotline and went home.[7] Upon questioning by investigators from this office, we determined that Grossman failed to dial "1-800" before the number.

Student A was sent home at the end of the school day.

The Abusive Mother Is Called

Although Grossman and her colleagues were unable to reach proper authorities, the school was successful in contacting Student A's mother to inform her of her daughter's allegations. That call only aggravated the situation. When Student A got home, she was beaten again for telling school officials about being abused. Apparently no one considered the obvious danger in returning the victim to the scene of the crime, and notifying the perpetrator that the girl had turned her in.

Nurse Edwards initially told investigators that she tried to call Student A's mother on May 27th after her examination of the girl "to find out what was happening to the child at home," but she claimed that no one answered. She later changed that version of the facts and said that

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[5] Grossman learned the basic details needed to make a report, from the school personnel who came in contact with the child. However, she remained the staff member with the least knowledge of the case.

[6] Edwards denies providing the number to Grossman, but acknowledges that she gave it to Levitt on the 28th.

[7] Grossman told investigators that she called several times from home, but continued to get no

she had called on other occasions, but did not do so on that date.

Nevertheless, it is clear that someone from the school contacted the mother, informing the woman of her daughter's allegation and the fact that the girl's information would be reported to authorities. In fact, Principal Martinez admitted receiving a call from Mota on the afternoon of the 27th asking why the school was calling "the police." Martinez replied: "Those are the rules, we have to call." Furthermore, in a statement to the arresting officer, Mota said that she received a call from PS 188 on May 27th and that is why she kept Student A home on the 28th.[8] Mota expected the Administration for Children's Services (ACS) to visit that day.

At the end of the school day on May 27th, Principal Martinez was too busy with preparations for the playground dedication to be concerned about Student A. Assistant Principal Grossman, having survived lunchroom duty, was now in charge of dismissal. She explained that she was too busy overseeing four hundred children to think about any one in particular, presumably, even one who came to school with burns from a cigarette lighter. Assistant Principal Levitt was asked why, at the end of the May 27th school day, Student A was sent back to the place of her abuse, and he replied: "I have no answer for that." Asked why "911" was not called when calls to the hotline went unanswered, Levitt said: "I have no answer for that."

According to the police, after Student A returned home from school on the afternoon of the 27th, both she and her little brother were beaten by her mother.

May 28, 1997: A Report Is Made

On May 28, 1997, Student A did not attend school. As Mota told the police, she kept the girl home because she expected a visit from ACS as a result of intervention by the school.

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answer.

[8] Mota did not say who at the school had contacted her.

What Mota did not know, of course, was that the hotline had not yet been called, and would not be contacted for the better part of the morning. In fact, it was not until approximately 11:00 a.m. that Levitt – having learned from Della Cava that Student A was absent, and from Edwards that the State had not been contacted – made a report to the hotline.

Although at least five staff members recognized or were informed of the abuse of Student A on the 27th, and even though Principal Martinez made clear to Mota that a report would be made, no one made it a priority on that day or the following morning:

- Martinez continued to be busy with plans for the playground dedication.
- Grossman, who never got through to the hotline on the 27th, claimed that on May 28th she saw Levitt in the main office at approximately 8:00 a.m. and asked whether anyone had reported the abuse of Student A. However, she did not remember Levitt's answer, and made no further efforts herself.

- Levitt, for his part, did not recall any conversations about Student A first thing that morning because he was "following procedures" and adhering to his assignment to yard duty.
    - According to Della Cava, she notified Levitt of Student A's absence at about 10:00 a.m., but took no further action herself.
    - Edwards followed up with Levitt and learned that the hotline had not been notified, but took no action because "it was not her job to do so."

Finally, at about 11:00 a.m. on May 28th, Levitt reported the abuse of Student A to the State Central Register. He did so even though no one had "told him to," and he got through on the first try.

As a result of that call, the State made a law enforcement referral of the report, an NYPD police officer went to the home, and Student A and her siblings were removed that same day. Mota was not present, but she arrived at the precinct after midnight on the 29th and was

arrested. The mother told police that she burned Student A because the girl set her stuffed animals on fire and had to be taught a lesson. Villegas was arrested the next day. Student A identified a belt that he used to beat her with and the police were able to match her bruises to the belt.

School Personnel Ignored Earlier Warning Signs of Abuse

The school's failure to protect Student A when clear signs of abuse were spotted on May 27th is incomprehensible. This is particularly true given that the observations of that date did not occur in a vacuum. Rather, they were the last of repeated indications of abuse that were noted throughout the school year.

Within the first month of the new year, school staff observed suspicious marks and bruises on Student A. As early as September 18, 1996, Rosa Silva, Student A's classroom teacher, noticed marks on the girl's body. Twice more, on September 24th and October 3rd, Silva observed similar bruises. When questioned, Student A gave a number of excuses ranging from placing the blame on her siblings to accusing the family cat. The situation seemed suspicious to Silva so, on October 4, 1996, the teacher memorialized her observations in a note addressed to Laura Good, the youth advisor at PS 188.[9] Silva described black and blue or purple marks on Student A's arms, nose, right eye, left cheek, and inside her elbow.[10] Silva took no further action herself.

By November 1996, Principal Martinez became aware of the situation and directed Good to follow-up.[11] As a result, Good met with Mota on November 22nd to discuss Student A's physical condition. Mota told Good that Student A was lying about how she got the bruises and marks. The family, in fact, had no cat and her younger brother was incapable of pushing the girl down the stairs. Mota explained that she was aware of one of the bruises which she claimed occurred as a result of the brother throwing a toy at Student A.

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[9] Good's title within the school is youth advisor. Her Board position is that of a substance abuse worker. She is not licensed and is not a pedagogue.

[10] The note was copied to Assistant Principal Tudda, but, according to both Silva and Tudda, he apparently never received it. Assistant Principal Grossman claims she never saw the note even though she maintained Student A's file which contained a copy.

[11] Martinez, in writing dated November 21, 1996, asked to be updated on the matter.

Nevertheless, with knowledge that a teacher had observed numerous bruises on the body of a seven-year-old girl and with no credible explanation for their existence, Good took no further action regarding the possibility that Student A was being abused in her home environment. Instead, she referred the girl for psychiatric evaluation.

By January 1997, the fourth sign of abuse was detected. During that month, Edwards treated a bump and open wound on the girl's head. Student A said that she fell and hit her head. Edwards sent a medical referral form to Mota, but never received a response. No further action was taken.

For a fifth time, signs of physical abuse were noted on April 2, 1997. Edwards observed black and blue bruises on the girl's buttocks and her notations on Student A's medical records indicate "physical abuse marks."[12] Student A said that her "step father" had spanked her. Incredibly, Edwards' only reaction was to note in her records that the matter would be referred to Good "for investigation." However, the youth advisor contends she was never told about the April 2nd discovery. Edwards spoke with Mota on April 11th about Student A's "situation." According to Edwards, the mother had no explanation for the bruise discovered on April 2nd. The nurse merely noted that she would refer the matter to Good.[13]

In addition to the physical indications of abuse, from the start of the 1996-1997 school year, Student A was a behavioral problem.[14] Indeed, Student A was assigned to Della Cava's

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[12] Notations made by Edwards indicate that Student A was "referred because of physical abusive marks on her buttocks (black & blue)…." Edwards was "not sure" who made this referral.

[13] That day, Good says she also had contact with the mother. According to the youth advisor, Mota arrived at PS 188 to complain about the school contacting "BCW," meaning ACS. However, there is no evidence ACS had been notified by the school. Indeed, the caseworker assigned to Student A at the time of her mother's arrest conducted a search for prior referrals from the school and found none other than Levitt's report on May 28th.

[14] The school was aware that Student A's biological father had committed suicide the previous

class in May because Silva had made at least thirty-three documented referrals to Grossman regarding Student A's conduct. Thus, Grossman was aware of Student A's behavioral problems at school and described her as "moody and stubborn." She discussed Student A with Mota, and concluded that the mother favored her older daughter over Student A.[15] Principal Martinez described the girl as "violent prone," often fighting with her teacher and fellow students. She also had a problem following directions given her by the teacher. As a result, she sometimes was allowed to sit in class with her ten-year-old sister. Although ignored by the school, Student A's behavior was a classic warning sign of child abuse.

Finally, in addition to physical and behavioral signs of abuse, Student A's chronically poor attendance was a clear indication of problems at home. During the 1995-96 academic year, she was absent ninety-six times.[16] The next year, the girl missed thirty-five days – the equivalent of seven weeks of classes – by the time school officials finally reported her abuse in May.[17] Student A's poor attendance was yet another indication of her abuse that went unheeded.

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year and that the girl had found his body.

[15] Student A, her older sister, and her younger brother have different biological fathers.

[16] Student A transferred from District 31 to District 21 on April 30, 1996. Presumably, officials at PS 188 would have reviewed her attendance as part of their evaluation of a new student, and made a note to monitor the girl.

[17] Student A missed thirteen out of ninety-two days in the first half of the year and twenty-two out of a possible seventy days in the second half through May 28th. Some of these absences were actually suspensions as a result of her behavior problems.

Procedures at PS 188

Pursuant to the New York State Social Services Law, every school official is required to make an immediate report to the State Central Register "when they have reasonable cause to believe that a child coming before them in their professional or official capacity is an abused or maltreated child," [18] and the abuser is an adult who is "legally responsible for" the child.[19] That law also requires a registered nurse to make a report.[20] Thus, Della Cava, Levitt, Martinez, Grossman, Good, Silva, and Edwards (despite her assertion to the contrary) were "mandated reporters" of Student A's abuse.

School personnel face an additional requirement to report pursuant to a Regulation of the Chancellor, and must have a procedure in place to make necessary reports to the State.[21] Under both the law and the regulation, the principal, as the person in charge of the school, has the primary responsibility of ensuring that the report is made. Moreover, the Chancellor's Regulation requires that each school develop a Child Abuse Prevention and Intervention Team which should develop and implement a plan.[22]

The casual and careless approach taken regarding the indications of Student A's abuse is symptomatic of PS 188's failure to implement a working plan to be followed when someone at the school suspects that a child is being abused in the home. When first approached by

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[18] See Social Services Law section 413.

[19] See Social Services Law section 412. Generally, this is a parent, guardian, or custodian, but can be any other person eighteen-years or older who is legally responsible for the child. That term is more fully detailed in the New York State Family Court Act.

[20] See Social Services Law section 413.

[21] See Regulation of the Chancellor, A-750.

[22] See Regulation of the Chancellor A-750, 4.1 and 4.2.

investigators, Principal Martinez was unable to provide copies of procedures in place at PS 188 because he was "in a meeting" and he did not know off-hand where the documents were located. He was certain, however, that the school had a Child Abuse Prevention and Intervention Team whose members included Grossman, Levitt, Assistant Principal Frederick Tudda, Nurse Edwards, and the "on site" unit from Coney Island Hospital.

Thereafter, investigators asked each of those individuals named by Martinez about membership on the team. Once again the responses were troublesome:

- Grossman did not know she was on the team, in fact, she was unaware that the school had such a team.
- Levitt, too, was unaware that the school had a child abuse prevention and intervention plan, and did not know he was a member of the team.
- Tudda said he was a member of the team which also included Edwards and Martinez.
- Edwards, named as a team member by both the principal and an assistant principal, said she was not a member and, in fact, did not know the school had such a team.

Unable to locate the child abuse prevention and intervention plan, Martinez turned over three folders of "child abuse documents." Contained therein were various versions of the plan from 1992, 1993, and 1996. Team members are listed on each. Incredibly, neither Grossman, Levitt, Edwards, nor even Tudda who claims to be on the team, is listed. Youth Advisor Laura Good is, however. Notably, the 1996 plan, which is dated November 5, 1996, was not sent to the district office for approval until November 22, 1996, the day that Good finally acted on teacher Silva's referral of suspicious marks on Student A, as a result of Martinez's November 21st request for a follow-up on the matter.

This case illustrates the necessity of having a working plan for intervention in cases of suspected child abuse. All school personnel must know the plan exists, must know who is on

the team, and must know what to do when a case of abuse arises. The fact that PS 188 had a plan that existed on paper, but not in practice, not only failed to help Student A, in fact, it harmed her.

Conclusions and Recommendations

In 1987, Joel Steinberg, following years of physical abuse and maltreatment of his adopted daughter Lisa, murdered the girl. Staff at the New York City public school Lisa attended either missed or ignored the blatant signs of abuse, which went unreported. Following her death, an effort was made to train school personnel in their obligations under New York State Law and Chancellor's Regulation. Individuals at Lisa's school were not held personally accountable.

In 1993, we reported that a New York City public school principal failed to ensure that the hotline was called after a student wrote an essay declaring that her father had raped her.[23] Ultimately, the abuse was uncovered by other means and the girl's father was arrested. The principal received a slap on the wrist and the Chancellor's Regulation was re-written and re-distributed.

In 1997, a Kings County Grand Jury investigated the failure to track the whereabouts of a New York City public school student who disappeared from the system.[24] When the student's mother told her school that the family was moving and that her daughter would be transferring, she was removed from the attendance rolls, and no one checked to see if the girl ever arrived at a new school in the system. In fact, she never returned to school and was murdered by her mother's boyfriend several weeks later. The school personnel involved were neither disciplined nor criminally prosecuted.

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[23] See *An Investigation Into The Failure Of Personnel At PS30/31 Manhattan To Report Suspected Child Abuse*, February 1993.

[24] This office assisted NYPD homicide detectives and prosecutors from the Kings County District Attorney's Office in investigating the disappearance of Justina Morales, and the role the school system unwittingly played in concealing her murder.

Thankfully, the abuse of Student A was reported before she became a murder statistic. But the fact remains that indications of her abuse – violent behavior in the classroom, moodiness, unexplained bruises and marks, false explanations for her injuries – were discovered months before a referral was finally made. Furthermore, when school staff finally decided to report the abuse, they took no steps to ensure the girl's safety, and, in fact, placed her in jeopardy by returning her to the perpetrator who now knew that the abuse had been uncovered – thanks to a tip from the school itself.

The purpose behind the New York State law which mandates the report of suspected abuse is simply to protect children. School personnel who do not comply with their mandate to report suspicions that children under their care are being abused must be held responsible for their failure to act.

Therefore, we recommend that the Chancellor move to terminate the employment of Principal Augusto Martinez. While every member of the PS 188 staff who became aware of Student A's abuse was obligated to make a report to the hotline, it was Martinez who was ultimately responsible for ensuring that the call was made. Furthermore, this is not the first time that this office has recommended disciplinary action against this principal. In March 1996, we established that Martinez mishandled a complaint of sexual misconduct occurring on school grounds. Faced with an allegation that a PS 188 student had been sexually abused by an unknown male during school hours, Martinez "investigated" by having the victim – a first grader – view a "line-up" in his office. The young child had to face four potential suspects in the same room with him, a needlessly terrifying experience. Martinez admitted to investigators that he had not followed proper procedure, but showed no remorse. We asked then that strong disciplinary action, which could appropriately include termination of his employment, be taken against Martinez. Everett Hughes, then-deputy director of the Board's Office of Legal

Services, declined to initiate charges, stating that the matter could "appropriately be addressed by a letter of admonishment to the teacher's [*sic*] personnel file." District 21 officials refused to take even this modest action against Martinez.[25]

We recommend that strong disciplinary action be taken against Assistant Principals Arthur Levitt and Sarah Grossman for failing to protect Student A. They did not recognize the urgency of the girl's situation, did not address it as a "first priority," and did not fulfill their primary obligation to safeguard the health and well being of the students under their supervision.

We also recommend that strong disciplinary action be taken against Teacher Rosa Silva and Youth Advisor Laura Good. As early as the fall of 1996, they were aware of the physical indications of abuse, the lack of a credible explanation for the girl's injuries, and her history of behavioral problems. Yet, neither interceded on her behalf.

We further recommend that appropriate disciplinary action be taken against Teacher Lucille Della Cava for her role in failing to report the abuse of Student A. Although she remained obligated to call the hotline herself, she was led to believe that one of her supervisors would call the State hotline before the end of the school day on May 27th. Nevertheless, before she allowed Student A to be discharged from her class that afternoon, and returned to her mother for further abuse, she should have made sure that a dangerous situation had, in fact, been abated by the intervention of the proper authorities. Instead, the girl was left to fend for herself.

In addition, it is equally disturbing that a school nurse who comes into actual contact with wounds of abuse and who is charged with ensuring the physical well being of young children would not know and understand her obligation to report directly to the State hotline.

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[25] In response to Hughes' letter, District 21 Deputy Superintendent Claire Silverman "investigated" the appropriateness of taking action against the principal. When Martinez denied that he told investigators about conducting "the line-up," Silverman chose to believe him without further inquiry. This office objected to Silverman's position, to no avail.

Accordingly, we are forwarding a copy of this report to the New York City Department of Health which employs Nurse Rita Edwards, and we urge them to take appropriate disciplinary action against her.

Finally, we are referring our findings to Kings County District Attorney Charles J. Hynes. We ask District Attorney Hynes to carefully review the evidence gathered during our investigation to determine whether a criminal prosecution of the school personnel involved is warranted.