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**FILED**  
AUG 10 2012

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SONOMA  
BY Chris Heu DEPUTY CLERK

Approved: [Signature]  
Superior Court Judge  
Date: AUG 10 2012

**RESPONSE TO GRAND JURY REPORT FORM**

Report Title: Disclosing a Sonoma County Main Adult Detention Facility Inmate Recorded Telephone Conversation  
Report Date: August 9, 2012  
Response by: Jill Ravitch Title: District Attorney

**FINDINGS**

- I (we) agree with the findings numbered: \_\_\_\_\_
- I (we) disagree wholly or partially with the findings numbered: 1, 3  
(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

**RECOMMENDATIONS**

- Recommendations numbered 3 have been implemented.  
(Attach a summary describing the implemented actions.)
- Recommendations numbered \_\_\_\_\_ have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)
- Recommendations numbered \_\_\_\_\_ require further analysis.  
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered 4 will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.)

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

Number of pages attached 3

SONOMA COUNTY DISTRICT ATTORNEY'S OFFICE  
RESPONSE TO THE 2011-2012 GRAND JURY REPORT

**DISCLOSING A SONOMA COUNTY MAIN ADULT DETENTION FACILITY INMATE RECORDED TELEPHONE CONVERSATION**

**Finding 1, page 27:**

*Sheriff's Office personnel and District Attorney staff were unable to produce a relevant statute or written policy when asked if the disclosure of recorded inmate telephone conversations to third parties was legal.*

**Response:** The respondent disagrees with the Grand Jury's finding regarding the District Attorney staff, and cannot respond with regard to Sheriff's Office personnel.

The deputy district attorney assigned to the case in question had been working closely with the detective on a financial abuse case regarding the inmate whose call was at issue. The inmate was on parole from a prior financial abuse case that was very similar factually to the case currently under investigation. The detective and the deputy district attorney discussed the disclosure of a monitored call from the inmate to the inmate's girlfriend as an investigative tool, since the girlfriend was considered a potential witness in the case. The prosecutor told the detective that she believed the inmate's expectation of privacy was negated by his incarceration and the advisement given when the call was made. She counseled him to check with County Counsel, who provides advice to the Sheriff's Office with regard to policy matters.

If the finding is with regard to statements by the prosecutor to members of the Grand Jury, then the District Attorney respectfully disagrees. The prosecutor explained to the jurors that the inmate had no expectation of privacy under a Fourth/Fourteenth Amendment analysis and endeavored to educate the juror about caselaw and its application to the situation. The prosecutor also noted that she could not remark upon any policies in the Sheriff's Office regarding use of phone calls, that she had referred the detective back to County Counsel and even provided the jurors with the name of the deputy county counsel who handled matters such as this.

**Finding 3, page 27:**

*There appears to be a lack of methodology (ie. recorded documentation of discussions and results of discussions) when deputies seek advice from the deputy district attorneys.*

**Response:** The respondent disagrees with this finding.

The District Attorney's Office works closely with members of all law enforcement and regulatory agencies. Police officers, deputies, and other agents from law enforcement

agencies can be seen in the DA's office on any given day, whether in response to a subpoena, or just to meet with a lawyer regarding an investigation or upcoming case. Additionally, lawyers are available to review and sign off on search warrants, and are called to the scene when a homicide or suspicious death occurs. They are also available to meet with members of law enforcement and attend forensic interviews of victims and suspects. These responsibilities extend throughout 24 hours each day. It is impossible to document these in person meetings, or the myriad of telephone conversations and emails that occur. The current district attorney has made a point of reaching out to the law enforcement community to offer support and advice whenever requested. When an important conversation takes that produces evidence to be discovered in a case, or otherwise substantially impacts a case, notes are made in the case file, and when necessary, a memorandum is produced.

**Recommendation 3, page 27:**

*The District Attorney review Penal Code Section 637 with the District Attorney's staff and its counsel.*

**Response:** This Recommendation has been implemented.

The District Attorney's office conducts training for the attorneys on a monthly basis. In addition, weekly meetings occur among the various teams in the office. The attorneys and investigators are familiar with the California Invasion of Privacy Act (CIPA) as enumerated in Penal Code section 630 et seq. because we constantly address the monitoring of conversations through a variety of means in the course of investigations that are reviewed. The deputy district attorneys are aware of the recording capability in the jail, and it has been a powerful tool in the investigation and prosecution of criminal cases. We will continue to educate ourselves on the right to monitor those calls, as well as other telephonic, electronic and other means of recording communication between parties.

**Recommendation 4, page 28:**

*The District Attorney review this case for possible criminal wrongdoing pursuant to Penal Code Section 637.*

**Response:** This Recommendation will not be implemented.

The District Attorney has reviewed the Grand Jury report, as well as The California Invasion of Privacy Act (Penal Code section 630 et seq.) Additionally, the deputy district attorney who is the subject of the report provided a factual recitation of the case and the interactions with law enforcement regarding the use of a jail call for purposes of investigation and subsequent prosecution. No criminal wrongdoing can be found. While Penal Code section 637 prohibits the disclosure of telephonic communication without consent of the participants, such a restrictive reading of the code would frustrate the purpose of Penal Code section 633, which permits the monitoring and recording of

communication for law enforcement purposes. It would frustrate the purpose of section 633 to read section 637 so narrowly; to do so would suggest that an investigator could not share the contents with another investigator, prosecutor evaluating the case, or jury if introduced as evidence at trial. The recorded conversation at issue here was played for an individual already identified as a party of interest in an ongoing investigation. It was done for investigative purposes, and not disseminated to the public.