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GRAND JURY

September 5, 2003

SEP 22 2003

The Honorable Allan Hardcastle  
Judge of the Superior Court  
*Hand Delivered*

(MT)

9/10/03

#1599

RE: District Attorney's Response to 2002-2003 Grand Jury Report

Dear Judge Hardcastle:

Pursuant to Penal Code Section 933(b), please find attached a copy of our response to the 2002-2003 Grand Jury report.

Should you have any questions or comments regarding our response, please do not hesitate to contact me.

Sincerely,

R7, R4, R5,  
F15, R1, R2, R3, R4, R5, 6

  
Stephan R. Passalacqua  
District Attorney

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cc: Mike Chrystal, County Administrator  
Board of Supervisors  
Lou Haffner, Public Defender  
Sheriff Bill Cogbill

**SONOMA COUNTY DISTRICT ATTORNEY'S OFFICE  
RESPONSE TO THE 2002-2003 GRAND JURY REPORT**

**INVESTIGATING THE INVESTIGATORS**

**Recommendation R7, Page 19**

*Strengthen the use of integrated teams and include members from Bureau units and key law enforcement officials from outside the Bureau such as a Deputy District Attorney.*

**Response:** The recommendation has been implemented by the District Attorney.

In January of 2003, the newly elected District Attorney formed a Homicide Unit within the District Attorney's office comprised of the Assistant District Attorney, the Chief Investigator, three Deputy District Attorneys, and an additional investigator.

A designated attorney and investigator will respond to homicide and suspicious death scenes in conjunction with the venue agency in order to familiarize themselves with the circumstances surrounding the death. The attorney provides legal advice to investigating detectives, assists with the preparation of search warrants, and monitors the interview/interrogations of critical witnesses and/or suspects.

A designated attorney or investigator will attend the autopsies of the victims in order to be aware of the cause of death and to provide any subsequent legal advice in relationship to the on-going investigation.

In June of this year, members of the District Attorney's Homicide Unit met with the detective supervisors of each law enforcement agency in Sonoma County. Discussions included death review team protocols, inter-agency cooperation and resources, the role of the Coroner in death investigations, the role of the District Attorney's Office in homicide investigations in Sonoma County, and the possibility of establishing a county-wide homicide protocol.

**OFFICER-INVOLVED INCIDENTS**

**Recommendation R4, Page 31**

*The District Attorney's Office should shorten the time the agency being investigated must wait for written notice of any criminal wrongdoing.*

**Response:** The recommendation has been implemented.

The investigation of law enforcement employee-related fatal incidents are very serious matters. Employee-related fatal incidents are extremely time consuming and detailed events. As a result, the assigned prosecutor must closely review the completed investigative reports for any indication of criminal culpability by the involved parties. The attorney must then author an extensive Critical Incident Report of findings and conclusions.

Due to the serious nature of these types of incidents and the volume of work involved, it normally takes many weeks to months to thoroughly review the law enforcement investigation and complete the District Attorney's final report. After the assigned prosecutor completes his or her report, the Critical Incident Committee will review the matter; the Assistant District Attorney, three Chief Deputy District Attorneys, and the Chief Investigator comprise this committee. Their recommendation will then be submitted to the District Attorney. The District Attorney's Office will make every effort to complete the review process of these important matters within a reasonable period of time.

**Recommendation R5, Page 31**

*The District Attorney should routinely provide the Grand Jury with a copy of each Critical Incident Report in a timely manner, including the "Critical Incident Participation Report" for that incident.*

**Response:** The recommendation has been implemented.

In response to the 2002 Grand Jury recommendation that a Critical Incident Participation Report detailing district attorney employee involvement in each critical incident case be included with the final report, our office has implemented this procedure, which became effective on June 11, 2003.

This report will be maintained by both the attorney and the investigator assigned to the case, as well as any other personnel that participate to any degree in the investigation, review, or prosecution of the matter.

## IS JUSTICE BEING SERVED IN OUR COUNTY?

### **Finding F15, Page 52**

*The handling and dismissal of the murder trial resulted in deep divisions and conflict within the District Attorney's Office. Those divisions have not completely healed.*

**Response:** The respondent disagrees partially with the finding.

The Pelfini murder case was a tragedy for the community. The District Attorney's Office has taken steps to ensure that our office is effectively and professionally handling our most serious cases. The formation of a Homicide Unit was a significant step in that direction; our most qualified and experienced members of the office comprise that unit, which is supervised by the Assistant District Attorney.

### **Recommendation R1, Page 53**

*The Sheriff's Office and the District Attorney's Office should review their policies and practice regarding managing the performance of their respective staffs. Changes should be made to ensure that managers are trained in providing accurate feedback to their employees and in documenting poor performance. Reviews should accurately reflect performance and include annual employee goals to improve. Documentation of poor performance should be permanently retained in personnel files.*

**Response:** The recommendation has been implemented.

Managers and supervisors do review policies and practices on a regular basis in order to ensure proper employee performance and at the same time address poor performance.

Attorney, investigator, and support staff managers attend county-sponsored training sessions on topical issues on an annual and semi-annual basis. The peace officer manager and supervisor on staff have attended numerous supervisory and management training courses certified by the California Peace Officer's Standards and Training (POST). In addition, attorney supervisors attend conferences sponsored by the California District Attorney Association and the National College of District Attorneys.

Staff managers and supervisors complete detailed performance evaluations on subordinates at least semi-annually. On certain occasions, these evaluations contain

poor or marginal performance issues that are reviewed by the Human Resources department as well as County Counsel. Goals for future performance are included in evaluations.

Pursuant to the Civil Service Rules and Regulations, all documented letters of reprimand, suspension, or termination are maintained in the employee's personnel file for the amount of time allowed by law.

**Recommendation R2, Page 53**

*Employees who have been identified as chronic poor performers should be terminated, not merely transferred at the same pay rate.*

**Response:** The recommendation has been implemented consistent with the applicable law.

The District Attorney's Office has many talented and valuable employees. The public expects and deserves that our employees perform at a competent level. Under the new administration, thorough performance evaluations are conducted. If a particular employee does not perform in a manner that is in the best interests of the office and the community, then appropriate action is taken. Such action may range from counseling to disciplinary action, including termination, depending on the specific circumstances.

The Office of the District Attorney will continue to evaluate each employee's work performance in a fair manner. County Civil Service Rules, State and Federal law require each department to follow a course of "progressive discipline" prior to any termination of employment.

**Recommendation R3, Page 53**

*The District Attorney's Office should conduct an anonymous internal survey to identify current teamwork/morale issues and solicit and implement suggestions for improving the department.*

**Response:** The recommendation has not yet been implemented but will be implemented in the future.

Prior to the publication of the Grand Jury's report, the District Attorney retained a consultant to assist the office in the process of restructuring and to improve the morale

of the District Attorney's Office. Over the next six months, it is anticipated that the office will complete that process which will assist members of staff to continue to provide competent and effective services to the public within a healthy work environment.

It is important to note that lack of adequate space and difficult working conditions contribute to the present workplace environment.

**Recommendation R4, Page 53**

*The current District Attorney should make himself more accessible to all staff members and to other law enforcement agencies.*

**Response:** The recommendation has been implemented since the new District Attorney took office on January 6, 2003.

The District Attorney is very accessible to the staff members and the other law enforcement agencies throughout the county. He will continue to make every effort to make accessibility a high priority.

The District Attorney meets on a weekly basis with Administrative staff members, and holds frequent office-wide meetings for the entire staff of 125 employees. The District Attorney has been personally available on occasions to mentor prosecutors after observing their performance in court. Also, he meets informally with various staff members on a regular basis.

The District Attorney meets on a monthly basis with the representatives of every law enforcement agency in the county at the Chief Association meetings. Also, the District Attorney sits on a number of important committees and task forces including the Santa Rosa Mayor's Gang Prevention Task Force. On a monthly basis, he participates in county-wide department head meetings and is also a member of the Sonoma County Management Advisory Council. Also, the District Attorney meets on a regular basis with representatives of the courts, the Public Defender, and other representatives of the legal community.

In addition, the budget crisis was a top priority during the beginning of the District Attorney's administration.

**Recommendation R5, Page 54**

*The District Attorney and Board of Supervisors should explore all avenues to provide adequate space for the District Attorney staff.*

**Response:** The recommendation has not yet been implemented but will be implemented in the future.

The Board of Supervisors is aware of the significant space needs of the Office of the District Attorney. Members of the administrative staff are working closely with the Department of General Services for obtaining additional space. It is anticipated that by June 2004, additional space will be provided.

In the meantime, temporary steps have been taken to improve the working conditions by converting an office into a conference room and another office into an employee break room.

**Recommendation R6, Page 54**

*The Sheriff's Office and the District Attorney's Office should continue to build a strong, mutually supportive team to provide high quality investigations and the successful prosecutions of criminal cases.*

**Response:** The Recommendation has been implemented

The new District Attorney and the new Sheriff have met and discussed these important issues. Both offices have every intention to work closely and to ensure that the District Attorney's new Homicide Unit and the Sheriff's detective units develop a strong and professional working relationship that enhances quality investigations and successful prosecutions. In June of this year, members of the District Attorney's Homicide Unit met with the supervisors of the Sheriff's violent crimes detective unit to discuss areas of mutual investigative concern, and to improve channels of communication on legal issues relative to homicide and suspicious death cases. In addition, detectives from every other law enforcement agency were present.

**Recommendation R7, Page 54**

*The District Attorney and Sheriff should ensure that the policies and procedures drafted as a result of People v. Pelfini are followed by personnel in their departments.*

**Response:** The recommendation has been implemented.

The District Attorney and staff members continue to remain cognizant of the issues surrounding this case. Each prosecutor and investigator assigned to the new Homicide Unit attend regular in-house meetings. Plans are being made for the members of the Homicide Unit to meet with homicide detectives on a county-wide basis at least 3-4 times per year. A meeting took place in June 2003. Prosecutors, investigators, and detectives communicate on a regular basis during the investigative phase and prosecutorial phase of every homicide case.

**PROFESSIONALS DEFEND SONOMA COUNTY'S INDIGENTS**

**Recommendation R7, Page 62**

*The Public Defender should partner with the courts, the District Attorney's Office and contract attorneys to develop a case definition that all use uniformly.*

**Response:** The Recommendation requires further analysis.

Presently, the District Attorney and the Courts use the Integrated Justice System to compile statistics based on cases, not defendants. The Public Defender also has access to this reporting mechanism. It is unknown at this time how the public defender keeps their workload statistics, thus impacting the scope and parameters of any analysis or study to be completed by the public defender, courts, district attorney or contract attorneys.

The Office of the District Attorney is available to partner with the Public Defender and the courts in developing a case definition.