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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 791850

B. LYNETTE BANKS, Et. Al.

Appellants

v.

JOSEPH B. SELLERS, Et. Al.

Appellees

JOINT APPENDIX

Susan G. Moenssens, Esquire
Moenssens & Moenssens
P. O. Box 160
Kilmarnock, Virginia 22482

Counsel for Appellants

William G. Broaddus, Esquire
County Attorney
Joseph P. Rapisarda, Jr., Esquire
Assistant County Attorney
County of Henrico
P. O. Box 27032
Richmond, Virginia 23273

Counsel for Appellees

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

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MOTION FOR JUDGMENT

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF THE COUNTY OF HENRICO:

Come now Janie Mae Banks, next friend and Mother of the Plaintiff B. Lynette Banks, and the Plaintiff Galvester Banks, Father and Guardian of B. Lynette Banks, by counsel, and move this Honorable Court for judgment against the Defendants, jointly and severally, in the sums and upon the causes of action set forth below.

Count One:

1. That on or about the 21st day of November, 1975, at or about 9:30 a.m. of said day, upon the grounds of Henrico High School, on the sidewalk beside homeroom number 43, located on Azalea Avenue, in the County of Henrico, Commonwealth of Virginia, defendant Novita L. Goode, who was at that time an infant, did then and there wilfully, maliciously, viciously, violently and wrongfully, assault, batter, cut and stab Plaintiff B. Lynette Banks and did wilfully cause Plaintiff personal injuries, hereinafter described, all without cause or provocation on the part of Plaintiff while she rightfully and legally was on the premises of Henrico High School for the purpose of attending classes.

2. As a direct and proximate result of the aforesaid assault and battery, Plaintiff B. Lynette Banks became sick, sore and disordered from the aforesaid cut and stab wounds and as a result thereof became permanently scarred on her face and suffered a severe and permanent nervous shock and was put to great pain and suffering all to her damage.

Wherefore, Plaintiff B. Lynette Banks prays this Court to award judgment against Defendant Novita L. Goode in the amount of $150,000, and her costs expended herein.

Count Two:

3. Plaintiff Galvester Banks alleges all the allegations in the foregoing paragraph 1 with the same force and effect as if alleged in full in this second count.

4. As a direct and proximate result of the aforesaid assault and battery Plaintiff Galvester Banks has incurred medical, hospital and nursing expenses in endeavoring to cure his daughter, B. Lynette Banks, of the extensive facial wounds and mental suffering from the aforesaid assault and battery and believes and therefore alleges that it will be necessary to incur additional medical expenses in sum or sums unknown.

Wherefore Plaintiff Galvester Banks prays this Court to award judgment against Defendant Novita L. Goode in the amount of $30,000, and his costs expended herein.

Count Three:

5. Plaintiff B. Lynette Banks alleges all the allegations in the foregoing paragraph 1 with the same force and effect as if alleged in full in this third count.

6. The assault and battery was due to the negligence of Defendant Doloris Hawkins in that the Defendant knew the unruly, undisciplined, dangerous, and violent propensities of her daughter and ward, Novita L. Goode, and knew the night before the aforesaid assault and battery that her daughter and ward had a knife and intended to take it with her to Henrico High School the next day "to cut a girl," yet she failed to take any significant steps to prevent the aforesaid assault and battery in that she did not notify any school, police or juvenile authorities of the intentions of her daughter and ward.

7. As a direct and proximate result of the aforesaid negligence, Plaintiff B. Lynette Banks became sick, sore and disordered from the aforesaid cut and stab wounds and as a result thereof became permanently scarred on her face and suffered a severe and permanent nervous shock and was put to great pain and suffering all to her damage.

Wherefore, Plaintiff B. Lynette Banks prays this Court to award judgment against Defendant Doloris Hawkins in the amount of $150,000, and her costs expended herein.

Count Four:

8. Plaintiff B. Lynette Banks realleges all of the allegations contained in the foregoing paragraphs 1 and 6 with the same force and effect as if alleged in full in this fourth count.

9. The conduct of Defendant Doloris Hawkins was wilfull, wanton and in reckless disregard for the life and safety of Plaintiff B. Lynette Banks.

10. As a direct and proximate result of the aforesaid wilfull, wanton and reckless disregard for her safety, Plaintiff Lynette Banks became sick, sore and disordered from the aforesaid cut and stab wounds and as a result thereof became permanently scarred on her face and suffered a severe and permanent nervous shock and was put to great pain and suffering all to her damage.

Wherefore, Plaintiff B. Lynette Banks prays this Court to award judgment against Defendant Doloris Hawkins for exemplary damages in the additional sum of $10,000.

Count Five:

11. Plaintiff Galvester Banks realleges all of the allegations contained in the foregoing paragraphs 1 and 6 with the same force and effect as if realleged in full in this fifth count.

12. As a direct and proximate result of the aforesaid negligence, Plaintiff Galvester Banks has incurred medical, hospital and nursing expenses in endeavoring to cure his daughter, B. Lynette Banks, of the extensive facial wounds and mental suffering

from the aforesaid assault and battery and believes and therefore alleges that it will be necessary to incur additional medical expenses in sum or sums unknown.

Wherefore, Plaintiff Galvester Banks prays this Court to award judgment against defendant Doloris Hawkins in the amount of $30,000, and his costs expended herein.

Count Six:

13. Plaintiff B. Lynette Banks realleges all the allegations contained in the foregoing paragraph 1 with the same force and effect as if realleged in full in this sixth count.

14. At the time and place of the assault and battery of Plaintiff B. Lynette Banks, the Defendants School Board of County of Henrico, Joseph B. Sellars, Superintendent of Schools of the County of Henrico, and Colan G. Steele, Principal of Henrico High School, when they knew or should have known of the undisciplined, dangerous and violent propensities of some of the students in Henrico High School and/or of Defendant Novita L. Goode, negligently performed their duties to provide a safe environment and/or adequate protection for the physical safety of Plaintiff B. Lynette Banks, in that they;

a. failed to promulgate reasonable rules for conduct and discipline of the students at Henrico High School;

b. or, if such regulations were promulgated, failed to provide personnel to enforce said regulations;

c. or, if such personnel were provided, failed to establish proper qualifications for such personnel;

d. or, if such qualifications were established, failed to select personnel possessing such qualifications;

e. or, if qualified personnel were obtained, failed to instruct such personnel on the rules of conduct and/or discipline of the students at Henrico High School and the procedures and methods of enforcing said rules;

f. or, if the personnel were properly instructed, failed to provide the equipment and facilities reasonably necessary for the enforcement of the rules of conduct and discipline. When if they had done so Plaintiff B. Lynette Banks would not have been injured.

15. As a direct and proximate result of the aforesaid negligence, Plaintiff B. Lynette Banks, a student at Henrico High School, was foreseeably injured when subjected to assault and battery by another student, Novita L. Goode, and as a result thereof Plaintiff Lynette Banks became sick, sore and disordered from the aforesaid cut and stab wounds and as a result thereof became permanently scarred on her face and suffered a severe and permanent nervous shock and was put to great pain and suffering all to her damage.

Wherefore, Plaintiff B. Lynette Banks prays this Court to award judgment against Defendant School Board of the County of Henrico, Virginia, Joseph B. Sellars and Colan G. Steele, jointly and severally, in the amount of $150,000 and her costs expended herein.

Count Seven:

16. Plaintiff Galvester Banks realleges all the allegations in the foregoing paragraphs 1 and 14 with the same force and effect as if realleged in full in this seventh count.

17. As a direct and proximate result of the aforesaid negligence, Plaintiff Galvester Banks has incurred medical, hospital and nursing expenses in endeavoring to cure his daughter, B. Lynette Banks, of the extensive facial wounds and mental suffering from the aforesaid assault and battery and believes and therefore alleges that it will be necessary to incur additional medical expenses in sum or sums unknown.

Wherefore, Plaintiff Galvester Banks prays this Court to award judgment against Defendants School Board of Henrico County, Virginia, Joseph B. Sellars, and Colan G. Steele, jointly and severally in the amount of $30,000 and his costs expended herein.

B. LYNETTE BANKS, and
GALVESTER BANKS, Plaintiffs

By _____
Counsel

Susan G. Moenssens
Moenssens & Moenssens
Attorney for Plaintiffs
5623 Lakeside Avenue
Richmond, Virginia 23228

SPECIAL PLEAS OF SOVEREIGN IMMUNITY AND MOTIONS TO DISMISS (#77-L-222)

Come now the defendants Joseph B. Sellers, Colin G. Steele, and the County School Board of Henrico County, by counsel, and for their Special Pleas of Sovereign Immunity say that they are immune to the claims asserted by the plaintiffs in the Motion for Judgment by reason of the doctrine of sovereign immunity.

WHEREFORE, these defendants move the Court to dismiss them as party defendants on the ground that they are immune to the claims asserted in the Motion for Judgment.

DEMURRERS

Come now the defendants Joseph B. Sellers, Colin G. Steele, and the County School Board of Henrico County, and say that the Motion for Judgment is insufficient in law upon the following grounds:

1. Misjoinder of intentional torts with unintentional torts.

2. Failure to allege facts establishing a cause of action against these defendants.

GROUNDS OF DEFENSE

Come now the defendants Joseph B. Sellers, Colin G. Steele, and the County School Board of Henrico County, by counsel, and for their Grounds of

Defense to the plaintiffs' Motion for Judgment say as follows:

1. The defendants admit that on November 21, 1975, defendant Novita L. Goode and plaintiff B. Lynette Banks were students at Henrico High School, and that they were involved in an altercation on the grounds of said school; the defendants otherwise lack sufficient knowledge and information to form a belief as to the truth of the allegations contained in paragraph 1 of Count One of the Motion for Judgment, and thus are unable to either admit or deny such allegations but call for strict proof thereof.

2. The defendants deny the allegations contained in paragraph 2 of Count One of the Motion for Judgment.

3. In response to paragraph 3 of Count Two of the Motion for Judgment, the defendants reallege and replead the allegations contained in paragraph 1 of their Grounds of Defense with the same force and effect as if they were reprinted herein.

4. The defendants deny the allegations contained in paragraph 4 of Count Two of the Motion for Judgment.

5. In response to paragraph 5 of Count Three of the Motion for Judgment, the defendants reallege and replead the allegations contained in paragraph 1 of their Grounds of Defense with the same force and effect as if they were reprinted herein.

6. The defendants lack sufficient knowledge and information to form a belief as to the truth of the allegations contained in paragraph 6 of Count Three of the Motion for Judgment, and thus are unable to either admit or deny such allegations but call for strict proof thereof.

7. The defendants deny the allegations contained in paragraph 7 of Count Three of the Motion for Judgment.

8. In response to paragraph 8 of Count Four of the Motion for Judgment, the defendants reallege and replead the allegations contained in paragraphs 1 and 6 of their Grounds of Defense with the same force and effect as if they were reprinted herein.

9. The defendants lack sufficient knowledge and information to form a belief as to the truth of the allegations contained in paragraph 9 of Count Four of the Motion for Judgment, and thus are unable to either admit or deny such allegations but call for strict proof thereof.

10. The defendants deny the allegations contained in paragraph 10 of Count Four of the Motion for Judgment.

11. In response to paragraph 11 of Count Five of the Motion for Judgment, the defendants reallege and replead the allegations contained in paragraphs 1 and 6 of their Grounds of Defense with the same force and effect as if they were reprinted herein.

12. The defendants deny the allegations contained in paragraph 12 of Count Five of the Motion for Judgment.

13. In response to paragraph 13 of Count Six of the Motion for Judgment, the defendants reallege and replead the allegations contained in paragraph 1 of their Grounds of Defense with the same force and effect as if they were reprinted herein.

14. The defendants deny the allegations contained in paragraph 14 of Count Six of the Motion for Judgment and expressly deny any negligence on their part.

15. The defendants deny the allegations contained in paragraph 15 of Count Six of the Motion for Judgment.

16. In response to paragraph 16 of Count Seven of the Motion for Judgment, the defendants reallege and replead the allegations contained in paragraphs 1 and 14 of their Grounds of Defense with the same force and effect as if they were reprinted herein.

17. The defendants deny the allegations contained in paragraph 17 of Count Seven of the Motion for Judgment.

18. The defendants allege and charge that the plaintiff B. Lynette Banks was herself guilty of negligence proximately contributing to the alleged injuries and damages.

19. The defendants allege and charge that the plaintiff B. Lynette Banks acted as the first aggressor in provoking the defendant Novita L. Goode, and thus the plaintiff is herself responsible for any injuries which she may have received.

20. The defendants allege and charge that they are immune to the claims asserted by the plaintiffs in the Motion for Judgment by reason of the doctrine of sovereign immunity.

21. The defendants allege and charge that neither of the plaintiffs have been damaged to the extent alleged and further, that the defendants are not indebted to either of the plaintiffs in any amount.

22. The defendants allege and charge that they will rely upon all defenses lawfully available to them as may appear from discovery or the evidence.

WHEREFORE, these defendants pray that the Court deny in all respects each and every prayer for relief contained in the plaintiffs' Motion for Judgment and enter judgment in favor of these defendants, awarding them their costs expended in this behalf.

JOSEPH B. SELLERS
COLIN G. STEELE
COUNTY SCHOOL BOARD OF HENRICO COUNTY

By Joseph P. Rapisarda, Jr.
Counsel

William G. Broaddus
County Attorney

Joseph P. Rapisarda, Jr.
Assistant County Attorney

County of Henrico
P. O. Box 27032
Richmond, Virginia 23273

CERTIFICATE

I hereby certify that a true copy of the foregoing Special Pleas of Sovereign Immunity and Motions to Dismiss, Demurrers, and Grounds of Defense, was mailed this 13th day of July, 1977, to Susan G. Moenssens, Esquire, counsel for plaintiffs, and to defendants Novita L. Goode and Doloris Hawkins, at their addresses as shown on the Motion for Judgment.

Joseph P. Rapisarda, Jr.

COMMONWEALTH OF VIRGINIA
FOURTEENTH JUDICIAL CIRCUIT

EDMUND WALLER HENING, JR.
JUDGE
E. BALLARD BAKER
JUDGE
L. PAUL BYRNE
JUDGE
ROBERT M. WALLACE
JUDGE

LOCATION:
PARHAM AND
HUNGARY SPRING ROADS
MAILING ADDRESS:
P. O. BOX 27032
RICHMOND, VA. 23273

CIRCUIT COURT OF THE COUNTY OF HENRICO

August 17, 1979

William G. Broaddus, Esquire
Henrico County Attorney
Joseph P. Rapisarda, Jr., Esquire
Assistant County Attorney
Post Office Box 27032
Richmond, Virginia 23273

Susan G. Moenssens
Attorney at Law
Moenssens & Moenssens
5623 Lakeside Avenue
Richmond, Virginia 23228

Re: B. Lynette Banks, an infant, et al v. Novita L. Goode, an infant, et al.
Case No. 77-L-222

Dear Counsel:

This is an action brought by Janie Mae Banks, next friend and mother of B. Lynette Banks, an infant, against the defendant, Novita L. Goode, an infant; Deloris Hawkins, mother of the defendant, Goode; Joseph B. Sellars, Superintendent of Schools for the County of Henrico; Colan G. Steele, Principal of Henrico High School; and the School Board of the County of Henrico, Virginia, for personal injuries received on November 21, 1975, upon the grounds of Henrico High School, when the plaintiff was wilfully and maliciously cut and stabbed by the defendant Goode, another student. The plaintiff Banks alleges that the defendant Hawkins wilfully, wantonly and negligently failed to take any significant steps to prevent the assault and battery. The plaintiff alleges, further, that the defendants Sellars, Steele and the County School Board negligently performed their duties to provide a safe environment and/or adequate protection for the physical safety of the infant plaintiff.

The infant plaintiff seeks compensatory damages from the defendant and each of them and punitive damages from the defendant Hawkins. The plaintiff Galvester Banks, father of the infant plaintiff joins in the action and seeks to recover the medical expenses allegedly incurred by him on behalf of the infant plaintiff.

No service of process was had upon the defendants, Goode and Hawkins, and on September 23, 1977, the plaintiffs moved to non-suit the action as to said defendants, which motion was granted.

The defendants, Sellars, Steele and the County School Board have filed Special Pleas of Sovereign Immunity and Motions to Dismiss; Demurrers; Grounds of Defense; and Motions to Quash and for a Protective Order.

With the exception of the Motions to Quash and for a Protective Order, the Court has heard evidence and oral argument on the Pleas of Sovereign Immunity and Motions to Dismiss and the Demurrers. In addition, counsel for the remaining parties to this action have filed memoranda of authorities and written argument in support of their respective positions.

THE ISSUES

1. Are the defendants Sellars, Steele and the County School Board immune to the claims in tort asserted by the plaintiffs by virtue of the Doctrine of Sovereign Immunity?

2. Is the Motion for Judgment demurrable because of misjoinder of intentional and unintentional torts, and the failure to allege facts establishing a cause of action against the defendants Sellars, Steele and the County School Board?

CONCLUSION

Since this Court is of the opinion that the resolution of the issue of Sovereign Immunity is dispositive of this case, the Court does not find it necessary to reach the issues raised by the Demurrers.

The plaintiffs assert a two-prong attack on the defendants' position that Sellars, Steele and the County School Board are protected from liability under the Doctrine of Sovereign Immunity as follows:

A. The duty of the School Board and its agents to provide a safe environment for its students is ministerial in nature and therefore not protected by nor within the umbrella of Sovereign Immunity; and

B. The time is right for the Virginia Courts to follow the lead of the forty-five (45) states that have abolished the antiquated Doctrine of Sovereign Immunity either totally or at least with respect to School Boards, Districts or School-type entities. Judicial determination and abolishment of the antiquated Doctrine, not legislative action, is the proper course for Virginia to take since the Doctrine of Sovereign Immunity is a court fabricated doctrine historically. Stare decisis is no bar.

At the outset, the Court is appreciative and complimentary to all counsel for the parties and, particularly, counsel for the plaintiffs, for the extensive research and comprehensive arguments contained in their briefs in support of their respective positions.

The traditional rule that the State is immune from liability for the tortious acts of its servants, agents and employees, in the absence of express constitutional or statutory provisions making it liable has long been the firmly established law in Virginia, regardless of its origin. Eriksen v. Anderson, 195 Va. 655 (1954).

Further, as plaintiffs concede in their brief, it is also well settled that a local school board as a governmental agency or arm of the State is immune from liability for all tortious personal injury negligently inflicted. Kellam v. School Board, 202 Va. 252 (1960); Crabbie v. School Board, 209 Va. 356 (1968).

The State cannot be sued for torts without its consent and the power to consent to a suit for torts rests in the legislature and not in the judiciary. Elizabeth River Tunnel District v. Beecher, 202 Va. 452 (1961). See also Memorial Hospital, Inc. v. Oakes, 200 Va. 878, 898 (1959), for an analagous holding in the context of charitable immunity

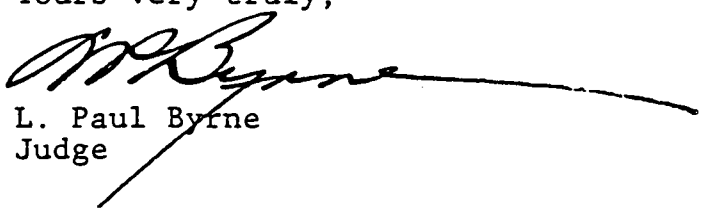
Therefore as to the second-prong of the plaintiffs' attack on the Doctrine of Sovereign Immunity, this Court acknowledges that the plaintiffs' arguments are very persuasive but respectively declines the plaintiffs' invitation to abolish the Doctrine in Virginia.

Further, in holding that the defendants Sellars, Steele and the County School Board are protected by the Doctrine of Sovereign Immunity from the tortious claims asserted by the plaintiffs, this Court adopts in toto the argument of the defendants and the authorities cited in their brief as dispositive of this action. Accordingly, the Special Pleas of Sovereign Immunity will be sustained and the Motions to Dismiss the plaintiffs' Motion for Judgment will be granted.

Counsel for the defendants will prepare the sketch of an Order implementing this decision and noting the exception of the plaintiffs to such ruling.

Counsel for the plaintiffs are reminded that the Court has not received the sketch of the Order of Nonsuit as to the defendants Goode and Hawkins, which motion of the plaintiffs was granted on September 23, 1977. The record should reflect this action.

Yours very truly,



L. Paul Byrne
Judge

LPB/ncg

ENTERED: 9/24/79

Judge

V I R G I N I A :

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

B. LYNETTE BANKS, an infant, et al., Plaintiff,	)	
v.	)	Case No. 77-L-222
NOVITA L. GOODE, an infant, et al., Defendants.	)	

ORDER

This cause came to be heard upon the Special Pleas of Sovereign Immunity and Motions to Dismiss and the Demurrers each filed on behalf of defendants County School Board of Henrico County, Joseph B. Sellers and Colin G. Steele, upon the memoranda of law filed on behalf of these defendants and of the plaintiffs, upon evidence ore tenus relating to the aforesaid Special Pleas of Sovereign Immunity and Motions to Dismiss, and was argued by counsel. Upon consideration whereof, and it appearing to the Court that the aforesaid Special Pleas of Sovereign Immunity and Motions to Dismiss are well taken, and that it is unnecessary for the Court to reach the issues raised by the aforesaid Demurrers, it is ORDERED that the Special Pleas of Sovereign Immunity and Motions to Dismiss be, and they hereby are, sustained, for the reasons stated in the Court's letter opinion dated August 17, 1979; and it is further ORDERED that the plaintiffs' Motion for

Judgment be, and it hereby is, dismissed with prejudice from the docket of this Court, to which ruling and dismissal counsel for plaintiffs noted her exception.

A Copy Teste:
MARGARET B. BAKER, Clerk

Sara A. Brooks
Deputy Clerk

I Ask For This:

Joseph P. Rapisarda, Jr.

Joseph P. Rapisarda, Jr.
Assistant County Attorney
County of Henrico
P. O. Box 27032
Richmond, Virginia 23273
Counsel for defendants County School Board of Henrico County, Joseph B. Sellers, and Colin G. Steele

Seen And Objected To:

Susan G. Moenssens

Susan G. Moenssens
~~700 Building, Suite 1121~~ 3810 Seminary Ave.
~~Seventh and Main Streets~~
Richmond, Virginia 23227
Counsel for plaintiffs

ORDER

Came this day the plaintiffs, and defendants County School Board of Henrico County, Joseph B. Sellers, and Colin G. Steele, by counsel, and the plaintiffs having indicated their desire to appeal to the Supreme Court of Virginia for a writ of error, it is ORDERED that the transcript of the September 23, 1977 hearing upon the defendants' demurrers and special pleas of sovereign immunity be, and it hereby is, made a part of the record on appeal as provided by Rule 5:9(a) of the Rules of the Supreme Court.

ENTERED: 10/9/79

Judge

A Copy Teste:
MARGARET B. BAKER, Clerk

Deputy Clerk

I Ask For This:

Joseph P. Rapisarda, Jr.
Joseph P. Rapisarda, Jr.
Assistant County Attorney
County of Henrico
P. O. Box 27032
Richmond, Virginia 23273
Counsel for Defendants County School Board of Henrico County, Joseph B. Sellers, and Colin G. Steele

Seen And Agreed To:

Susan G. Moenssens
Susan G. Moenssens
3810 Seminary Avenue
Richmond, Virginia 23227
Counsel for Plaintiffs

STATEMENT OF FACTS, TESTIMONY, OR OTHER INCIDENTS OF THE CASE

Now come the plaintiffs, by counsel, and move this Honorable Court to approve the following joint and agreed Statement of Facts, Testimony, or Other Incidents of the Case and make it part of the Record in the above-captioned case pursuant to Rule 5:11:

1. This action was brought by Janie Mae Banks, next friend and mother of B. Lynette Banks, an infant, against the defendant, Novita L. Goode, an infant; Deloris Hawkins, mother of the defendant, Goode; Joseph B. Sellers, Superintendent of Schools for the County of Henrico, Virginia; Colin G. Steele, then Principal of Henrico High School; and the County School Board of the County of Henrico, Virginia, for personal injuries received on November 21, 1975, upon the grounds of Henrico High School, when the plaintiff was wilfully and maliciously cut and stabbed by the defendant Goode, another student. The plaintiff Banks alleged that the defendant Hawkins wilfully, wantonly and negligently failed to take any significant steps to prevent the assault and battery. The plaintiff alleged further that the defendants Sellers, Steele, and the County School Board negligently performed their duties to provide a safe environment and/or adequate protection for the physical safety of the infant plaintiff.

2. The infant plaintiff sought compensatory damages from the defendants and each of them and punitive damages from the defendant Hawkins. The plaintiff Galvester Banks, father of the infant

plaintiff, joined in the action and sought to recover the medical expenses allegedly incurred by him on behalf of the infant plaintiff.

3. Since no service of process was obtained upon the defendants Goode and Hawkins, the plaintiffs moved, on September 23, 1977, to nonsuit the action as to said defendants, which motion was granted by this Court. An Order to that effect was signed by this Court on September 24, 1979.

4. The defendants Sellers, Steele and the County School Board filed Special Pleas of Sovereign Immunity and Motions to Dismiss, Demurrers and Grounds of Defense.

5. The defendants Sellers, Steele and the County School Board submitted written memoranda of law in the case on the following issues raised:

(a) Are the defendants Sellers, Steele and the County School Board immune to the claims in tort assigned and asserted by the plaintiffs by virtue of the Doctrine of Sovereign Immunity?

(b) Is the Motion for Judgment demurrable because of misjoinder of intentional and unintentional torts, and the failure to allege facts establishing a cause of action against the defendants Sellers, Steele, and the County School Board?

6. The plaintiffs asserted a two-prong attack on the defendants' position that Sellers, Steele and the County School Board are protected from liability under the Doctrine of Sovereign Immunity as follows:

(a) The duty of the School Board and its agents to provide a safe environment for its students is ministerial in nature and therefore not protected by nor within the umbrella of Sovereign Immunity;

(b) The time is right for the Virginia Courts to follow the lead of the forty-five (45) States that have abolished the antiquated Doctrine of Sovereign Immunity either totally or at least with respect to School Boards, Districts or School-type entities. Judicial determination and abolishment of the Doctrine, not legislative action, is the proper course for Virginia to take since the Doctrine of Sovereign Immunity is a court devised doctrine historically.

7. On September 23, 1977, this Court heard evidence ore tenus relating to the Special Pleas of Sovereign Immunity and Motions to Dismiss, and the Court also heard oral argument on both the Special Pleas of Sovereign Immunity and Motions to Dismiss and the Demurrers.

8. After taking the matters under advisement, this Court held that the Special Pleas of Sovereign Immunity and Motions to Dismiss were well taken, that the issues raised by the Demurrers therefore need not be reached, and by letter opinion dated August 17, 1979, ruled that the Special Pleas of Sovereign Immunity and Motions to Dismiss were sustained. Over objection of plaintiffs, this Court entered an Order to the same effect on September 24, 1979, noting plaintiffs' exception to the ruling and dismissal.

9. On October 8, 1979, plaintiffs duly filed their Notice of Appeal pursuant to Rule 5:6 of the Supreme Court of Virginia, giving due notice to counsel for defendants.

10. On October 9, 1979, this Court, with the concurrence of all parties, entered an Order making the transcript of the September 23, 1977 hearing a part of the record on appeal.

11. A Statement of Facts, Testimony, or Other Incidents of the Case was filed by the plaintiffs on November 16, 1979, with the Clerk of the Circuit Court of the County of Henrico, Virginia, due notice of same having been given, on that same date, to defendants' counsel, all pursuant to Rule 5:9(c) of the Supreme Court of Virginia.

12. Plaintiffs, on November 16, 1979, also gave Notice to defendants that, on November 29, 1979, at 8:30 a.m., they would move this Court to approve the said Statement.

13. Defendants, on November 21, 1979, duly filed in the Clerk's Office their Notice of Defendants' Objections to Statement of Facts, Testimony or Other Incidents of the Case.

14. Counsel for the parties have since resolved the aforesaid objections of defendants without the necessity of going forward with the hearing originally scheduled for November 29, 1979, and plaintiffs are hereby presenting this joint and agreed Statement of Facts, Testimony or Other Incidents of the Case to the Court for its approval and signature pursuant to Rule 5:11.

/ /

_____
Judge

We Ask For This:

_____

Susan G. Moenssens
Moenssens and Moenssens
3810 Seminary Avenue
Richmond, Virginia 23227
Counsel for plaintiffs

Seen And Agreed To:

_____

Joseph P. Rapisarda, Jr.
Assistant County Attorney
County of Henrico
P. O. Box 27032
Richmond, Virginia 23273
Counsel for defendants
Joseph B. Sellers,
Colin G. Steele, and
the County School Board
of Henrico County

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday *the* 11th *day of* September, 1980.

B. Lynette Banks, et al., Appellants,

against Record No. 791850
Circuit Court No. 77-L-222

Joseph B. Sellers, et al., Appellees.

From the Circuit Court of Henrico County

Upon the petition of B. Lynette Banks and Galvester Banks an appeal is awarded them from a judgment rendered by the Circuit Court of Henrico County on the 24th day of September, 1979, in a certain motion for judgment then therein depending, wherein the said petitioners were plaintiffs and Novita L. Goode, an infant, and others were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said court below in the penalty of $1,000, within 15 days of the date of this order, with condition as the law directs.

On further consideration whereof, finding no reversible error in the judgment complained of insofar as it pertains to the County School Board of Henrico County, the court refuses the petition for appeal as to that party.

A Copy,

Teste:

Allen L. Gray
Clerk

ASSIGNMENTS OF ERROR

1. The Circuit Court erred in affording Respondents School Board the protection of sovereign immunity for the negligent acts on the grounds that as an agency of the Commonwealth they are immune to suits for tortious acts in the absence of legislative waiver of such immunity.

2. The Circuit Court erred in affording Respondents Sellers and Steele the protection of sovereign immunity on the grounds that as employees of the governmental agency they are within the immunity for their official acts.

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

B. LYNETTE BANKS, et al -vs- NOVITA L. GOODE, et al	CASE NO. 77-L-222

The complete TRANSCRIPT of the testimony and other incidents of the above-styled hearing when heard, on September 23, 1977, before Honorable J. Paul Byrne, Judge.

APPEARANCES:

Moenssens & Moenssens, Seminary Avenue, Richmond, Virginia, 23228; by: Susan G. Moenssens, counsel for the plaintiff

and

Robert L. Wolf, Esquire, 6700 Belmont Road, Richmond, Virginia.

Henrico County Attorney's Office, Henrico County Courthouse Complex, Hungary Spring & Parham Roads, Richmond, Virginia; by: Joseph P. Rapisarda, Jr., Esquire, and William G. Broaddus, Esquire, counsel for the defendants.

JOSEPH B. SELLERS, a witness called by the defendants, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. RAPISARDA:

Q Sir, would you state your full name for the record, please.

A Joseph B. Sellers.

Q And, what is your occupation, sir?

A I'm Division Superintendent of the Henrico County Schools.

Q And, Dr. Sellers, who is your employer?

A My employer is the Henrico County School Board.

Q Sir, how long have you been an employee of the County School Board?

A I was employed by the County School Board of Henrico in July of 1961.

Q And, sir, how long have you served in your capacity as Superintendent of Schools?

A I have served as Superintendent of Schools in Henrico County since October 1, 1975.

Q Sir, are you a member of the County

1 School Board of Henrico County?
2 A No, sir, I am not.
3 Q Do you have any sort of relationship or
4 liaison with that Board?
5 A Sir, I am the Chief Executive Officer
6 of the County School Board of Henrico County.
7 Q And, sir, in that capacity as Chief
8 Executive Officer of the School Board, would you describe,
9 briefly, for the Court, the nature of your duties.
10 A As the Chief Executive Officer, better
11 known as the Division Superintendent of the County School
12 Board of Henrico, I am responsible for carrying out those
13 duties assigned to me not only by the County School Board
14 of Henrico but by the State Department of Education and the
15 State Superintendent of Public Instruction.
16 I would say that my duties are very
17 general in nature, such as being responsible for the
18 curriculum in the school, the safety of school buildings,
19 and things of that nature. My duties are very general and
20 supervisory in nature.
21 Q All right, sir. Will you describe,
22 Dr. Sellers, how you go about discharging the duties that
23 are imposed upon you as the Chief administrative officer
24 or the Superintendent of Schools for the County.
25 A Sir, in a County the size of Henrico,

1 the duties that I perform as Superintendent might be somewhat--
2 the nature in which they are handled might be somewhat
3 different than in a smaller school system, but in Henrico
4 my responsibilities are delegated to officials that serve
5 under me, such as Assistant Superintendents and Directors,
6 Assistant Directors, and I do not necessarily perform any
7 of them directly, myself, except of a very general type
8 nature, filing records with the State and things of this
9 nature.
10 Q All right, sir. Dr. Sellers, do you
11 have occasion, in the course of fulfilling your responsi-
12 bilities, to assist the School Board in any policy formulation?
13 A Yes, sir. I serve in an advisory
14 capacity with the School Board in the formulation of policy.
15 Naturally, that is one of the primary functions of the School
16 Board, to formulate the policies under which the school
17 system is to be administered, and I serve in an advisory
18 capacity to the School Board in that regard.
19 Q And, sir, would these include policies
20 or regulations pertaining to the maintenance of conduct and
21 discipline in the various high schools in the County?
22 A Yes, sir, I believe they would.
23 THE COURT: It is not restricted just
24 to high schools, is it?
25 MR. RAPISARDA: Let me rephrase that,

if I could.

BY MR. RAPISARDA: (Continuing)

Q Dr. Sellers, this would be for all schools in the County, generally?

A That is correct, yes, sir.

Q Sir, how are such policies and regulations-- and, here I'm speaking generally of these policies and also including those that pertain to conduct and discipline-- how are those matters implemented in fact?

A From the Division Superintendent's point of view, these are implemented by delegating the authority to other persons in the school system. Naturally, in the overall picture, the Superintendent is responsible for the overall picture of the school system, the overall function of the school system, but it is not possible for the Superintendent to have direct supervision over each of the functions for which he is responsible. He must delegate that authority.

Q All right, sir.

MR. RAPISARDA: Your Honor, that would be all we have at this time.

THE COURT: Cross-Examination, Mrs. Moenssens.

1
2 CROSS-EXAMINATION
3 BY MRS. MOENSSENS:
4 Q Dr. Sellers, I believe you said that
5 you are responsible for carrying out the duties that are
6 assigned to you by the State Department of Education, the
7 State Superintendent of Instruction and the County School
8 Board. Is that correct?
9 A Yes, ma'am.
10 Q All right. Now, in the course of your
11 employment. have you come in contact with any rules,
12 regulations or policies formulated by either one of these
13 bodies or persons regarding the maintenance of a safe
14 environment for students in the schools?
15 A Not specifically, no, ma'am. It would
16 have to be in general terms. For example, the regulations
17 of the State say, for example, that the Superintendent has
18 the authority to condemn a school building if he considers
19 it unsafe for pupils to occupy, but to my knowledge there
20 is no specific regulation that specifies that I am
21 responsible for the safety of children in that context.
22 Q Have you ever been involved in any way,
23 directly or indirectly, in meetings with officials either
24 of the State or of the Henrico County School Board in which
25 safety of the students has been discussed in the schools?

A Well, if not directly stated, I'm sure it's been implied in meetings that we have been in; that all of us want to make the environment safe for the students at the schools.

For example-- if I may use another example, Your Honor-- if we discover that a windowpane is broken and someone calls it to my attention or to the attention of one of my subordinates, and that windowpane is not fixed and a student becomes injured because of it, I think either I or someone has, perhaps, been negligent, but that's why I say it's a very general type thing.

Q Well, you are provided, are you not, with some type of an informative bulletin or communication in which you would be informed of the happenings about the Richmond metropolitan area regarding safety of the students in the schools?

MR. RAPISARDA: Your Honor, I would object to that part of the question "Richmond metropolitan area". If she wants to keep it to Henrico County Public Schools--

THE COURT: I think we are concerned with Henrico County, Mrs. Moenssens. We can't be responsible for what's happening in the city schools.

MRS. MOENSSENS: Well, Your Honor, what

1 far do we take that?
2 MRS. MOENSSENS: Well, I would be happy
3 to confine it to the Richmond metropolitan area.
4 THE COURT: I don't think you can.
5 That's the point that I am trying to make. I think
6 it's perfectly permissible for you to ask Dr.
7 Sellers if there has been a general declaration
8 of policy from the State Board of Education with
9 regard to maintaining a safe environment for
10 students in the schools.
11
12 BY MRS. MOENSSENS: (Continuing)
13 Q Dr. Sellers, has there been a general
14 declaration of policy of any nature regarding to providing
15 a safe environment for students in the Henrico County School
16 system?
17 A I'm not familiar with any such policy.
18 Q Are you aware of any publication which
19 exists which provides information to you on incidents of
20 violence in the Henrico County School system?
21 MR. RAPISARDA: Your Honor, I'm going
22 to object to that. To me, that's getting into
23 the merits of whether the man had notice and how
24 many occurrences are going on. I think for
25 purposes of the plea, again our position-- and, we

1 don't oppose, of course, Cross-Examination on the
2 duties and how he goes about fulfilling them--
3 but, I don't see how this ties in.
4 THE COURT: Well, Mr. Rapisarda, I'm
5 going to let it in.
6 MR. RAPISARDA: All right.
7
8 BY MRS. MOENSSENS: (Continuing)
9 Q Would you answer the question, please.
10 A Would you restate the question, please.
11 Q Have you been informed by any type of
12 bulletin or any type of informational device about incidents
13 of violence which have occurred in the Henrico County school
14 system?
15 A No, ma'am, not to my knowledge.
16 Q Then, are you stating that in your
17 entire connection with the Henrico County school system
18 there has never been an incident of violence to your
19 knowledge?
20 A No, ma'am, I did not state that.
21 Q Have there been incidents of violence,
22 to your knowledge?
23 A Yes, there have. They are reported to
24 me individually as they happen in schools. I have not
25 received any publication or any notice to that regard.

1 Q Then, you have been aware, and have you
2 communicated your awareness to the School Board?
3 A Yes, I have.
4 Q And, have there been discussions between
5 yourself and the School Board regarding these incidents?
6 A I do not recall that any specific
7 discussions have been held between the isolated incidents
8 of this nature with the School Board.
9 Q Then, you are not concerned?
10 A Yes, I was concerned, but we have not
11 had any numerous occasions of violence, as you describe it,
12 in Henrico County schools, and these things have been maybe
13 mentioned to the School Board members in the various
14 districts where the school would be located, but I do not
15 recall any specific discussions with the School Board as a
16 School Board of specific concerns in this regard.
17 Q Are there any rules and regulations
18 which exist within the schools of Henrico County, to your
19 knowledge, which pertain to students carrying weapons on
20 the school premises?
21 A In general, the decorum at school and
22 the deportment of students at school is left in the hands
23 of the local school administration at each individual school.
24 The policies that come out from the School Board are very
25 general in nature. Without looking through the complete

1 policy and regulation book, I cannot recall whether there
2 is a specific regulation dealing with the carrying of a
3 weapon or not.
4 Q Then, you, yourself, have never issued
5 any directives to be carried out through the School Board
6 and the schools themselves relating to weapons in the
7 schools. Is that correct?
8 A I don't recall that I have.
9 Q And, you have never issued any
10 regulations to be carried out by the School Board and the
11 schools regarding maintenance of a safe environment for
12 the students?
13 A I think that is generally understood.
14 I don't recall that I have issued any particular superin-
15 tendent memorandums or anything about it-- at least, not
16 recently.
17 If I might give you-- may I indulge
18 the Court for just a minute?-- if I might give an example
19 of what I do do or have done, this year, for example, I did
20 issue a superintendent's memorandum cautioning or asking
21 the principals to caution the coaches about excessive work
22 of the football players during the excessively hot season,
23 in regard to their safety and their health, just to remind
24 them, because I have heard of players having heart attacks.
25 In that regard, yes.

1 Q Do you believe, Dr. Sellers, as
2 Superintendent of Henrico County Schools, that you have an
3 opportunity and a duty for the safety and welfare of the
4 students there?
5 A Yes. I have a responsibility for the
6 safety and welfare of the students, but I am not able to
7 do that properly without delegating that to someone else.
8 Q And, is that duty to see to the safety
9 and welfare of the students, then, a part of the responsi-
10 bility of the School Board?
11 A In general terms, yes, ma'am, I think
12 we are all responsible for the safety and welfare of the
13 students.
14 Q And, is the duty to provide a safe
15 environment and to provide for the safety and welfare of
16 the students also the responsibility of the principals of
17 the individual schools in the Henrico County school system?
18 A Insofar as possible, yes, ma'am.
19 THE COURT: Go one step further, Mrs.
20 Moenssens, and put it on the parents, too.
21
22 BY MRS. MOENSSENS: (Continuing)
23 Q All right. Do you believe the parents
24 also have a duty to see to it that the children are of such
25 a mental framework and educational background through the

1 home that they would be inclined to-- are you a parent, Dr.
2 Sellers?
3 A Yes, ma'am, I am.
4 Q Do you have children in the school
5 system?
6 A Yes, I do. I have one daughter.
7 Q As a parent, do you believe you have a
8 duty, also, to see that your child is in a safe environment in
9 the school situation?
10 A Yes, ma'am.
11 Q All right.
12 A If I might add to that, I would think
13 that it's most definitely and assuredly a parent responsi-
14 bility to see that the child goes to school with the
15 attitude and the background from home knowing that they will
16 conduct themselves in a safe environment conducive to
17 learning.
18 Q Thank you. And, Dr. Sellers, in Henrico
19 County if a child resides in Henrico County he or she is
20 required, by law and the mandates of the legislature and
21 through the State Department of Education, to attend a
22 public school in Henrico County if he has not been exempted
23 for religious reasons or chooses and is financially able to
24 go to private school. Is that correct?
25 MR. RAPISARDA: I would like to object to

1 that, because it's not relevant to the issues
2 today.
3 THE COURT: I'm not going to stop her
4 now. I know what the answer is going to be.
5 MR. RAPISARDA: We just want to--
6 MRS. MOENSSENS: I oppose it because
7 I think it's quite relevant.
8 THE COURT: The Court is going to
9 allow it.
10
11 A (Continuing) Would you please restate
12 the question, ma'am.
13 Q Yes, sir. Dr. Sellers, for children
14 who live in the Henrico County area, they have no choice,
15 generally speaking, whether or not to attend a school in
16 Henrico County. Is that not a fact?
17 A Yes, they do have a choice.
18 Q What is their choice?
19 A There are a number of private schools
20 in the area that they can choose to attend, if they so
21 choose to do so.
22 Q If they are not financially able to,
23 though, these students are required, are they not, by the
24 law of Virginia, to attend school between the ages of five
25 and seventeen years? Isn't that correct?

1 A No, ma'am, that is not correct. They
2 are required to attend school between the ages of six and
3 seventeen.
4 Q With all due respect, Dr. Sellers, I
5 believe the age has been lowered, has it not, for kinder-
6 garten purposes?
7 A Kindergarten is not yet compulsory;
8 it is optional.
9 Q Between the ages of six and seventeen
10 children in Henrico County must attend school. Is that
11 correct?
12 A Yes.
13 Q And, unless the parents are of other
14 means than attending public school, those children must
15 attend a public school in Henrico County. Is that not
16 correct?
17 A I think that would be correct.
18 Q So, children such as your child and the
19 plaintiff in this case-- they had no choice of where to
20 be during the daytime hours over which their schedules were
21 operating, and that was within the province and custody of
22 Henrico County schools at that time. Is that not correct?
23 A I'm not sure what choice the party
24 involved in the case had. I myself have a choice to send
25 mine to private or public school. I'm not sure what choice

1 that individual had, depending on their financial condition.
2 THE COURT: Do you include in private
3 school parochial school?
4 THE WITNESS: Yes, sir.
5
6 BY MRS. MOENSSENS: (Continuing)
7 Q Then, Dr. Sellers, for the student who
8 is not of the means to attend private or parochial school
9 and has not been exempted by the Court for religious or
10 other reasons, that child normally is required under law
11 to be in school during school hours and is entrusted to the
12 care of the Henrico County school system. Is that not a
13 fact?
14 A Every child between the ages of six
15 and seventeen who resides in Henrico County must be in school
16 somewhere.
17 Q In a Henrico County public school
18 operated by the School Board of the County of Henrico. Isn't
19 that correct?
20 A Every child must be in school somewhere.
21 If they cannot or choose not to go to a private school, they
22 must be in a Henrico County public school, unless they are--
23 we have a few cases where they are wards of Henrico County,
24 but they may be out of the County attending school somewhere
25 else, but generally speaking children who reside in Henrico

1 County are required to attend the Henrico County schools
2 if they do not choose to go to private or parochial schools.
3 And, in general terms. the School Board
4 or school administration is responsible for their safety
5 and well-being.
6 Q Thank you.
7 MRS. MOENSSENS: That's all the
8 questions I have.
9 MR. RAPISARDA: Your Honor, just to
10 make the record clear, I would note that we
11 object to that whole line of questioning she
12 was just going into about the duty to attend
13 school.
14 THE COURT: Your objection and
15 exception will be noted in the record, Mr.
16 Rapisarda.
17 MR. RAPISARDA: Thank you.
18 THE COURT: Any further questions of
19 Dr. Sellers, Mr. Rapisarda?
20 MR. RAPISARDA: Judge, we have no
21 further questions.
22 THE COURT: You may step down, Doctor.
23 Thank you very much.
24 * * * * * * * * *
25 WITNESS STOOD ASIDE

THE COURT: Any further evidence, Mr. Rapisarda?

MR. RAPISARDA: Your Honor, we would like to call Dr. Steele, please.

COLIN G. STEELE, a witness called by the defendants, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. RAPISARDA:

Q Sir, would you state your full name for the Court, please.

A Colin G. Steele.

Q And, sir, what is your occupation?

A Principal of Henrico High School, Henrico County.

Q And, sir, by whom are you employed?

A Henrico County School Board.

Q How long, sir, have you been an employee of the School Board?

A Since July, 1972.

Q And, how long--

A 1973.

1 Q All right. And, how long, Dr. Steele,
2 have you been the principal at Henrico High School?
3 A That same amount of time.
4 Q All right. Sir, to what individual or
5 individuals are you responsible for the discharge of your
6 duties as principal of Henrico High School?
7 A I'm responsible to the Assistant
8 Superintendents, of which there are four, and to the
9 Superintendent himself.
10 Q And, that is Dr. Sellers?
11 A That's right.
12 Q What are your duties as principal of
13 the high school?
14 A In broad terms, my duties are to
15 manage the high school and provide the educational climate,
16 instructionally and otherwise, for all of the students.
17 Q All right, sir. How do you go about,
18 Dr. Steele, discharging the duties which you do have as
19 principal, and include in that, your answer, if you would,
20 your duty to maintain conduct at the high school.
21 A I do it essentially through a delegation
22 process to those people employed by the school system who
23 work at the school, teachers, assistant principals, and
24 those kind of individuals, by formulating policy, using some
25 judgment and discretion in carrying out the general School

1 Board regulations.
2 Q All right, sir. Do you have occasion,
3 sir, to do some formulation of policy or regulations per-
4 taining to the maintenance of conduct and discipline at
5 Henrico High?
6 A All the regulations that we have
7 regarding conduct and discipline and the punishment and
8 rewards thereof are formulated by me and their implementation
9 delegated to subordinates.
10 Q All right, sir. How, then, are those
11 policies implemented in fact?
12 A By issuing plans and programs and
13 designs that can be carried out by those employed at the
14 school system.
15 Q All right, sir. Dr. Steele, when you
16 say that you participate in formulating plans and policy,
17 do you, yourself, draft these plans and programs?
18 A Yes, sir.
19 MR. RAPISARDA: That's all I have,
20 Your Honor, at this time.
21 THE COURT: Cross-Examination, Mrs.
22 Moenssens.
23
24
25

1
2 CROSS-EXAMINATION
3 BY MRS. MOENSSENS:
4 Q Dr. Steele, I believe you said you
5 received some of your instructions from the Division Super-
6 intendent and the School Board. Is that correct?
7 A I did not say that, no, ma'am.
8 Q Who did you say, then, the Division
9 Superintendent and who else?
10 A I didn't get any question about who I
11 received my instructions from, ma'am.
12 THE COURT: He said he was responsible
13 in the exercise of his duties to the four
14 Assistant Superintendents and to Dr. Sellers.
15 MRS. MOENSSENS: All right-- Assistant
16 Superintendent. I missed that. Thank you.
17
18 BY MRS. MOENSSENS: (Continuing)
19 Q Now, you have stated that you, yourself,
20 formulate policy. Have you formulated any policies regarding
21 the safety of the students at Henrico County High School?
22 A Yes, I have.
23 Q And, what would be the nature of those
24 policies?
25 A They would be policies regarding the

1 regulation of conduct and the response therein when a
2 student violates the decorum of normal citizenship.
3 Q Have you formulated policies regarding
4 weapons and violence in the schools?
5 A No, I have not.
6 Q You are stating, then, that you have
7 no policy at Henrico High as to whether or not the students
8 may carry weapons or be violent in the school?
9 A We don't use the term "weapon" nor
10 "violence" in any of our policies. We use the term "fight".
11 We have a policy that bars students from fighting.
12 THE COURT: I'd be interested right
13 here, Doctor, to know if that policy is effective.
14 THE WITNESS: About as effective as it
15 was when you were going to school, Your Honor.
16 THE COURT: Yes, I was going to get
17 into that in just a few minutes.
18
19 BY MRS. MOENSSENS: (Continuing)
20 Q Who do you delegate the implementation
21 of your policies to, Dr. Steele?
22 A The rest of the professional staff, the
23 assistant principals and the teachers.
24 Q Do you believe that as principal of
25 Henrico High you have a duty to provide a safe environment

1 for the students?
2 A Certainly.
3 Q And, you believe that you are responsible
4 for the safety and welfare of the students while they are
5 in school during school hours?
6 A I don't believe that I am personally
7 responsible, no, ma'am.
8 Q Who is?
9 A Anyone who is personally and directly
10 charged with their conduct at the moment; for example, a
11 classroom teacher with twenty students in front of her
12 during a class meeting.
13 Q But, as principal of the school, you are
14 charged with the supervision and maintenance and care of the
15 students during the entire school day, are you not?
16 A Yes.
17 Q So, then, really, you are charged with
18 the responsibility of maintaining a safe environment for the
19 children, are you not, at the top level?
20 A I'm charged with the general responsi-
21 bility. You have just indicated-- if I may draw an analogy,
22 much the same as the Chief of Police of Henrico County is
23 charged with that responsibility for the County.
24 Q And, then, you feel beyond that the
25 teachers, individual teachers, who have the particular child

in their custody at that particular moment are charged with the responsibility. Is that correct?

A If there is such a relationship at the moment, yes, ma'am. There are many moments in the formal operations of a school day when no one is directly beside a student, but on those occasions when a teacher has a student assigned to her or an assistant principal has a responsibility assigned, yes.

Q Well, your teachers, Dr. Steele, have duties that traditionally teachers I don't believe are fond of-- I was once a teacher myself-- such as bus duty-- is that correct?-- cafeteria duty. So, there are teachers on duty at all times of the day, although a child may not be in a classroom with Miss Smith, let's say. Is that correct?

A Yes.

Q So, you have teachers that are daily assigned bus duty. Is that correct?

A That's correct.

Q And, you have teachers that are assigned cafeteria duty?

A That's correct.

MRS. MOENSSENS: I don't believe I have any other questions, Your Honor.

THE COURT: Any further questions, Mr.

Rapisarda?

MR. RAPISARDA: No, Your Honor.

THE COURT: The Court was only being facetious. He is not interested in determining whose going to be king of the hill on the first day of school like it used to be.

You may step down.

* * * * * * * * *

WITNESS STOOD ASIDE

THE COURT: Any further evidence, gentlemen?

MR. RAPISARDA: No, Your Honor.

THE COURT: Any evidence from you, Mrs. Moenssens, this morning?

MRS. MOENSSENS: No, Your Honor. As I have stated before, I believed it was a matter of law and not factual evidence.

THE COURT: I understand. The Court is going to take a ten minute recess and let you get your thoughts together to present your argument.