

City of Coral Gables City Commission Meeting
Agenda Item I-2
March 28, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick

City Staff

City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia
Police Chief, Ed Hudak

Public Speaker(s)

Manuel Guarch, Justice Advocate

Agenda Item I-2 [2:21:45 p.m.]

Litigation Report/Justice Advocate Program

Mayor Cason: We are going to do now I-2, which is Justice Advocate Program, it's been waiting for a number of hours.

City Attorney Leen: OK. We'll do I-2. Thank you Mr. Mayor, you are absolutely right. Although we have asked Mr. Guarch try to do work here when he's here, so he's been doing some work on other matters. Today we are presenting to you two things, the Litigation Report, which has been sent to you, each of you. If you have any questions about it, otherwise it will just be accepted by the City, any of you have any questions on the Litigation Report?

Mayor Cason: No.

City Attorney Leen: OK. In addition to that, then we have the Justice Advocate Update. We wanted to do this update, the Mayor had requested it for his final meeting as Mayor, we wanted to give an update as to what's occurring. So, I'm going to have Mr. Guarch go over what our current cases are, he's going to do that briefly with the PowerPoint, and then I'm going to speak briefly at the end about something that's occurred this week, then he's going to talk a little bit about that too. So, Mr. Guarch.

Mr. Guarch: Good afternoon, Manuel Guarch with the Reyes Law Firm, Special Counsel for the City. So, we have the PowerPoint, this time, so it's up there. Mr. Mayor at the end, because this is your last meeting, but I do have information that you've asked for a couple times that I think you'll all enjoy. So, you are familiar with the Justice Advocate Program its goals and purposes. This is Luis Basalo, this is a selection of a number of individuals. Not in this presentation is juveniles, though I will discuss a couple juveniles just not their names, I can't identify them, but they are relevant. Luis Basalo was an armed car-jacking, was a shooting in October. Not much has happened in that case since we last spoke, that case is set for trial 4/17. I don't anticipate it will go that day. These are the three LSA subjects from about two years ago. Two of them are still fugitives, leaving the scene of an accident where somebody was critically injured. They were in a coma for approximately one month. The two subjects are fugitives, they have arrest warrants pending, one of them is actually in prison right now in Arkansas, so he's in prison right now in Arkansas, so his prison time in Arkansas takes precedent over our Florida trial. This is a false impersonation, its set for trial 5/30, and the State Attorney's office is handling this and is very happy with how the case is progressing. Cedric Gray – again, this is set for trial 5/15, no major updates there. Grissom Rodgers is probably an event you read about or heard about recently. This was an officer involved shooting. The subject had car-jacked a vehicle at gunpoint, then was found here in Coral Gables thanks to the automated license plate reading technology that the City has installed. He was then taken into custody in front of or near UM's campus. We attended the bond hearings on this case and argued for probable cause on an attempted murder of one of the officers; probable cause was found and an increased bond was placed for this individual for an aggravated fleeing and alluding person is still in custody and doesn't look like to be getting out of custody any time soon. Irene Menendez is a case we previously discussed. She's been now convicted and sentenced to one year state prison. This was a victim approved plea. It's a very old case, I was surprised it's closed this way, but the victim was happy, so there was a resolution. Juan Carlos Redero was another leaving the scene of an accident case. It was a death involving a bicyclist. I'm sure you'll remember its set for trial 4/10. This was a burglar cluster. This is the case I wanted to discuss. This was, I want to say about three or four months ago, I know it came before the Commission. It had happened right before the last presentation. Since that time the adult in the case has accepted a sentence, with hold adjudication with six months community control which is house arrest followed by six months probation. More importantly the two juveniles in that case, who I won't name have gone to high risk residential treatment or high risk

residential facility, which means that they are basically in custody of the state receiving rehabilitation for a period of one year while they also receive continual education. This is important and if either of the juveniles does commit a crime again they will be looked at for direct filing as adults. So, ordinance violation prosecutions, we are now at the direction of the City Attorney receiving all no action memos from the State Attorney's Office, and no action memo is essentially when the State Attorney's Office issues a memorandum that says why it's declining to prosecute one of our cases. So give a reason either, victim failure to appear for a pre-file conference, lack of evidence, or suppression issues, whatever the reason is. We now are taking these no action memos to our police legal advisors to identify training possibilities for the department and determine when appropriate; an ordinance violation prosecution should go forward with Madam City Prosecutor.

City Attorney Leen: Yes. So, the way that that works is that if there is a no action it comes to Mr. Guarch, our Justice Advocate, he will confer with Ms. Ramos, the City Prosecutor. We will confer with the Director of Public Safety, Chief of Police, both of them and then we will determine whether to go forward with a municipal ordinance violation or maybe a civil, some sort of civil citation or it could just be training, it could be a lawsuit, there are all sorts of things that we could do in those circumstances, but take another look. I also believe, I know that the State Attorney, they work very hard, they do good work, but I always believe when these things are being looked at, it improves the process, because it's always good for someone to be looking at it who deeply cares about it. I believe the State Attorney deeply cares about it, but we do too, because it's our residents who are hurt, so that's the idea behind it, and I believe it's going to work well.

Mr. Guarch: So finally, Mr. Mayor this is what I was talking about. In receiving these no action memos, since November of this past year, we've received seven no action cases with the State Attorney's Office, prior to filing charges declined to go forward. Of those seven cases, six were for a victim failure to prosecute. So, victim either decided they didn't want to show up for a pre-trial conference or simply said to the State Attorney's Office they won't be cooperating with the prosecution. Only one of those seven cases was for a reason other than victim failure to appear and the one case did not have to do with officer not showing up, it had to do with simply whether or not State Attorney's Office felt they could prove their case beyond a reasonable doubt. So, I believe you had asked me before what the percentage was, with a small sample size its 85 percent.

Mayor Cason: And we've gone out of our way to make it easy for victims – they can go to, is it your office, fill out a declaration, so they don't have to go down.

Mr. Guarch: They can do that with the State Attorney's Office, they can also be deposed; we've offered our offices, we have multiple conference rooms for them to be deposed here in Coral Gables, so they don't have to go all the way downtown.

Mayor Cason: And we also have the fund to provide money if they are earning hourly salaries, so that they don't lose money.

City Attorney Leen: The Victims Assistance Program, which – this has just started looking at these no actions, so that will be they will be coordinated together.

Mayor Cason: But, it's still a shame that we are losing cases, because people just don't want to be bothered to go in, and then what happens they'll come back and do it to the neighbors, they'll keep coming back and back and back, so it's unfortunate.

Commissioner Slesnick: Where are they deposed here in Coral Gables? - at the police station or the courthouse?

Mr. Guarch: If they don't take advantage of our offer, the depositions will take place in one of three places, the courthouse, the Public Defender's office, or the State Attorney's Office, generally by rule or by agreement of the parties that's where a deposition would occur.

Mayor Cason: Great – any questions? Thank you very much.

Mr. Guarch: The other I don't know if you want to discuss.

City Attorney Leen: Yes. I just wanted to briefly mention. Many of you may have seen in the news a sad story from the 70's. Officer Robert de Court who was a Coral Gables Police Officer was killed in the line of duty, his name came back into the news recently, because one of the two defendants in this case was sentenced for the crime he committed at the age of 17 to life with the possibility of parole. Now that sentence was done in exchange, it was basically a negotiated sentence in lieu of the death penalty. The issue is that the Judge in the case is taking another look at the sentence, has reopened it, and my understanding is that it has been appealed to the Third District, his decision to reopen the case for sentencing, and that case is in front of the Third District. My view, I've talked to the City Manager about this and she has the same view and I've talked to a number of you individually, but I felt like it should be brought up in open session, is that Coral Gables should always stand by its officer, that's our duty in this sort of situation where an officer was killed in the line of duty. I believe that we should appear in the case and that we should submit an amicus brief, which is in front of the court. My understanding from Mr. Guarch is there is a cullable argument against what the defendant is seeking to do here, that there is a

cullable argument that he should remain in jail, and I believe based on the Justice Advocate Program which is typically used, albeit for different types of crimes, this is the most serious crime. I do believe it should be applied here too and that we should prosecute this to the fullest extent of the law. So, that's why we just brought it to you today. Mr. Guarch would you speak about it a little bit?

Mr. Guarch: Absolutely. We agree with the State Attorney's Office position. They believe that this is distinct from precedent in Miami-Dade County and the third DCA, and that's why they have chosen to appeal the trial court's order granting a new sentencing in this case; and in this case there was a bargain for deal in lieu of the death penalty, the defendant agreed to accept life in prison with the possibility of parole; and in addition to that, this case is slightly different, because it's not a de facto life sentence as he has been given potential punitive future release dates for parole, however they've been withdrawn. So, we believe there is absolutely a cullable argument, both for overturning the lower court judge's ruling concerning granting new sentencing, but even aside from that in the event that we lose there, I know the Chief is very strong in his position that senior staff and officers will be appearing for a new sentence hearing if it gets to that.

City Attorney Leen: Prior to bringing the matter before the Commission, I spoke with Director Fernandez, I spoke with Chief Hudak, both felt very solemnly that this is something that we should be doing, and so would either of you like to say anything about it?

Chief Hudak: The ongoing fight for justice for the officers, the nine of them, is something that my job is to make sure that we continue to follow up. Bob de Court's son still comes every year for police memorial in May. I've been to several sentencing hearings, actually one person, and I use the person term lightly, is out on the streets that was involved in killing one of our officers, Officer Teranoni in 1980. Again, his parole supervision has been modified; we didn't get notice of it on time when it was done. We owe this to the families, I think it's my job; we owe it to the families. I appreciate the City Manager's support, the City Attorney's support, that we never forget the sacrifices that they have made and this person took a deal, even though and you've probably read it in the newspaper, his bullet wasn't the bullet that killed Bob de Court, but he was involved in it, and he took that plea and justice needs to be served in that decision that was made back then. We will continue and as I've told staff, my senior staff the other day that, if it gets to the point where there is resentencing, we will be there, because we are only as good as those that we lost and that we remember. I appreciate everyone's support on this for the family. I've been in touch with the de Court family, they understand it; and we talk about re-victimizations of our citizens and here it comes again from 1972, just to revisit the entire situation again is tough on them.

Mayor Cason: Agreed. Go forward. Thank you.

City Attorney Leen: Thank you Mr. Mayor.

Mr. Guarch: Thank you.

City Attorney Leen: One note, Mr. Clerk could you note that there was unanimous consent.

[End: 2:35:57 p.m.]