

# IS JUSTICE BEING SERVED IN OUR COUNTY?

## Summary

The 2002-2003 Sonoma County Civil Grand Jury investigated the handling of a high-profile suspicious death case that occurred in 1999 in Sonoma County. Although most of the following report addresses the issues around *People v. Pelfini*, the Jury also looked into other complaints and cases that were received this year. The Jury examined practices and procedures within the Sheriff-Coroner's and District Attorney's offices to assess the accuracy of allegations that both the investigation and prosecution of the case were mishandled. The Jury also sought to determine whether changes in personnel, policies and procedures are in place to assure that justice is served in Sonoma County. The investigation of the suspicious death, subsequent trial and dismissal of charges occurred during the 2001 tenure of both a Sheriff and a District Attorney who are no longer in those positions. While changes in policies and procedures have been instituted by both past and present Sheriffs and District Attorneys, review of additional cases indicates that there are still issues to be resolved. This Jury will transfer all evidence from this case to next year's Grand Jury who may want to investigate further. (PC 924.4)

## Reason for Investigation

The 2001-2002 Grand Jury received a citizen's complaint questioning "the integrity of judicial practice in Sonoma County." The complaint was based on a widely-publicized criminal trial being mishandled by the Sheriff's office and dismissed "in the interests of justice", by the District Attorney's office. Because both offices were in the process of reviewing their respective roles in that case, and neither of their reviews had been completed, the complaint was deferred to this year's Jury. This year's jury also received several other complaints that raised questions about the administration of justice in our county.

## Background

On November 7, 1999, Sonoma County Sheriff Deputies were dispatched to a Petaluma residence in response to a 911 call regarding a possible suicide. Because the caller's statements to the responding Deputies were in conflict with the physical scene at the residence, a Violent Crimes Investigation (VCI) Detective was contacted and responded; also responding was a Deputy Coroner with less than six months in the Coroner's Unit and with no experience with homicide investigations. Despite the fact that the patrol deputies expressed their suspicions of the alleged "suicide" to the VCI Detective, who was the lead investigator, that Detective did not call for the Crime Scene Investigations (CSI) lab. Thus, the area was not secured and evidence was not collected. At that time the investigation was not treated as a suspicious death or possible homicide. This decision led to subsequent problems with the investigation.

The expert testimony of the autopsy pathologist would be critical in the prosecution of the case as the District Attorney's Office would rely on his expert testimony as to whether or not the victim was murdered. The Sheriff and District Attorney realized that the defense team would attack certain aspects of the pathologist's background, previously unknown to the Sheriff because of the lack of a thorough pre-employment background check on the pathologist. An additional problem for the prosecution was the pathologist's criminal grand jury testimony. After reviewing the testimony, the Sheriff's Office realized the pathologist needed some assistance to become a more credible witness. The Sheriff's Office hired a speech coach for him in an effort to improve his communications skills and general courtroom demeanor.

The speech coach hired by the Sheriff's Office videotaped approximately forty-four training sessions with the pathologist which included the pathologist's testimony about the autopsy and other trial

issues as well as concerns about his background. Both defense counsel and the Deputy District Attorney handling the case stated that they were not aware of the existence of the video tapes prior to trial. Later, the Deputy District Attorney when questioned by the Court said he did not give copies of the tapes to the defense, claiming they were “work product,” and thus exempt from discovery. After reviewing the tapes, the Court held otherwise and defense was given copies.

During the trial, defense counsel attacked the pathologist’s credibility, alleging that he committed perjury, that his testimony was altered and distorted during his participation in the coaching sessions and further, the defense counsel alleged that the Deputy District Attorney prosecuting the case was somehow involved. Defense counsel then indicated that they would call other witnesses, including the Deputy District Attorney, to the stand to determine his level of involvement and influence on the pathologist’s testimony. On the following day, the District Attorney’s Office dismissed the case “in the interests of justice.”

**Several other issues reviewed by the Jury included a fish-and-game case, and recent complaints about the District Attorney’s and Sheriff’s Offices personnel policies and practices.**

### **Investigative Procedures**

The Grand Jury:

1. Interviewed the following persons:
  - The current District Attorney
  - The current Sheriff
  - Five members of the District Attorney’s staff
  - The defense counsel for *People v. Pelfini*
  - A speech pathologist
  - Two employees of the California Department of Fish and Game.
  - An inmate complainant.
  
2. Reviewed the following documents:
  - Court transcripts for *People of the State of California, Plaintiff vs. Louis Emilio Pelfini, Defendant*. Case No. SCR-30250, December 13, 2001 – 1:30 p.m., December 21, 2001
  - Several citizen’s complaints
  - Agenda Item Summary Report. Sonoma County Board of Supervisors; “Request to approve execution of a three-year agreement with Forensic Medical Services.”
  - The contract “Agreement for Pathology Services” approved August 9, 2000.
  - A Letter from the former District Attorney, September 30, 2002 (outlining training post-suspicious death case)
  - A letter from the former Sheriff, November 7, 2002 (discussing dual Sheriff-Coroner role, pathologist selection and post-suspicious death case department changes)
  - A letter from the California Attorney General’s Office, January 16, 2002; review of cases, *People v. Pelfini*, SCR-30250 and *People v. George McLaughlin*, SCV-386087
  - A letter from the California Attorney General’s Office, August 16, 2002; review of *People v. Pelfini* Sonoma County Case No. SCR-30250
  - A memo from the current District Attorney, April 30, 2003
  - California Department of Fish and Game Report # AC039615
  - Case file notes from District Attorney to California Department of Fish and Game regarding internal investigation into handling of Misdemeanor Complaint DAR-428595 Dismissal
  - Misdemeanor Complaint DAR-428595, drafted July 16, 2001
  - Misdemeanor Complaint DAR-428595 Dismissal Action, filed August 7, 2001

- Pertinent Sonoma County Sheriff's Department and District Attorney's Office personnel records
- Various newspaper articles.

## **Findings**

### ***Sheriff's Office***

F1. In December of 2000, a criminal Grand Jury indicted a Sonoma County citizen for the murder of his wife.

F2. In preparation for the trial, the Sheriff's Office retained a speech coach to improve the effectiveness of the pathologist as a witness.

F3. There was an inadequate pre-employment background check of the Sonoma County pathologist conducted by the Sheriff's Department and the coroner services contractor.

F4. Recently, the Sheriff's Department advertised widely to fill the forensic pathologist position. However, only one company, the original coroner services contractor, applied. It provides the current pathologist.

F5. Conflicts within the Sheriff's Violent Crimes Investigation (VCI) unit, in addition to only one VCI Detective responding to the scene, who decided not to handle the death as suspicious, all had a domino effect on the criminal investigation. Additional personnel and resources normally utilized in homicide cases were not called in, a follow-up investigation remained inactive for over a month, physical evidence at the scene was not collected, and statements and interviews normally taken within days or hours were not completed in some cases, for several months.

F6. The Sheriff's Department conducted an "Administrative Review" or internal investigation into their handling of this case by their department.

F7. Following the identification of problems revealed by the suspicious death investigation, the Sonoma County Sheriff's office took the following actions:

- All existing Sheriff's office contracts were examined to determine whether contractual obligations were being followed.
- A procedure was established regarding deaths in Sonoma County that under the following circumstances, the Coroner's Detectives are to notify the sergeant in charge of the Coroner's Unit:
  - 1) All homicides.
  - 2) All multiple casualty deaths.
  - 3) Any death that involves suspicious circumstances.
  - 4) All 'in-custody' deaths.
  - 5) Any death in which the 'Critical Incident Protocol' is invoked.
  - 6) Any death, which in your opinion may generate significant media interest.
  - 7) Airplane accidents.
  - 8) Any other death that has unusual circumstance.

F8. All Coroner's Detectives have undergone additional training including "Officer Involved Shooting" and "Homicide Investigations Training".

F9. Two VCI Detectives are now required to respond to all suspicious death investigations. An on-call Deputy District Attorney will also respond.

F10. An arbitrary “No Overtime” practice in the VCI Unit had been used as a reason for not thoroughly investigating homicide cases. That practice has been removed, allowing VCI Detectives to properly conduct complete investigations.

F11. In the Sheriff’s Department Administrative Review of the death investigation, some detectives were criticized. But no evidence of that criticism is included in their personnel files.

F12. The Sonoma County Sheriff has a dual role as Sheriff-Coroner which, by law, can not be changed until 2006.

### ***District Attorney’s Office***

F13. The California Attorney General’s office reviewed the murder prosecution of *People v Pelfini* (2001) in view of allegations that the pathologist had committed perjury and that the Deputy District Attorney was somehow involved. In a narrowly-focused opinion, the Attorney General’s office concluded that no basis existed for charges of perjury against the pathologist and that “the [Deputy District Attorney’s] participation in preparing the [pathologist] to answer questions regarding his past employment, did not support allegations of criminal misconduct.” This means that there is insufficient evidence to bring criminal charges.

F14. Immediately after dismissing *People v Pelfini*, the District Attorney’s office scheduled a mandatory training session with all Deputy District Attorneys which included review of the U.S. Supreme Court decision in *Brady v Maryland*. That decision requires that the prosecution divulge to the Court, any exculpatory information, including “material that would impeach an important witness.”

Additional steps taken by the District Attorney’s office included:

- An agreement with the Sheriff that all future pathologists would be subjected to thorough background investigations
- An agreement with the Sheriff that no witness will be prepared by any person or expert without the presence of a Deputy District Attorney
- All attorneys assigned to homicide will attend regularly scheduled meetings with local law enforcement homicide detectives.

F15. 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.

F16. Because a jury was impaneled, a trial begun and the case dismissed by the former District Attorney, the rules of double jeopardy preclude a retrial.

F17. In a separate incident, a Deputy District Attorney involved himself in a case against an acquaintance which had been assigned to another Deputy District Attorney. He dismissed the charges in the case without consulting the charging Deputy District Attorney.

F18. There is a perception among some employees (and this Jury) that the new District Attorney could be more accessible.

F19. The lack of adequate space within the District Attorney’s offices has a negative effect on deputy district attorneys’ ability to meet with their clients in a private, professional setting. Their offices are cramped and shared by at least two deputies.

## **Conclusions**

The Jury concludes that the suspicious death case was mishandled by both law enforcement agencies involved. The publicity surrounding the investigation and the trial tarnished the reputations of the District Attorney and the Sheriff. There are many outstanding employees of both offices and their reputations were tarnished as well.

In the case of the Sheriff's Department, it appears that lack of real accountability and lax supervision permitted unit leaders and other department members to function at unacceptable professional levels. Even when less-than-professional behavior was confirmed by internal investigations, those employees with unacceptable levels of performance were merely transferred, and no permanent record was placed in their personnel files. Thus, patterns of behavior unacceptable to law enforcement officers are not tracked and the new supervisors who receive the transferred officers do not have the documentation they need as managers to counsel the officers or replace them if that is appropriate. Without a documented record of poor performance, it is difficult to remove incompetent personnel.

The Jury determined that not holding people responsible for questionable performance is also an issue in the District Attorney's Office. For example, there was no written evidence in personnel files about a deputy district attorney's inappropriate behavior in a case against a personal acquaintance.

In addition to these cases, the Jury reviewed other, more recent complaints and cases that lead us to the discomfiting conclusion that neither office has fully resolved the people, process and procedural issues raised. The new policies and procedures drafted by both the District Attorney's and Sheriff's Offices are admirable steps to strengthen their departments. The Jury believes that if the leaders of those two offices hold all personnel accountable for strictly following those policies, many issues raised in this report will have been addressed.

It is imperative that the citizens of Sonoma County have confidence in the professionalism and competence of law enforcement agencies in their county. The cases reviewed by this Jury call into question some significant issues with the two law enforcement agencies involved. We have a new Sheriff and a new District Attorney. Both want to put the high-profile case behind them and build strong, professional agencies that will be respected by our citizens. Both leaders have implemented significant changes within their departments and have created a stronger working partnership between the two agencies. However, we believe there are still issues that need resolution by the respective offices before the Jury can be confident that justice will be served in our county.

## **Recommendations**

R1. The Sheriff's Office and the District Attorney's Office should review their policies and practices 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.

R2. Employees who have been identified as chronic poor performers should be terminated, not merely transferred at the same pay rate.

R3. 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.

R4. The current District Attorney should make himself more accessible to all staff members and to other law enforcement agencies.

R5. The District Attorney and Board of Supervisors should explore all avenues to provide adequate space for the District Attorney staff.

R6. 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.

R7. The District Attorney and Sheriff should ensure that the policies and procedures drafted as a result of People v. Pelfini are followed by all personnel in their departments.

R8. The 2003-2004 Sonoma County Civil Grand Jury should review evidence collected by this year's Jury and take appropriate action.

### **Required Responses to Findings**

Sheriff: F11

District Attorney: F15

### **Required Responses to Recommendations**

Sheriff: R1, R2, R6, and R7

District Attorney: R1, R2, R3, R4, R5, R6, and R7

Board of Supervisors: R