

# WAS JUSTICE SERVED?

## SUMMARY

The 2011-2012 Grand Jury received a complaint held over from the previous year's Grand Jury due to time constraints. The complainant is the son of a man who was killed by a juvenile hit-and-run driver. The complainant had numerous concerns about the disregard of his and his family's rights under the California Victims' Bill of Rights of 2008: Marsy's Law (see Appendix). The complainant also expressed concern about the rapid closure of the juvenile court case and its outcome.

During our investigation, we spoke with Cloverdale police officers, the District Attorney, Deputy District Attorneys (DDAs) involved in this case, the complainant, and the complainant's attorney.

The Grand Jury found that the police officers involved acted according to protocol. Both the police and the DDAs admitted errors in certain aspects of this case. We found the complainant's rights pertaining to Marsy's Law appear to have been violated. The complainant did not receive required information pertaining to the juvenile's court appearances, charges filed, or the juvenile's release from custody as specified in Marsy's Law. The Grand Jury recommends that the District Attorney's Office strictly adhere to this law to ensure victims' rights.

## BACKGROUND

The Grand Jury received a complaint from a citizen whose father was gravely injured as the result of a pedestrian versus vehicle hit-and-run. The driver of the vehicle was a juvenile who fled the scene without offering aid to the victim and without calling for medical/police assistance. The juvenile was quickly found, taken into custody, booked, and taken to Juvenile Hall. A friend of the complainant's family notified the complainant that his father had been badly injured in an accident.

Two days later, the juvenile was arraigned (charges were brought). The next day, the juvenile admitted guilt, and his case was adjudicated (heard and decided). Both of these events occurred without notification to the victim's family. In addition, no one in the courtroom on either day inquired about the status of the victim whose condition at the time was considered hour-to-hour. The victim died the following day.

An autopsy was performed three days later. A Cloverdale police officer and a Deputy District Attorney (DDA) were present. During interviews with the Grand Jury, both indicated that they were unaware, at the time of the autopsy, that the case had been adjudicated. Later that week, the complainant received a letter in the mail postmarked the date of the autopsy and addressed to the victim. It was from the District Attorney's Office advising the victim that the case was closed. This was the first time the family had communication from the DA's Office.

The complainant posed 33 questions to the Grand Jury regarding his concerns. These concerns included the speed and outcome of the court proceedings, the thoroughness of the police investigation, a perceived bias in favor of the juvenile, a conflict of interest involving the juvenile's attorney, and questionable actions by the juvenile court judge. The complainant also felt there was a lack of regard for his family by the police and court personnel, as well as Marsy's Law violations by the DDAs.

## APPROACH

The Grand Jury spoke with the complainant and his attorney. We also interviewed four Cloverdale police officers involved in the accident investigation, the District Attorney, two DDAs involved in the juvenile's court proceedings, and one DDA who was brought into the case weeks later. We reviewed all court, probation, and police records. We also viewed the booking video.

## DISCUSSION

The Grand Jury learned through our investigation that juvenile court cases are handled differently than adult court cases. Sonoma County Juvenile Court, in particular, favors rehabilitation for juveniles versus incarceration. In addition, there are much stricter time limits for pressing charges and beginning court hearings in juvenile court. The police and the DDAs interviewed all agreed that adjudication in this case was quick, but not outside the realm of normal. We were told that all the "pieces" needed to be in place, including the juvenile's admission of guilt, and apparently they were. In interviews with the Grand Jury, the police officers and the DDAs expressed opinions that the juvenile's attorney may have attempted to get this case concluded before the victim died. Several of the interviewees further stated that the attorney was doing his job to settle the case quickly.

The complainant was concerned that the juvenile's attorney is the brother of the then Sonoma County District Attorney. The Grand Jury found no evidence of impropriety concerning this possible conflict of interest.

Regardless of the fact that this case was adjudicated so quickly, the victim's family should have been notified at each step of the proceedings, including meeting with the prosecutors regarding what charges would be filed. This was the duty of the DA's Office, and one of the DDAs we interviewed admitted that he should have notified the family and did not. This was a violation of Marsy's Law.

Three weeks after the case was adjudicated, the Marin District Attorney's Office re-opened the case. The Marin DA became involved at the request of the newly elected Sonoma County District Attorney to investigate any possible conflict of interest. The original charge of felony hit-and-run causing great bodily injury was amended to include a misdemeanor charge of vehicular manslaughter.

The family's request to have the juvenile incarcerated was denied. The juvenile was given three years probation. Working through the organization, Restorative Resources, the juvenile was obligated to perform community service. Upon successful completion of his probation, the juvenile would have his record expunged.

The Grand Jury reviewed the police records and interviewed all the officers involved in the arrest, booking, and investigation of this case. We asked why the juvenile's cell phone was never confiscated and why his vehicle was not immediately impounded. The Cloverdale police admitted mistakes were made. Paperwork had been in progress to begin the impounding process, and a subpoena had been written to obtain the phone. However, the Cloverdale police stopped the investigation when they were notified by the DA's Office that the case had been adjudicated. Yet, when one of the Cloverdale officers and one of the DDAs were together at the autopsy, four days after the adjudication, the DDA gave the Cloverdale officer a list of items to further investigate for this case. There seemed to be a lack of communication between the DA's Office and the Cloverdale Police Department, and within each of these agencies.

Cloverdale is a small town with a small police department. As such, the complainant felt that the Cloverdale police officers might know the juvenile and his family on a personal level, and thus may have provided preferential treatment of the juvenile. Our investigation found no evidence of favoritism within the Cloverdale Police Department and with the officers involved in this investigation. The Cloverdale Police Department appears to have handled the juvenile according to protocol. The juvenile was arrested and taken to Juvenile Hall, and the arrest records were promptly sent to the DA's Office.

The Grand Jury was not able to substantiate the complainant's concerns about the juvenile court judge's insensitivity towards the family.

Within weeks of taking office, and in response to the Marsy's Law errors made by the DA's Office in this case, the current District Attorney implemented policies and procedures to assure victims' rights as specified in Marsy's Law.

## **FINDINGS**

- F1. The Cloverdale Police Department showed no partiality in favor of the juvenile during the investigation of this case.
- F2. The case was adjudicated before the investigation had been completed.
- F3. The Cloverdale Police Department followed all appropriate procedures to detain and arrest the juvenile, and proper documents were submitted to the District Attorney's Office within the prescribed time allotted for filing.
- F4. While this case was adjudicated very quickly, it was not outside the realm of normalcy for cases in which the juvenile admits guilt.
- F5. The District Attorney's Office failed to comply with Marsy's Law as it relates to the complainant.

## **RECOMMENDATIONS**

- R1. The Sonoma County District Attorney's Office ensure strict adherence to Marsy's Law.
- R2. The District Attorney implement procedures to improve communication with all Sonoma County law enforcement agencies.

## **REQUIRED RESPONSES**

Pursuant to Penal Code Section 933.05, the Grand Jury requires responses from the following:

- Cloverdale Police Chief - F1, F2, and F3
- Sonoma County District Attorney - F2, F5, R1, and R2

## **DISCLAIMER**

This report was issued by the Grand Jury with the exception of one member of the jury who recused him/herself. This juror was excluded from all parts of the investigation, including interviews, deliberations, and the writing and acceptance of the report.

## BIBLIOGRAPHY

- All police records (including the booking video) relative to this case
- All court records (including probation) relative to this case

## APPENDIX

California Victims' Bill of Rights of 2008: Marsy's Law

*Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.*

### Victims' Bill of Rights Act of 2008 — Marsy's Law

On November 4, 2008, the People of the State of California approved Proposition 9, the Victims' Bill of Rights Act of 2008: Marsy's Law. This measure amended the California Constitution to provide additional rights to victims. This card contains specific sections of the Victims' Bill of Rights and resources. Crime victims may obtain additional information:

Contact: Sonoma County Victim Witness Assistance Center

Phone: (707) 565-8250

Contact: Attorney General's Victim Services Unit

Phone: (877) 433-9069

A 'victim' is defined under the California Constitution as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term 'victim' does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim." (California Constitution, article I, § 28(e).)

### Victims' Bill of Rights "Marsy's Rights"

#### California Constitution, Article I, Section 28(b)

In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

1. To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
2. To be reasonably protected from the defendant and persons acting on behalf of the defendant.
3. To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

4. To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
5. To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
6. To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
7. To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.
8. To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.
9. To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
10. To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
11. To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.
12. To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
13. To restitution.
  - A. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
  - B. Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
  - C. All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.
14. To the prompt return of property when no longer needed as evidence.
15. To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.
16. To have the safety of the victim, the victim's family, and the general public considered before any parole or other post judgment release decision is made.
17. To be informed of the rights enumerated in paragraphs (1) through (16).

A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the above rights in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.

(Constitution, article I, § 28(c)(1).)