

1 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **IN AND FOR THE COUNTY OF LAKE**
3
4

5 **THE PEOPLE OF THE STATE**)
6 **OF CALIFORNIA,**)

Case No. CR912639

7 Plaintiff,)
8)

v.)

9 **BISMARCK F. DINIUS,**)

10 Defendants.)
11)
12)
13)

14 **REQUEST FOR RELIEF DUE TO PROSECUTORIAL MISCONDUCT**
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15 v.)

16 **BISMARCK F. DINIUS,**)

17 Defendants.)
18)
19)

Case No. CR912639

**REQUEST FOR RELIEF DUE
TO PROSECUTORIAL
MISCONDUCT**

20 **TO: THE PEOPLE OF THE STATE OF CALIFORNIA, REPRESENTED BY**
21 **LAKE COUNTY DISTRICT ATTORNEY JON E. HOPKINS:**

22 PLEASE TAKE NOTICE that defendant, BISMARCK DINIUS, hereby
23 seeks immediate relief due to prosecutorial misconduct committed by District
24 Attorney Jon E. Hopkins.


25 PLEASE TAKE NOTICE that, based upon Mr. Hopkins' mid-trial issuance
26 of a press release / open letter regarding this case, Mr. Dinius seeks the following
27 specific forms of relief: 1) Mr. Dinius respectfully requests the court to dismiss
28 count II of the information pursuant to Penal Code section 1385, in light of the

1 district attorney's express determination that he should move to dismiss count I; in
2 this case, Mr. Dinius is charged with precisely the same offense in both counts I
3 and II. In the alternative, Mr. Dinius respectfully requests the court to 2) inquire
4 forthwith as to whether members of the venire have been exposed to any
5 information concerning Mr. Hopkins' press release / open letter, 3) deliver a
6 cautionary instruction to all members of the venire, 4) grant additional peremptory
7 challenges to the defense, and/or 5) hold Mr. Hopkins in contempt.

8 This request is based on this notice of motion, the accompanying points and
9 authorities, such supplemental points and authorities as may be submitted
10 hereafter, the papers and records on file herein, such further evidence and
11 argument as may be presented at the hearing on this motion, U.S. Const. Amends.
12 VI and XIV, Cal. Const, art. I, §§ 7, 15, and 16, and Penal Code section 1385.

13
14 DATE: July 20, 2009

Respectfully Submitted,

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17 VICTOR S. HALTOM
18 Attorney for Defendant
19 BISMARCK F. DINIUS
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1 Mr. Hopkins' mid-trial press release is a remarkable, unprecedented episode
2 of prosecutorial misconduct. The law books are devoid of any cases involving
3 anything approaching what Mr. Hopkins has done here. Mr. Hopkins has charted
4 new territory — openly defying ethical constraints by expressing his personal
5 opinion that Mr. Dinius is guilty and arguing his case to the press and community
6 while the trial is underway.

7 Mr. Hopkins' press release demonstrates that his interest in this case is not
8 attaining a just result, but rather maintaining his own political viability. He has
9 taken hits in the press for his decision making and his handling of this case. Now
10 he is trying to strike back. However, in doing so, he has abandoned the proper
11 role of a prosecutor. "The prosecution is commissioned to try cases in the
12 courtroom, not in the airwaves." (*United States v. Alberico* (10th Cir. 1979) 604
13 F.2d 1315, 1320.) The prosecutor's "proper function ... is to present his case in
14 the courtroom, not to make extrajudicial statements interpreting or explaining the
15 evidence, ... or attempting to build a favorable climate of opinion." (*Berger v.*
16 *United States* (1935) 295 U.S. 78, 79.)

17 III.

18 THE PROBLEMS OCCASIONED BY THE DISTRICT 19 ATTORNEY'S PRESS RELEASE / OPEN LETTER.

20 The timing of the district attorney's letter could not have been worse.
21 Undoubtedly, a number of potential jurors, who are presently going through the
22 jury selection process, will have been exposed to Mr. Hopkins' press release /
23 open letter, or the fallout from its issuance — exposure to secondary media
24 coverage and/or exposure to discussions in the community.

25 Furthermore, with this open letter, the district attorney has run afoul of a
26 host of ethical rules. His letter is littered with false assertions and
27 mischaracterizations. And, it reveals its author's stunning illogic and/or
28 incompetence in this case. These problematic features of the open letter are

1 discussed below, *seriatim*:

2 A. *Ethical Violations*

3 The letter is rife with discrete types of unethical communications.

4 Additionally, the letter as a whole is an unethical communication.

5 Rule 5-120 of the California Rules of Professional Conduct provides:

6 (A) A member who is participating or has participated in the
7 investigation or litigation of a matter shall not make an extrajudicial
8 statement that a reasonable person would expect to be disseminated
9 by means of public communication if the member knows or
reasonably should know that it will have a substantial likelihood of
materially prejudicing an adjudicative proceeding in the matter.

10 (B) Notwithstanding paragraph (A), a member may state:

11 (1) the claim, offense or defense involved and, except when
prohibited by law, the identity of the persons involved;

12 (2) the information contained in a public record;

13 (3) that an investigation of the matter is in progress;

14 (4) the scheduling or result of any step in the litigation;

15 (5) a request for assistance in obtaining evidence and
16 information necessary thereto;

17 (6) a warning of danger concerning the behavior of a person
involved, when there is reason to believe that there exists the
18 likelihood of substantial harm to an individual or the public interest;
and

19 (7) in a criminal case, in addition to subparagraphs (1) through
20 (6):

21 (a) the identity, residence, occupation, and family status of the
accused;

22 (b) if the accused has not been apprehended, the information
23 necessary to aid in apprehension of that person;

24 (c) the fact, time, and place of arrest; and

25 (d) the identity of investigating and arresting officers or
agencies and the length of the investigation.

26 (C) Notwithstanding paragraph (A), a member may make a
27 statement that a reasonable member would believe is required to
28 protect a client from the substantial undue prejudicial effect of recent
publicity not initiated by the member or the member's client. A
statement made pursuant to this paragraph shall be limited to such

1 information as is necessary to mitigate the recent adverse publicity.

2 A "Discussion" following the foregoing text of Rule 5-120 provides, in
3 pertinent part:

4 Rule 5-120 is intended to apply equally to prosecutors and
5 defense counsel.

6 Whether an extrajudicial statement violates rule 5-120 depends
7 on many factors, including: (1) whether the extrajudicial statement
8 presents information clearly inadmissible as evidence in the matter for
9 the purpose of proving or disproving a material fact in issue; (2)
10 whether the extrajudicial statement presents information the member
11 knows is false, deceptive, or the use of which would violate Business
12 and Professions Code section 6068(d); (3) whether the extrajudicial
13 statement violates a lawful "gag" order, or protective order, statute,
14 rule of court, or special rule of confidentiality (for example, in
15 juvenile, domestic, mental disability, and certain criminal
16 proceedings); and (4) the timing of the statement.

17 Paragraph (A) is intended to apply to statements made by or on
18 behalf of a member.

19 Mr. Hopkins entire letter consists of extrajudicial statements and arguments.
20 He cites no documents in the record to support his assertions and contentions. He
21 makes numerous remarks concerning matters not previously contained in the
22 record.² Thus, by publishing this document, Mr. Hopkins has violated Rule 5-120.

23 *1. Reference to Mr. Dinius' Prior DUI Conviction*

24 In his letter, Mr. Hopkins twice refers to Mr. Dinius as a "drunken sailor[]"
25 and makes reference to a single DUI conviction Mr. Dinius suffered over a decade
26 ago. The American Bar Association Standards for Criminal Justice expressly
27 prohibit a lawyer from commenting in the press regarding an accused's prior
28 criminal record. (ABA Standards for Criminal Justice, std. 8-1.1(b)(i) (3d ed,
1991).)³ Mr. Hopkins' ethical violation in this regard is particularly problematic,
as Mr. Dinius' prior DUI conviction is inadmissible in this trial as a matter of law.

26 ² Unlike Mr. Hopkins, all of the undersigned's communications with the media regarding
27 publicized matters in this case have been limited to matters that are contained in the public record.

28 ³ The Justice Department similarly prohibits its attorneys from revealing information to the
press regarding a defendant's prior criminal record. (28 C.F.R. § 50.2(b)(4).)

1 (*In re Carr* (1988) 46 Cal.3d 1089, 1090 [misdemeanor DUI does not involve
2 moral turpitude].) Thus, Mr. Hopkins has inappropriately disseminated
3 information in the public domain, in a context likely to reach potential jurors, that
4 could never be presented legitimately to a jury.

5 2. *Vouching*

6 In his letter, Mr. Hopkins repeatedly vouches for the credibility of witnesses
7 and evidence that he says support key factual components of his case. In doing so,
8 he expresses his opinion that Mr. Dinius, who he characterizes as a “drunken
9 sailor[.]” is guilty.

10 The prosecutor’s vouching for the credibility of witnesses and
11 expressing his personal opinion concerning the guilt of the accused
12 pose two dangers: such comments can convey the impression that
13 evidence not presented to the jury, but known to the prosecutor,
14 supports the charges against the defendant and can thus jeopardize the
15 defendant’s right to be tried solely on the basis of the evidence
16 presented to the jury; and the prosecutor’s opinion carries with it the
17 imprimatur of the Government and may induce the jury to trust the
18 Government’s judgment rather than its own view of the evidence.

19 (*United States v. Young* (1985) 470 U.S. 1, 18-19.)

20 [The prosecutor] is the representative not of an ordinary party to a
21 controversy, but of a sovereignty whose obligation to govern
22 impartially is as compelling as its obligation to govern at all; and
23 whose interest, therefore, in a criminal prosecution is not that it shall
24 win a case, but that justice shall be done. As such, he is in a peculiar
25 and very definite sense the servant of the law, the twofold aim of
26 which is that guilt shall not escape or innocence suffer. He may
27 prosecute with earnestness and vigor — indeed, he should do so. But,
28 while he may strike hard blows, he is not at liberty to strike foul ones.
29 It is as much his duty to refrain from improper methods calculated to
30 produce a wrongful conviction as it is to use every legitimate means
31 to bring about a just one. [¶] It is fair to say that the average jury, in a
32 greater or less degree, has confidence that these obligations, which so
33 plainly rest upon the prosecuting attorney, will be faithfully observed.
34 Consequently, improper suggestions, insinuations and, especially,
35 assertions of personal knowledge are apt to carry much weight against
36 the accused when they should properly carry none.

37 (*Berger v. United States, supra*, 295 U.S. at p. 88.)

38 Mr. Hopkins has transgressed these bounds. Not only does he repeatedly
39 refer to Mr. Dinius as a “drunken sailor[.]” but he asserts that he has “found” that a
40 multitude of witnesses “saw NO RUNNING LIGHTS on the sailboat at the time of

1 the collision” (capitalization in the original), and that Mr. Dinius “fail[ed] to make
2 sure the running lights required by law were displayed while operating the
3 sailboat...”. Even though this “finding” is false, as discussed below in detail, Mr.
4 Hopkins vouches for it. His vouching in this regard underscores the centrality of
5 the lighting issue to the prosecution’s case. (See *Carriger v. Stewart* (9th Cir.
6 1997) 132 F.3d 463, 482 [noting that “the prosecutor’s vouching underscore[d]”
7 the centrality of the issue with respect which he vouched].) Indeed, the purported
8 lack of illumination of lights on the sail boat is the linchpin of the prosecution’s
9 case. If the lights were on — and they were — the prosecution’s case is over.

10 Mr. Hopkins has violated cardinal precepts of prosecutorial ethics
11 established long ago by the Supreme Court of the United States. He
12 mischaracterizes the evidence in this case to support his theory that the sail boat
13 lights were not on at the time of the accident. Then, he vouches for that false/
14 mischaracterized evidence. And he does this in the context of simultaneously
15 seeking to justify his prosecution of Mr. Dinius and expressing his personal
16 opinion that Mr. Dinius is guilty.⁴

18 ⁴ Mr. Dinius does not seek a gag order as relief for the prosecutor’s ethical violations
19 in this case. If the prosecutor would simply comply with applicable ethical constraints, there
20 would be no problem with publicity in the case. Indeed, this is a case in which the sunshine
21 afforded by media coverage is particularly needed and appropriate: The prosecution in this
22 case has made a controversial charging decision. For this reason, there is significant public
23 interest in the case. “Media investigations of the public sector help citizens monitor the
24 performance of the official branches of government. Indeed, it is this watchdog function that
25 underlies the description of the press as the Fourth Estate of government.” (L. Lidsky,
26 *Prying, Spying, and Lying: Intrusive Newsgathering and What the Law Should Do About It*
27 (1998) 73 Tul. L. Rev. 173, 231 (footnotes omitted).) In such circumstances, “Sunshine is
28 said to be the best of disinfectants.” (Hon. Louis D. Brandeis, *Other People’s Money* (1914)
p. 92.) Nowhere is the role of the media more sacrosanct than in matters involving
questionable decision making by government officials. (See *McConnell v. FEC* (2003) 540
U.S. 93, 248 (conc. & dis. opn. of Scalia, J.) [adverting to “the heart of what the first
amendment is meant to protect: the right to criticize the government”]; *Rosenblatt v. Baer*
(1966) 383 U.S. 75, 85 [“Criticism of those responsible for government operations must be

1 *B. False Assertions and Mischaracterizations*

2 As noted, the prosecution's entire case against Mr. Dinius, on the yet-to-be-
3 dismissed manslaughter charge (count I) and the felony drunk driving/boating
4 charge (count II — Harbors & Navigation Code section 655, subdivision (f)),
5 hinges on the theory that the sail boat lights were not on at the time of the
6 accident.⁵ Unsurprisingly, then, Mr. Hopkins devotes considerable attention to
7 this subject in his letter. He expresses his personal opinion that the "running lights
8 [were] off[.]" And, he claims to have "found that TWELVE PEOPLE saw NO
9 RUNNING LIGHTS on the sailboat at the time of the collision." (Capitalization
10 in the original.) Presupposing that the lights were off, he says the issue in this
11 case "is whether [Mr. Dinius'] failure to make sure the running lights required by
12 law were displayed while operating the sailboat was a substantial factor in the
13 cause of the death of his passenger." The problem with these assertions and
14 characterizations is that they are false. Mr. Hopkins does not support his
15 assertions and characterizations with citations to materials in the court record or
16 his case file. He cannot do so, because the actual case materials and records do
17 not support his assertions and characterizations. As discussed below, the actual
18 materials in the record and in Mr. Hopkins' case file demonstrate that the sail boat

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23 free, lest criticism of government itself be penalized."].)

24 ⁵ Both of those charges require proof of some negligent act or omission on Mr.
25 Dinius' part that constituted a proximate cause of Lynn Thornton's death. Following this
26 court's granting of Mr. Dinius' motion to compel the prosecution to elect a theory of
27 causation, the sole theory of causation alleged in counts I and II is the purported lack of
28 illumination of the sail boat running lights. Proof that Mr. Dinius may have been under the
influence of alcohol while at the tiller does not suffice to establish proximate cause in this
regard. Rather, the prosecution must prove an independent, negligent act or omission.

1 lights were on at the time of the accident.⁶

2 *1. The Running Lights Were On at the Time of the Accident*

3 a. Mark Weber — Mr. Weber is the owner of the sailboat.
4 He has made statements to police and given testimony under oath in the civil
5 proceedings that arose out of this accident. Mr. Weber has repeatedly stated that
6 he turned on the sailboat cabin lights and running lights. He has repeatedly stated
7 that the lights were on at the time of the crash.⁷

8 b. Brian Stole — Mr. Stole was right near the shoreline in
9 Konocti Bay at the time of the accident. He has given statements to an insurance
10 investigator, an investigator for the district attorney's office, and undersigned (in
11 the presence of the undersigned's investigator). Mr. Stole saw the accident occur.
12 He saw the running lights of both the powerboat and the sailboat. As the accident
13 occurred, he saw the lights of the two boats come together.⁸

14 c. Dr. William Chilcott & Wes Dodd — Dr. Chilcott
15 examined the filament of the sailboat's stern light. Telltale stretching and
16 distortion of the filament, which were noted by Dr. Chilcott, demonstrate that the
17 stern light was illuminated at the time of the accident. Dr. Chilcott is a nationally
18 recognized expert in this field. He testified across the country in marine accident
19 cases. When he testifies in criminal cases, he most often testifies for the

20

21 ⁶ Mr. Hopkins makes other false assertions and characterizations about factual issues
22 in the case involving other subjects, such as the speed at which Mr. Perdock was driving his
23 power boat, the investigation of the case, and the forensic evidence. However, in light of the
24 centrality of the lighting issue, and in the interest of brevity, the discussion in this brief
25 regarding Mr. Hopkins' false assertions and characterizations will be limited to the lighting
26 issue.

27 ⁷ See page 15 of discovery; see page 76 of the reporter's transcript of Mr. Weber's
28 deposition in the parallel civil action.

⁸ See pages 122-123 and ▲-26 of discovery; see also the transcript of a recorded
interview of Mr. Stole, which is attached hereto as Exhibit B.

1 prosecution. Wes Dodd concurs with Dr. Chilcott's findings in this regard. Mr.
2 Dodd is a former law enforcement officer. He teaches marine accident
3 investigation to the members of the Lake County Sheriff's Office and the
4 Sacramento-based marine accident investigator who conducted limited
5 investigation in this case for Lake County authorities.⁹

6 2. *Witnesses Saw the Running Lights On Before the Accident*

7 a. Jim Ziebell — Mr. Ziebell is a Lake County resident. He
8 founded the Konocti Cup, which is the annual regatta that took place on Clear
9 Lake on the day of the accident in this case. When the people on the sailboat set
10 sail from the marina at Richmond Park Bar & Grill shortly before the accident, Mr.
11 Ziebell was standing on the dock in the marina. He saw that the sailboat stern
12 light was illuminated.¹⁰

13 b. Stephanie Greene — Ms. Greene, who is a former law
14 enforcement officer, was on the deck of the Richmond Park Bar & Grill when the
15 sailboat set sail. The deck overlooks the marina. Ms. Greene saw that the sailboat
16 stern light was illuminated as the boat set sail.¹¹

17 c. Jeannie Strak — Ms. Strak was also on the deck of
18 Richmond Park Bar & Grill when the sailboat set sail. She saw that the sailboat
19 stern light was illuminated as the boat sailed out into Konocti Bay. She watched
20 the boat for four to five minutes. According to Ms. Strak, the boat was "lit up like
21

22 ⁹ See Volume 3, pages 462-516 of the reporter's transcript of the preliminary
23 examination in this case, which contains the testimony of Dr. Chilcott and Mr. Dodd; see also
24 Exhibits J and K (the Chilcott and Dodd expert reports), which were introduced into evidence
25 at the preliminary hearing.

26 ¹⁰ See pages 123, 248, ▲-5, and ▲-6 of discovery; see also Defense Investigator John
27 Kirkman's report regarding his interview of Mr. Ziebell.

28 ¹¹ See Defense Investigator John Kirkman's report regarding his interview of Ms.
Greene.

1 a Christmas tree.” Shortly after the accident, a Lake County deputy sheriff
2 interviewed Ms. Strak. She told the deputy sheriff that the lights on the sailboat
3 were illuminated.¹² To date, no report regarding Ms. Strak’s statement to the Lake
4 County deputy sheriff has been provided to the undersigned.

5 d. Doug Jones — Doug Jones is the owner of Bayshore, a
6 lakeside resort adjacent to Konocti Bay. Mr. Jones was standing on the grounds of
7 his resort shortly before the accident. He saw the sailboat, and he observed that its
8 cabin and stern light were illuminated. The day after the accident, Mr. Jones told
9 Lake County Deputy Sheriff Lloyd Wells that he had seen the sailboat and that its
10 lights were illuminated. Deputy Wells told Mr. Jones that the sheriff’s department
11 had already determined that the lights were not on. Mr. Jones retorted that he had
12 seen the lights on with his own eyes. The deputy said Mr. Jones must be wrong.
13 Mr. Jones declined to argue the point further with the deputy. The Lake County
14 Sheriff’s Department did not prepare any report regarding Mr. Jones’ observations
15 until after Mr. Jones gave a televised interview regarding his observations. That
16 interview occurred after charges were filed against Mr. Dinius in 2007.¹³

17 In light of the fact that the foregoing four witnesses, and others, saw the sail
18 boat sailing in Konocti Bay with its lights on before the accident, the prosecution
19 has a serious problem: At trial, the prosecution is going to have to contend that
20 someone on the sailboat went and turned off the lights after they set sail. Nobody
21 on the sailboat has said or is going to say that they turned off any lights. It would
22 have made no sense for them to do that. So, the prosecution is going to have to
23

24 ¹² See page 249 of discovery; see also Defense Investigator John Kirkman’s two
25 reports regarding his interviews of Ms. Strak, which were attached as Exhibit L to Mr.
26 Dinius’ renewed recusal motion; see also Ms. Strak’s declaration, filed herein on June 17,
2009.

27 ¹³ See page 131 of discovery; see also Declaration of Doug Jones, attached as Exhibit
28 T to Mr. Dinius’ reply to the opposition to his original recusal motion.

1 contend that the surviving members of the sailboat are lying about that point and
2 that one of them, for some crazy reason, turned the lights off, after they had been
3 turned on. In any event, if anyone would have turned off the lights, the most likely
4 candidate would be Mr. Weber, as it is his boat and he was closest to the lights. If
5 Mr. Weber, or someone else, turned off the running lights, how would Mr. Dinius
6 have known? He was sitting at the tiller. From his vantage point, he would have
7 been unable to see whether those lights were illuminated or not.

8 3. *Contrary to Mr. Hopkins' Assertion, There Are Not 12 People*
9 *Who Saw No Running Lights on the Sailboat at the Time of the*
10 *Collision*

11 Mr. Hopkins states in his open letter: "TWELVE PEOPLE saw NO
12 RUNNING LIGHTS on the sailboat at the time of the collision." (Capitalization
13 in the original.) On its face, the statement is absurd: A person cannot see a
14 negative. Moreover, examination of the actual facts reveals the false and
15 misleading nature of Mr. Hopkins assertion in this regard. *None* of the 12 people
16 referenced in his letter provide any meaningful support for Mr. Hopkins' position
17 on the lighting issue.¹⁴

18 ¹⁴ 1. Russell Perdock — Mr. Perdock's self-interest in this matter is apparent. Mr. Perdock
19 has provided a plethora of inconsistent statements about the events relevant to the accident. (See
20 discovery pages 12-13, 66-71, 237-238; see also the transcripts of Russell Perdock's deposition
21 testimony in the parallel civil action and his testimony at the preliminary hearing.) He was traveling
22 at a stunningly dangerous speed at night, and he was not wearing the corrective lenses he needs to
23 see well when operating a vessel at night. (See transcript of recorded interview of Donna Perdock,
24 attached as Exhibit F to Mr. Dinius' renewed motion to recuse.) Even for a boater operating at a
25 prudent speed, the ability to see the lights on another vessel in Konocti Bay at night is hampered by
26 shorelights. (As explained in Mr. Dinius' pending application for a jury view, a nighttime boater's
27 ability to see the lights of other vessels is hampered by the phenomenon of boat lights blending in
28 with shorelights.) Mr. Perdock's contention that he saw absolutely no lights illuminated on the
sailboat is also belied by the fact that the lead investigating officer for the Lake County Sheriff's
Office, Sgt. Dennis Ostini, testified at the preliminary hearing that he has concluded the sailboat
cabin lights were illuminated at the time of the accident. (See volume 1, page 162 of the reporter's
transcript of the preliminary hearing.)

2. James Walker — Mr. Walker is a close friend and high school classmate of Mr.
Perdock's. He was with Mr. Perdock on the boat at the time of the accident. On May 4, 2006, Mr.
Walker told Sgt. Ostini that he saw the white-colored sailboat "a second or two before the collision,"

1
2
3 and that he had not seen any lights illuminated on the sailboat. Many of the same circumstances that
4 render Mr. Perdock's contention regarding the lights unbelievable also apply to Mr. Walker. (See
5 discovery page 33.)

6 3. Jordan Walker — Ms. Walker, who was 14 years old at the time of the accident, is Mr.
7 Walker's daughter. She was on the powerboat with Messrs. Perdock and Walker at the time of the
8 accident. On May 4, 2006, she told Sgt. Ostini that she saw the white sails of the sailboat
9 approximately three seconds before the accident. (See discovery pages 33-34.) This means that she
10 saw the sailboat at a distance of approximately 180 feet. (In Wes Dodd's accident reconstruction
11 report, which was received in evidence as Defense Exhibit J (see volume 3, pages 499-500, of the
12 reporter's transcript of the preliminary hearing), Mr. Dodd set forth his conclusion that Mr. Perdock
13 was traveling at a speed of at least 40 miles per hour at the time of the accident. At a speed of 40
14 miles per hour, one travels a distance of approximately 60 feet per second.) If she saw the sailboat
15 from that far away, Mr. Perdock should have also been able to see it, and he should have been able
16 to avoid rear-ending the boat.

17 4. Hans Peter Elmer — Mr. Elmer is a retired law enforcement officer. At the time of the
18 accident, Mr. Elmer was on a deck at the Young Scandinavians Club. The deck overlooks Konocti
19 Bay. He heard Mr. Perdock's boat as it roared around Fraser Point and into Konocti Bay in the
20 moments just before the accident. He observed the boat, saw the speed at which it was traveling, and
21 turned to his friends and exclaimed: "There goes an idiot for you who is going to kill himself or
22 somebody else!" Mr. Elmer estimated the speed at which Mr. Perdock was traveling to be 50 to 55
23 miles per hour. The undersigned and the undersigned's investigator have had contact with Mr.
24 Elmer throughout the course of this case. To this date, neither Mr. Hopkins nor any Lake County
25 law enforcement officer has spoken with Mr. Elmer. Mr. Elmer's attention was focused on the
26 speeding power boat before the accident. He was not paying attention to anything other than that
27 boat as it sped into Konocti Bay. Mr. Elmer would not have noticed the lights of a drifting or slow-
28 moving sail boat in the area, as he was not looking for such a boat, and the shoreline opposite Mr.
Elmer's vantage point was littered with numerous shore lights. (See the transcript of Mr. Elmer's
deposition testimony in the parallel civil action; see also Defense Investigator John Kirkman's report
regarding his interview of Mr. Elmer.)

20 5. Karen Elmer — Ms. Elmer was on the deck at the Young Scandinavians Club with her
21 husband. Her observations did not differ from his. (See discovery page ▲-16.)

22 6. Bismarck Dinius — Mr. Dinius was at the tiller of the sail boat. From his vantage point,
23 the running lights were not visible. The stern light projects illumination 180 degrees to the rear of
24 the transom. Of course, he was aft of the transom. Mr. Hopkins' insinuation that Mr. Dinius is a
25 witness who affirmatively observed that no running lights were illuminated is absurd.

26 7. Zina Dotti — Ms. Dotti was a passenger on the sail boat. She was seated relatively near
27 Mr. Dinius. For the same reasons that Mr. Dinius did not see whether the running lights were on,
28 Ms. Dotti could not see whether they were on. (See discovery pages 110-113.)

25 8. H. Edward Dominguez — Mr. Dominguez was seated right next to Ms. Dotti. (See
26 discovery pages 106-109.)

27 9. Jennifer Patterson — Ms. Patterson was 15 years old at the time of the incident. She was
28 at the residence of the Holdener family, which is located at 9022 Soda Bay Road, in Kelseyville.
The Holdeners' property backs up to Konocti Bay. Ms. Patterson was with her friends, Rebecca
Combs and Jeff Holdener. She was "playing on [a] trampoline." As she was on the trampoline, she

2 4. *Mr. Perdock Was Speeding Wildly Across the Lake*

3 Mr. Hopkins claims an inability to determine the speed of the power boat.
4 However, simply by viewing the sheer destruction of the boats caused by the
5 accident, one can glean that the power boat was rocketing across the lake at the
6 time of the accident. The boat struck the rear of the sail boat, vaulted up into the
7 air, sheered the mast off the sail boat, and flew all the way over the 27-foot-long
8 sailing vessel. As noted above, retired police sergeant Hans Peter Elmer saw the
9 power boat tearing across the lake, and gauged its speed to be 55 miles per hour.
10 In a videotaped interview conducted on the night of the accident, Zina Dotti said
11 she saw the power boat just before it impacted the sail boat and that it was

12

13 heard "a speedboat engine roaring." She saw the lights of the speed boat go up and down. Then she
14 saw sparks and heard loud screams. Before the accident she had occasionally glanced out over
15 Konocti Bay. She had not noticed any other boats out on the bay prior to the accident. (See pages
▲-9 and ▲-10 of discovery.)

16 10. Gina Seago — Ms. Seago was 14 years old at the time of the accident. She was also at
17 the Holdener residence at the time of the accident. She was sitting on a dock with Jeffrey Holdener
18 and Jess Holdener. She heard a speedboat traveling out in Konocti Bay. Before hearing the boat,
19 she hadn't been paying much attention to what was going on out on the lake. She watched the
speedboat for about eight to ten seconds. At one point, the speedboat traveled out of her field of
vision. Then, she heard a crash and saw sparks. She had not seen other boats on the lake before the
collision, but she had not been paying much attention. (See pages ▲-8 and ▲-9 of discovery.)

20 11. Colin Johnson — Mr. Johnson was out on the lake on the night in question. He and his
21 friend, Anthony Esposti, were fishing. In an interview with an insurance investigator on June 6,
22 2006, Mr. Johnson stated that he saw an unlit sail boat out on the lake with no sails up. He saw the
23 tall mast of the sail boat. (See page 245 of discovery.) If Mr. Johnson did indeed see an unlit sail
boat with no sails up, the boat he saw was not the boat involved in this case. The sails on the boat
in question were constantly up as the boat was out in Konocti Bay, and Mr. Perdock ripped through
the sails when his boat launched over the sail boat.

24 12. Anthony Esposti — Mr. Esposti, who was with Mr. Johnson, told Sgt. Ostini that he saw
25 a sail boat out on the lake at approximately 7:30 p.m., "prior to darkness." He then saw that same
26 sail boat several more times after darkness. The boat he saw did not have its lights on. (See page
13 of discovery.) The boat Mr. Esposti saw is not the sail boat involved in this case. The sail boat
in this case was not even on the lake at 7:30 p.m.

27 As revealed by the summaries regarding information provided by the foregoing 12
28 individuals, Mr. Hopkins' assertion that they all "saw NO RUNNING LIGHTS on the sailboat at the
time of the collision[.]" is false.

1 “hauling — very, very, very fast.” Sgt. Dennis Ostini testified at the preliminary
2 hearing that Mr. Perdock, by his own admission, was traveling at a rate of speed
3 that Sgt. Ostini deemed to be somewhere in the neighborhood of four to eight
4 times faster than the maximum safe speed.¹⁵ Mr. Perdock was traveling at a
5 ridiculously unsafe speed. To contend otherwise is to deny reality.

6 C. *The Illogic and Absurdity of Mr. Hopkins’ Stated Intention to Dismiss*
7 *Count I and to Proceed on Count II, When Both Charged Offenses*
8 *Are Identical in this Case*

9 In his open letter, Mr. Hopkins states that he is “satisfied that the civil suit
10 settlement resolved the issue of liability among the parties for the death of Lynn
11 Thornton[,]” and that the question before him is “whether there is a need to pursue
12 criminal negligence charges in addition to and over and above the civil suit
13 settlement.” He then states that he has “determined that the [m]anslaughter charge
14 against Mr. Dinius should be dismissed and [that he] will make a motion to do that
15 at the next court appearance [on] Tuesday, July 21.”

16 While Mr. Dinius certainly has no objection to dismissal of the
17 manslaughter charge, the foregoing remarks reveal that Mr. Hopkins is either not
18 acting rationally or is unfamiliar with the controlling substantive laws applicable
19 to counts I and II. If count I (the manslaughter charge) should be dismissed, then
20 so should count II (the felony drunk driving/boating charge), as those two charges
21 are identical *in this case*.

22 The manslaughter charge, which is set forth in count I of the information, is
23 brought pursuant to former Penal Code section 192.5, subdivision (c). The
24 specific offense delineated by that statute is vehicular manslaughter while
25 intoxicated without gross negligence.¹⁶ The pending felony drunk driving charge,
26 which is set forth in count II of the information, is brought pursuant to Harbors

27 ¹⁵ See volume 1, page 174 of the reporter’s transcript of the preliminary hearing.

28 ¹⁶ The offense is now codified in Penal Code section 191.5, subdivision (b).

1 and Navigation Code section 655, subdivision (f).

2 Although the statutory language spelling out these two offenses is “not
3 identical” (*People v. Dawson* (2009) 172 Cal.App.4th 1073, 1085, fn. 3), the
4 elements of the two offenses are the same: Both require proof that 1) the
5 defendant drove a vessel, 2) the defendant was under the influence of alcohol
6 while driving, 3) the defendant, while driving under the influence of alcohol
7 committed an unlawful act or neglected to perform a legal duty, and 4) the
8 defendant’s negligent act or omission caused the death of another person. In the
9 case of felony drunk driving, the fourth element can also be satisfied by proof that
10 the defendant’s negligent act or omission caused bodily injury to another person.
11 (CALCRIM No 591; CALCRIM No. 2100.¹⁷) In the instant case, because the
12 prosecution has expressly singled out Lynn Thornton as the sole victim of count
13 II, and because Ms. Thornton died as a result of injuries suffered in the boating
14 accident in question, there is no real difference between the manslaughter charge
15 and the felony drunk driving charge.

16 If Mr. Hopkins has determined that count I should be dismissed, then, for
17 the very same reasons, the identical offense, set forth in count II, should also be
18 dismissed.

19 IV.

20 REMEDIES

21 Mr. Dinius is entitled to relief based upon Mr. Hopkins’ prosecutorial
22 misconduct.

23 A. *If Mr. Hopkins Is Only Willing to Move to Dismiss Count I, the Court*
24 *Should Dismiss Count II Pursuant to Penal Code section 1385.*

25 Pursuant to Penal Code section 1385, subdivision (a), this court has the
26

27 ¹⁷ Although the form instructional language contained in CALCRIM No. 2100 is crafted for
28 standard DUI cases, it also applies to drunk boating cases.

1 authority to dismiss an action in the interest of justice. This authority includes the
2 authority “to dismiss not only an entire case, but also a part thereof...” (*People v.*
3 *Superior Court (Romero)* (1996) 13 Cal.4th 497, 508.) This authority may be
4 exercised by the court prior to trial. (*People v. Konow* (2004) 32 Cal.4th 995,
5 1021-1028.)¹⁸

6 Mr. Hopkins has stated in his open letter: “I have determined that the
7 [m]anslaughter charge against Mr. Dinius should be dismissed...” *A fortiori*, the
8 very same charge, albeit pled pursuant to a different statutory provision, should be
9 dismissed. A prosecutor cannot ethically prosecute a person for a charge when the
10 prosecutor believes that charge should be dismissed. Under these circumstances,
11 if Mr. Hopkins is unwilling to move to dismiss count II, the court should dismiss
12 that count.

13 *B. Alternative Remedies*

14 In the event Mr. Hopkins does not move to dismiss count II as well as count
15 I, and in the event the court is unwilling to dismiss count II pursuant to Penal
16 Code section 1385, Mr. Dinius respectfully requests the court to grant the
17 following relief: 1) inquire forthwith as to whether members of the venire have
18 been exposed to any information concerning Mr. Hopkins’ press release / open
19 letter, 2) deliver a cautionary instruction to all members of the venire,¹⁹ 3) grant
20 additional peremptory challenges to the defense,²⁰ and/or 4) hold Mr. Hopkins in
21

22 ¹⁸ While a defendant does not “formally” have the right to move for dismissal pursuant to
23 Penal Code section 1385, the defendant may “informally suggest” the court to consider dismissal on
24 the court’s own motion. (*People v. Konow, supra*, 32 Cal.4th at p. 1022.) Mr. Dinius takes this
opportunity to respectfully and informally suggest the court exercise its authority in this regard.

25 ¹⁹ Mr. Dinius will proffer a proposed cautionary instruction.

26 ²⁰ “While the rules appear to expressly limit the [peremptory] challenges to that number
27 specified in the statute, both state and federal cases have generally held that the granting of additional
28 peremptory challenges is best left to the discretion of the court. (Lawless, *Prosecutorial Misconduct*
(4th ed. 2008) § 4.32, p. 4-98 (footnotes omitted) (collecting authority).)

1 contempt and/or impose sanctions against him.²¹

2 CONCLUSION

3 Based upon the foregoing authorities and analysis, Mr. Dinius respectfully
4 requests this court to grant the relief specified above.

5

6

7 DATE: July 22, 2009

Respectfully Submitted,

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VICTOR S. HALTOM
Attorney for Defendant
BISMARCK F. DINIUS

²¹ A court in a criminal case may impose monetary sanctions against an attorney who engaged in misconduct. (*People v. Willis* (2002) 27 Cal.4th 811.) Mr. Hopkins' misconduct in this case has resulted in the need for the undersigned to take action on Mr. Dinius' behalf. The undersigned is privately retained in this case. Mr. Dinius should not have to subsidize Mr. Hopkins' misconduct.

EXHIBIT A

OPEN LETTER FROM JON HOPKINS, LAKE CO. DISTRICT ATTORNEY

By Jon Hopkins

Updated: 07/17/2009 10:52:23 PM PDT

When I recently took over the prosecution of the case involving the collision between a sailboat and a motorboat in 2006 on Clear Lake, I was asking the question: Why do so many people support drunken sailors on the lake at night with their running lights off? It was very disturbing to find out the answer to that question, because it appears people are believing the information out there in the media that is wrong, false and misleading. That is disturbing enough on its own, but even more disturbing is that people have made up their minds based on that information and are not waiting to hear what evidence is presented in court.

The key thing for people to remember in this case is that the evidence in a criminal case is not what others repeat and what the media puts out or what the "Spin Doctor's" have to say; it is what is testified to in court in front of the jury. Once both sides of the case have had a chance to question the witnesses, the facts often change. It is important to keep an open mind and wait to see what the evidence turns out to be.

I have been reviewing the evidence, the photos, the transcripts, the reports, and talking to witnesses. I have been reading the law and the rules regarding water vessels, and reviewing the laws with respect to boating under the influence. I have been going out to the lake and seeing where witnesses were and asking about what they say they saw. I have also spent time carefully looking over the two boats involved.

There are some major areas of the case where the evidence that I have reviewed needs to be stated, so that the community understands the issues in this case. I have waited until the jury panels have all come to court and have been instructed by the court to avoid media about the case, so that this information will not affect them. It is important to remember that all of this is still needs to be heard in court.

WERE THE SAILBOAT RUNNING LIGHTS ON OR OFF?

The defense keeps posting a chart designed to show that more people saw the lights on than off, so I did my own chart and found that TWELVE PEOPLE saw NO RUNNING LIGHTS on the sailboat at the time of the collision. This number includes three people on the sailboat, including the defendant Mr. Dinius. It also includes three people in the motorboat and six people on the shore or in the water who saw the collision occur.

There was ONLY ONE PERSON, Mark Weber, THE SAILBOAT'S OWNER, who claims that the RUNNING LIGHTS WERE ON. There was also ONE PERSON ON SHORE who said he saw THE MOTOR BOAT LIGHTS AND ANOTHER LIGHT CONVERGE, BUT COULD NOT SAY IT WAS ON THE SAILBOAT.

The other people the defense counts as having seen running lights on the sailboat were ON SHORE at least 40 MINUTES BEFORE THE COLLISION. None of these witnesses saw the collision. Then the defense counts the people who saw CABIN LIGHT, which DOES NOT SATISFY THE LEGAL REQUIREMENT FOR RUNNING LIGHTS.

Everyone who saw the collision saw the running lights of the motorboat clearly.

WHEN WERE ALCOHOL TESTINGS DONE?

Three parties were tested for alcohol BY TAKING A BLOOD SAMPLE AT THE HOSPITAL. Nobody was given a Preliminary Alcohol Screening breath test at the scene or anywhere else. The most reliable test for alcohol in the blood is the blood test itself. Mark Weber, the sailboat owner, and Bismarck Dinius, the defendant, were taken to Sutter Lakeside Hospital north of Lakeport. Russell Perdock, the motorboat operator, was taken to Adventist Health Redbud Hospital in Clearlake. The collision occurred shortly after 9 pm. It takes 25 minutes to get to Sutter and 20 minutes to get to Redbud from Konociti. MARK WEBER was tested at 11:15 PM, RUSSELL PERDOCK was tested at 11:30 PM and BISMARCK DINIUS was tested at 12:05 AM. Weber and Perdock were tested on April 29, 2006, and Dinius was tested on April 30, 2006. Rumors that Perdock was not tested for over 24 hours are not true. WEBER TESTED .18%, DINIUS TESTED .12% and PERDOCK TESTED .00%. The legal limit is .08%.


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The Sergeant who transported Perdock to the hospital put the wrong date on the blood sample taken by the Nurse. The defense has tried to make it sound like the date on the sample was correct and Perdock was delayed in giving a blood sample. The Sergeant in charge of the investigation at the scene will testify that he assigned the other Sergeant to take Perdock to the hospital the night of the collision. The Sergeant who witnessed Perdock's blood draw took the sample to the Sheriff's substation in the early morning hours of April 30, 2006. The Detective in charge of evidence will testify that the sample taken to the DOJ lab and tested is the one he picked up early afternoon on April 30, 2006. The hospital medical records confirm that Perdock was treated the night of the collision and remained there at the hospital for treatment for some time. Witnesses observed Perdock still at the hospital, not being transported home by the Sergeant; and Perdock's ex-wife will testify that she drove him home, not the Sergeant. The defense claim that Perdock did not give blood until 11:30 pm, the night of April 30, 2006 is physically impossible.

HOW FAST WAS THE MOTORBOAT GOING?

All we have are estimates, guesses and speculation. We cannot prove the speed of the motorboat.

WHAT WAS THE SAILBOAT DOING?

There are rumors that the sailboat was anchored or just sitting in the water. Those are not true. EVERYONE ON THE SAILBOAT SAYS IT WAS UNDER SAIL AND MOVING.

THE CHARGES?

Part of my review was designed to determine what charges I think should be pursued against Bismarck Dinius. Included in my review were the transcripts of the depositions, Insurance Company investigations and the settlement reached in the civil suit. I am satisfied that the civil suit settlement resolved the issue of liability among the parties for the death of Lynn Thornton. The question is whether there is a need to pursue criminal negligence charges in addition to and over and above the civil suit settlement. I have determined that the Manslaughter charge against Mr. Dinius should be dismissed and will make a motion to do that at the next court appearance Tuesday, July 21.

Mr. Dinius is still charged with Boating Under the Influence causing bodily injury or death with a prior conviction of DUI. An issue in that charge is whether his failure to make sure the running lights required by law were displayed while operating the sailboat was a substantial factor in the cause of the death of his passenger. It doesn't matter that there could be other causes of death unless they were not foreseeable. The Judge who heard the evidence at the Preliminary Hearing has already ruled that the speed the motorboat was traveling was reasonably foreseeable on Clear Lake at night, and the chance of a collision with a sailboat not displaying the running lights required by law would also be reasonably foreseeable. The defense has asked the new Judge to review that ruling twice and the ruling still stands.


We have a serious problem in Lake County with boaters of all types operating while under the influence. We need to avoid the tragedies of serious injury and death that have occurred on Clear Lake. Hopefully, this tragedy will cause boaters to think of the consequences and dangers of boating under the influence and choose to not operate any watercraft while drinking or taking drugs or prescription medicine that affects their ability to handle the watercraft as well as a sober person.

CONFLICT OF INTEREST?

I requested a review of this case by the Attorney General's office before it was filed. They determined there was no conflict for the District Attorney. They have had two other opportunities to take over the prosecution of this case when the defense filed motions and have not. In the Attorney General's motion filed with the court, they make it very clear that the law says that a District Attorney can investigate and prosecute a case involving local law enforcement officers.

There are some who think that a law enforcement agency cannot be trusted to pursue the truth in a case involving a fellow officer and are very quick to be critical of anything done in that case. I can speak from personal experience from having reviewed those types of cases, and having looked at the facts involved, and I have found the investigations and perspective of the investigating officers to be very professional. The key is to look at what was done in a particular case and come to conclusions when all the facts are known. Unfortunately, in this case too many conclusions have not been based on the facts, but on rumors and misinformation in the media.

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I take my responsibilities as District Attorney seriously. In my 37 years in the criminal justice system as a Public Defender and a Prosecutor, I have formed a healthy respect for our Constitution and a strong belief in a system of justice that does not presume people to be guilty. I work tirelessly to find the truth. It doesn't matter to me who people are; it matters what we can prove they did. I have authorized the prosecution of four Lake County law enforcement officers charging criminal conduct, and still people think they can just claim that we don't file against cops. But we cannot convict a person, just because they are an officer, if the facts do not support guilt beyond a reasonable doubt to a unanimous jury of 12. Attempting to convict a motorboat operator of manslaughter, when we cannot prove the speed of his boat and he collides with a sailboat operated by drunken sailors at night without their running lights is not going to succeed. It will not convince a jury to vote for guilt just because the motorboat operator is a law enforcement officer, and that seems to be the suggestion of a lot of people.

I believe that a prosecutor never has to fear the truth. My goal in this case is to get to the truth. As you can see, I have already discovered that the truth is different from what people have been led to believe. When this trial has concluded, the District Attorney's office will have checked every aspect of the case and its investigation to assure that the evidence presented has met our standards of truthfulness and professionalism. If we reach a different conclusion than another law enforcement agency, then that is what we go with. The final product will be a result of what we independently determine.

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District attorney offers open letter to community on sailboat case

Written by Jon E. Hopkins
Saturday, 18 July 2009

Editor's note: The following letter is presented in its entirety. Text that is underlined, bold and in capitals represents Hopkins' formatting.

When I recently took over the prosecution of the case involving the collision between a sailboat and a motorboat in 2006 on Clear Lake, I was asking the question: Why do so many people support drunken sailors on the lake at night with their running lights off? It was very disturbing to find out the answer to that question, because it appears people are believing the information out there in the media that is wrong, false and misleading. That is disturbing enough on its own, but even more disturbing is that people have made up their minds based on that information and are not waiting to hear what evidence is presented in court.

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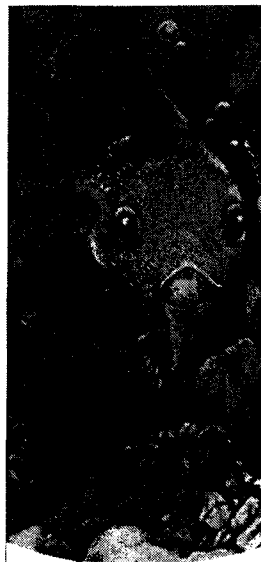
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All we have are estimates, guesses and speculation. We cannot prove the speed of the motorboat.

WHAT WAS THE SAILBOAT DOING?

There are rumors that the sailboat was anchored or just sitting in the water. Those are not true. **EVERYONE ON THE SAILBOAT SAYS IT WAS UNDER SAIL AND MOVING.**

THE CHARGES?

Part of my review was designed to determine what charges I think should be pursued against Bismarck Dinius. Included in my review were the transcripts of the depositions, Insurance Company investigations and the settlement reached in the civil suit. I am satisfied that the civil suit settlement resolved the issue of liability among the parties for the death of Lynn



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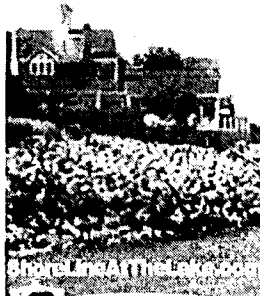
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Thomson. The question is whether there is a need to pursue criminal negligence charges in addition to and over and above the civil suit settlement. I have determined that the Manslaughter charge against Mr. Dinius should be dismissed and will make a motion to do that at the next court appearance Tuesday, July 21.

Mr. Dinius is still charged with Boating Under the Influence causing bodily injury or death with a prior conviction of DUI. An issue in that charge is whether his failure to make sure the running lights required by law were displayed while operating the sailboat was a substantial factor in the cause of the death of his passenger. It doesn't matter that there could be other causes of death unless they were not foreseeable. The Judge who heard the evidence at the Preliminary Hearing has already ruled that the speed the motorboat was traveling was reasonably foreseeable on Clear Lake at night, and the chance of a collision with a sailboat not displaying the running lights required by law would also be reasonably foreseeable. The defense has asked the new Judge to review that ruling twice and the ruling still stands.

We have a serious problem in Lake County with boaters of all types operating while under the influence. We need to avoid the tragedies of serious injury and death that have occurred on Clear Lake. Hopefully, this tragedy will cause boaters to think of the consequences and dangers of boating under the influence and choose to not operate any watercraft while drinking or taking drugs or prescription medicine that affects their ability to handle the watercraft as well as a sober person.

CONFLICT OF INTEREST?

I requested a review of this case by the Attorney General's office before it was filed. They determined there was no conflict for the District Attorney. They have had two other opportunities to take over the prosecution of this case when the defense filed motions and have not. In the Attorney General's motion filed with the court, they make it very clear that the law says that a District Attorney can investigate and prosecute a case involving local law enforcement officers.

There are some who think that a law enforcement agency cannot be trusted to pursue the truth in a case involving a fellow officer and are very quick to be critical of anything done in that case. I can speak from personal experience from having reviewed those types of cases, and having looked at the facts involved, and I have found the investigations and perspective of the investigating officers to be very professional. The key is to look at what was done in a particular case and come to conclusions when all the facts are known. Unfortunately, in this case too many conclusions have not been based on the facts, but on rumors and misinformation in the media.

I take my responsibilities as District Attorney seriously. In my 37 years in the criminal justice system as a Public Defender and a Prosecutor, I have formed a healthy respect for our Constitution and a strong belief in a system of justice that does not presume people to be guilty. I work tirelessly to find the truth. It doesn't matter to me who people are; it matters what we can prove they did. I have authorized the prosecution of four Lake County law enforcement officers charging criminal conduct, and still people think they can just claim that we don't file against cops. But we cannot convict a person, just because they are an officer, if the facts do not support guilt beyond a reasonable doubt to a unanimous jury of 12. Attempting to convict a motorboat operator of manslaughter, when we cannot prove the speed of his boat and he collides with a sailboat operated by drunken sailors at night without their running lights is not going to succeed. It will not convince a jury to vote for guilt just because the motorboat operator is a law enforcement officer, and that seems to be the suggestion of a lot of people.

I believe that a prosecutor never has to fear the truth. My goal in this case is to get to the truth. As you can see, I have already discovered that the truth is different from what people have been led to believe. When this trial has concluded, the

District Attorney's office will have checked every aspect of the case and its investigation to assure that the evidence presented has met our standards of truthfulness and professionalism. If we reach a different conclusion than another law enforcement agency, then that is what we go with. The final product will be a result of what we independently determine.

Jon E. Hopkins is Lake County's district attorney.

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A rebuttal letter, please.

written by CLO Resident, July 18, 2009

It appears that Mr. Hopkins has tried the case in his letter rather than in the court room and has found Mr. Dinius guilty but unable to be convicted by a jury because so many people in Lake County have been purposely duped by the misleading media.

In the interest of justice, shouldn't the defense attorney be invited to present a rebuttal letter?

As an educated, aware registered voter in Lake County, one who never supports "drunken sailors" anywhere, at anytime of the day, I am insulted by Mr. Hopkins letter and I look forward to the end of this current term in office.

I can't imagine that he believes he could be reelected after this fiasco.

+7

This is becoming very sad...

written by Dwain, July 18, 2009

What an amazing letter, the DA trying to convict a defendant via the media before the trial!

I'll be happy to prove one of Mr. Hopkins assertions wrong...

Hopkins states "HOW FAST WAS THE MOTORBOAT GOING? All we have are estimates, guesses and speculation. We cannot prove the speed of the motorboat."

Mr. Hopkins, have you ever heard of the science of PHYSICS?

YES, it is possible to prove a MINIMUM speed for the MASS of the powerboat to attain the FORCE necessary to meet the TRAJECTORY it attained.

Now, how about getting out your calculator and trying it? Then get back to us. Or better yet, tell the jury the truth, that you don't care how fast the powerboat was going.

And now that we are arguing this in public, Mr. Hopkins, please tell us how Mr. Dinius could have maneuvered out of the way of the powerboat if he had been sober.

+9

Trial Goes On

written by jazz, July 18, 2009

I'll have to check but this is one of the most bizarre incidents of pre-trial publicity I've seen in a criminal case. One of the first things prosecutors are taught is to avoid pre-trial publicity lest you open yourself up to the charge you are

trying to influence your jury pool via the media.

I was expecting to read that the case was to be dropped entirely or that he (Hopkins) was proceeding on a boating under the influence charge alone. The fact he is still pursuing a theory that the boating under the influence caused the injury/death means all of the same issues are still on the table and the trial will proceed unless some "deal is struck." That makes this "open letter" completely unethical.

Dwain highlights the main issue for the defense in his last sentence, how could a sober guy get out of the way of a high speed powerboat while at the wheel of a sailboat?

While I guess I applaud the decision to drop the most serious charge, I am frankly shocked that one of the most experienced and (if you ask him) best prosecutors in California would publish a letter to the community during a trial. He'll hide behind the "the jury was admonished already to avoid the paper blah blah blah." That may save his behind in a state bar inquiry (if someone files a complaint) but doesn't make the letter any less improper.

+7

Blatant Obfuscation

written by Chris Thompson, July 18, 2009

So now the District Attorney has tried this case in the media?

What next?

Will Mr. Hopkins also pass judgment?

A new prosecutor is needed here in Lake County, one with morals, ethics, and no close community ties. Some one impartial is needed here, not a local.

The law is the law, and a sailboat has the right of way under any conditions.

Yes Jazz, this is certainly a blatant case of trying to influence the jury pool via the media.

+4

To Hopkins.

written by James, July 18, 2009

This has always been about Perdock and saving his buns. The low lifes could care less about Ms.Thornton, her family and friends. Mr. Dinius was the fall guy to give cover. The arrogance of your power shines brightly in your letter. So the next move is to run for cover with the hope in time we will forget. Your office had no complaint form for citizens to state their grievances for over 148 years. I state this to show how much the lowlifes cared about our rights. To Hopkins I have made charges that people lied and covered up the lies in this government so investigate.

+1

"...the speed the motorboat was traveling was reasonably foreseeable on Clear Lake at night..."

written by Iornasue, July 18, 2009

Yes, we have many problems out on the lake. The two most notable problems appear to be driving under the influence and speeding. We see it on our roads and we see it on our lakes. Driving intoxicated and speeding should both be fully prosecuted.

That said, why should the driver of the speeding boat be dismissed with a simple "...the speed the motorboat was traveling was reasonably foreseeable on Clear Lake at night..." Could it not be just as easily argued that the driver of the speeding boat should have reasonably foreseen the drunken sailboat operator with his lights off?

Lets not make excuses for either of these people. We all need to remember to slow down (on the roads and on the waterways) and drink responsibly.

+1

Wrong date on the blood sample?

written by AnnieSmith, July 18, 2009

Okay..nursing people...Is anyone allowed to touch the blood vials let alone write on them? Anyway...put Hopkins letter in my garden. I won't have to fertilize it for a year or more. I still have a knot in my stomach when I read any comments on this case. To move forward and heal is hard enough let alone having the limelight hamper that progress.

Hopkins, I don't know you, but what ever your convictions, let them not be in the court system.

+4

arrogant and self-serving

written by smurf, July 18, 2009

as usual Hopkins blames everybody but himself, it's those dumb lake County hicks who all love drunk sailors, and the media has been spreading myths, and perdo wasn't even there! No Jon, you're the problem, YOU concealed and ignored evidence, and YOU and a small number of perdo apologists are only people on earth who can't accept this simple fact: perdo killed Lynn Thornton because he was going too fast.

Lights didn't matter, booze didn't matter, perdo's hand on the throttle was the murder weapon. you're just another criminal Jon, only you dress better than most, you belong in the same place you narccisistic thug!

+1

Hopkins

written by sthelenaman, July 18, 2009

Cannot believe a prosecutor would try to bring this out before a trial to make his case look good. Only makes him look worse if that's possible.

+1

What

written by a guest, July 18, 2009

you have is a DA who is not used to having things not come at as planned. Out of touch with reality. Too bad it is our DA in Lake County.

+1

Just a thought

written by CLO Resident, July 18, 2009

Could this letter have been written and made public for the singular purpose of assuring that the case gets thrown completely out of court?

-1

Final Paragraph

written by kd006, July 18, 2009

Pretty well sums up the arrogancem"I believe that a prosecutor never has to fear the truth. My goal in this case is to get to the truth. As you can see, I have already discovered that the truth is different from what people have been led to believe. When this trial has concluded, the District Attorney's office will have checked every aspect of the case and its investigation to assure that the evidence presented has met our standards of truthfulness and professionalism. If we reach a different conclusion than another law enforcement agency, then that is what we go with. The final product will be a result of what we independently determine."

So Jon, even if another law enforcment agency reaches a different conclusion you will still plow ahead with your version of the truth? Just sweep that nasty conflicting evedence under the rug or down a deep pit.

+4

No Trial !
written by thekattb4u, July 18, 2009
The last thing the boys in blue want is a trial... where all the details come out and are made public. Why do you think Bernie Madoff pleaded guilty?

+1

Just my opinion...
written by lenny, July 18, 2009

The District Attorney must resist pressure to file or not to file legally insufficient or sufficient criminal cases simply to appease victims and law enforcement or for publicity or for political reasons, or to satisfy the press or public demand, or any other non-professional reason.
This letter, in my humble opinion is totally inappropriate. The public should have been presented only with the last sentence minus the third paragraph.

+1

...
written by concerned parent, July 18, 2009
How can alcohol or "booze" not have anything to do with the accident? If they hadn't have been so drunk the lights would have been on and poor Dinius wouldn't have had to maneuver out of the way because he would have been seen. Of course no matter Mr.Hopkins said none of you would have been happy because you are so much smarter than anyone who works in law enforcement and had anything to do with this case.

-3

So much smarter?
written by kd006, July 18, 2009
I think so, this is why we have investigators who can determine scientifically if the lights were on or off, I thought someone from Sacramento had been called in to do an investigation of the physical evidence and stated the lights were on at the time of collision. This scientific inquiry does not lie, is not subject to memory lapse or outright tampering. Investigating the lamps on the vessel would have shown if the lights were on at time of impact and the direction of impact from the filament material disbursed inside the glass bulb. I wonder why that is not being mentioned, had that evidence been suppressed by the DA because it does not support his case?

Likewise although there is no speed limit on the lake, somehow doing 40, 50 or 60 MPH in the dark does not seem prudent, let's extrapolate this to driving on the road. The speed limit is 65, but the fog is so thick you can't see to move safely at 10 mph, but knowing the road so well you decide to drive 50, someone pulls out on the road and you run them down. Must be their fault as you came out of the dark at a high rate of speed and those dummies pulled right into your path. The "fact" that the driver was going in excess of their sight line and unable to safely stop should not matter?

If you were as you say a "concerned parent" I would be more worried about the truth than you are, one of these days one of your spawn will be involved in an accident but it probably will not be their fault, well at least according to your standards.

+1

...
written by concerned parent, July 18, 2009
If you read the letter everyone on the sailboat, except Webber, stated that the lights were off. Concerned parent was my original screen name when I signed up for, Lake County News, I just choose to not change my screen name like everyone does. So my spawns have nothing to do with this case. There were also previous reports from outside agencies that said the lights were off. I would say Dinius

stating that the lights were off that night would be enough, unless we're going to believe some of his statements and not others. Spontaneous contemporaneous statements, (those statements made immediately after the accident by Dinius) carry more weight in their truthfulness than statements made , days, weeks, months, years later.

-2

So...

written by kd006, July 18, 2009

Spontaneous contemporaneous statements, those ones any lawyer or insurance company tell you not to make at an accident scene (since you still are reeling from the accident) should hold great weight? How about the science I mentioned before? That and only that would be the proof of if the lights were on or off. Having had a few MV accidents myself my first thought is to turn off the ignition and shut off the lights to prevent a fire. I have even seen the police do this when they arrive on scene.

I think you might also take notice my one and only screenname has always been kd006, nothing else. Been around here longer than you so what is the point? Pretty obvious you and a few others are just tools of the local GOB network which is crumbling as we speak.

Have fun this is just one of many things that are going against the DA's office, LCSO and others, you can only keep the stink contained for so long before people start to smell it.

+3

hey "concerned" parent...

written by smurf, July 18, 2009

if you ran into a car stopped in the road and the driver was drunk it would still be your fault, as it's YOUR responsibility to maintain a safe stopping distance/speed at ALL times. It's NEVER OK to run into the back of anything, be it airplane, boat or car, and BTW, in aviation and sailing UNPOWERED CRAFT HAVE THE RIGHT OF WAY AT ALL TIMES. Hopkins LIED when said all those people said the lights were off, most of them said they didn't know, and if you CANNOT see a white object 40 feet tall directly in front of you then you're going too fast-period.

+6

...

written by Shadow, July 19, 2009

My guess is that they read the jury questionnaire and saw that they were not going to get a jury to convict him, that Perdock should have been charged right along with Dinnus. Now for the prosecution to talk so much about the case, how will they ever be able to charge Dinnus with anything. What a waste of our taxpayer money!

+2

Time to resign, Mr. Hopkins- NO ONE TRUSTS YOU.

written by Dusty_in_Clearlake, July 19, 2009

Yes, it's time to say goodbye, Jonny. You have shown your incompetence, corruption and above all, a staggering willingness to cling to such absurd ideas as this case shows! NO ONE ANYWHERE AGREED WITH YOU ON THIS!

You made a laughing stock of yourself and everyone in Lake County!

YOU are a very LARGE reason TOURISM IS DOWN!!! People are scared of crazy D.A. prosecuting people for such stupid things!

I seem to recall you trying to prosecute my neighbor for assault- WHEN HE SQUIRTED SOMEONE WITH A GARDEN HOSE!!!

And just how much of OUR money have you wasted perusing these legal flights of fancy??

You need to be investigated!

Your reputation is destroyed! Just go away!!

+2

Dusty

written by kd006, July 19, 2009

Yes how low we have sunk, if it was not true "assault with a garden hose" would be laughable. I can only imagine it if you were holding someone down and trying to drown them, but such is the state of things these days. Say one cross word to a public official and they threaten you with a lawsuit, for making threats. Since when is it illegal to say that someone should be recalled/fired? Goes on every day I am sure and the sheeple just grow quiet, report loud music or barking dogs when it's inconvenient and your accused of harrasing or stalking!

I would not be suprised if most of us that post on the blogs have a file on us somewhere, if not an actual identity at least a screen name so when they sieze your computer and search the hard drive they could trump up more offences against the police state.

Paranoid no, not when these things actually happen. Seems "government for the people" has been slowly replaced by "government for the government" as our rights are eroded away in the name of keeping us safe.

It's very easy to spot the trolls here and on the other blogs, no need to make a list of them, but pretty easy to spot every time they quote "cop haters" or cite some "inside knowledge" that us poor fools just fail to understand.

My only hope is Hopkins has dug his hole so deep even the GOB's aren't going to reach down and save him. Then I hope an investigation into the LCSO will be done by an outside agency, Mitchell seemes to have been very vague about Garizoli and his flying machine when asked for details by the BOS.

The Blue Green Algae might be offensive to the olfactory nerves, but some things in Lake County stink much worse.

+1

HOW FAST WAS THE MOTOR BOAT OPERATING? "WE HAVE NO PROOF" ????????????

written by Janice K., July 20, 2009

"HOW FAST WAS THE MOTORBOAT GOING?"

"All we have are estimates, guesses and speculation. We cannot prove the speed of the motorboat."

The writer of the "open letter" needs to be fired/recalled and prevented from ever holding public office again for his own failure of common sense.

The EXTENSIVE damage to the sailboat was clearly not done by a collision of a power boat operating at safe speeds.

The Attorney General's Office of the State of California recently stated that they were going to engage in some form of independent investigation of the case as "irregularities" appeared to exist in the case. Why didn't the "open letter" explain what "irregularities" caught the attention of the State of California?

I look forward to hearing an INDEPENDENT voice of State Government .

+1

"We have a serious problem in Lake County with boaters of all types operating while under the influence"

written by Janice K., July 20, 2009

Interesting comment in the "open letter."

The ONLY time I've ever seen the Sheriff's Department patrol on the lake was on the 4th of July, 2008.

If boaters "under the influence" are a serious problem, how is it that the presence of the law is minimal?

What I do see, often, are power boaters speeding at dangerous and unnecessary speeds without fear of law enforcement. The reason the speeders don't fear law enforcement is because law enforcement is rarely seen on the lake.

Isn't it interesting that the DA's Office says the problem is serious, yet does not provide any statistics to back up their claim. No numbers of citations & arrests for DUI on the lake each year that would support the "serious" statement.

Seems to me that the DA's Office has a failure to connect with reality and speaks from mere hunches.

+2

DA Jon Hopkins: Dishonest, incompetent, or both?
written by Janice K., July 20, 2009

Jon Hopkins makes his own intentionally simplistic conclusions that people are angry because the power boat operator was a cop.

Message to Jon Hopkins: I support law enforcement 98% of the time. A case has to be a pretty blatant violation of law for me to side with the usual cop haters. I despise cop haters. They usually represent nothing more than angry people who have been arrested or jailed or imprisoned and/or relatives of those same lowlife types. Those people are unable to live normal lives and blame cops because they lack the courage to blame their own behaviors or the behaviors of their relatives.

This case is a rare example of where I side with the defendant. Regardless of whether the sailboat operator was drinking or not, the extensive damage to the sailboat caused by the speed of the power boat was evidence that the power boater (cop or not) was at fault. THE SPEED was the causative factor of the accident and THE SPEED is what killed the woman. Yet the DA, mysteriously, won't charge the motor boater. Why? He knows that a jury would convict the motor boater of speeding based solely upon photos of the extensive damage. The DA understands that. Yet he pretends that a conviction would not occur.

Once a jury convicted the motor boater of DANGEROUS AND UNLAWFUL SPEEDING, the motor boater would then be liable and have to pay his own damages. DA Jon Hopkins realizes this, too. So he refuses to bring charges while uttering half truths to the public in his "open letter."

Despite assertions in the "open letter," the incompetence and/or dishonesty of Jon Hopkins is pretty obvious.

+3

DA is classic
written by a guest, July 20, 2009

Windbag Conservative creep. Our loss. Never knew he could not even write effectively.

Politics: A strife of interests masquerading as a contest of principles. The conduct of public affairs for private advantage.

+1

Boycott
written by a guest, July 20, 2009

No wonder the sailing community is boycotting with their money.

+2

PROSECUTORS BEWARE

written by A_Boater, July 20, 2009
"PROSECUTORS BEWARE: PRETRIAL PUBLICITY MAY BE
HAZARDOUS TO YOUR CAREER"

That's the title to a seminal paper on the ethics of what
prosecutors can and cannot say in public before a trial. It's
cited by the NDAA (National District Attorney's Association)
as essential reading for a DA.

[http://www.lakecounty.us/files/_barpub.pdf](http://www.lakecounty.il.us/files/_barpub.pdf)

Obviously, Hopkins has never read it, or he wouldn't have
dropped this stinkbomb that could well be a career ender.
He's shown not only an astounding level of intellectual
dishonesty, but sheer incompetence as well. He should just
resign now, before he becomes the next Nifong.

Read both Hopkin's article and the Morley article, and tell me
why this guy is qualified to be a DA?

+0

beg the question much??

written by taxismom, July 20, 2009

please -- take a course in deductive logic ---

Why do so many people support drunken sailors on the
lake at night with their running lights off

it goes w/out saying that lake county's citizens dont support
drunken sailors on the lake, any more than we support our
county's lead prosecutor not understanding the logical fallacy
of petitio principii

+1

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EXHIBIT B

People v. Dinius
Transcript of Interview

Stole: Brian Stole
Kirkman: John Kirkman, Private Investigator
Haltom: Victor S. Haltom, Attorney at Law
Date: Wednesday, June 24, 2009

Kirkman: My name is John Kirkman. I'm here with Attorney Victor Haltom and witness Brian Stole. Today's date is Wednesday, June 24, 2009; the time is 12:15 pm. We're with Mr. Stole to discuss what his observations were on the evening of April 29, 2006, with regard to the boating accident that occurred on Clear Lake in Lake County, California. Mr. Haltom?

Haltom: We're in a Denny's restaurant in Petaluma. We're like right off 101 and --

Stole: Petaluma Blvd.

Haltom: Petaluma Blvd. Brian, could you spell your last name?

Stole: Yeah, S-t-o-l-e.

Haltom: Mr. Kirkman indicated that we're here to talk about the accident that happened on Clear Lake. Did you see that accident happen?

Stole: Yes.

Haltom: I've seen a--or heard recorded interviews of you given earlier regarding this case, do you recall giving those recorded interviews?

Stole: Yes.

Haltom: One of them was to a gentleman named Joe Berger, who was an insurance investigator. I think you talked to him right after the accident, do you remember that?

Stole: Yes.

Haltom: Then there were two--and that was on the telephone with Mr. Berger?

Stole: Right, correct.

Haltom: And then there were two other interviews with a gentleman named Tom Clements from the Lake County District Attorney's Office, do you recall those?

Stole: Yes.

Haltom: I think one interview was a phone call, and then he called you again the next week?

Stole: Right.

Haltom: Has anybody else questioned you about this case?

Stole: No, nobody else has asked me.

Haltom: Do we have your permission to record this?

Stole: Yeah, absolutely.

Haltom: Tell us what you saw in connection with the accident.

Stole: Well I was standing down on the ****, and I heard a boat going across the water, and then I saw the two sets of lights come together, and then a loud crash.

Haltom: Do you think—. You know now that the two sets of lights you saw come together were the lights of the power boat and the lights of the sailboat?

Stole: Right.

Haltom: Hopefully those dishes aren't making it hard to hear. Could you tell whether the power boat was like coming towards you, going to the side, or moving away from you?

Stole: It was moving away from me. I was standing on the shore at Bayview, which is a family park, and I was looking across the water towards the accident, so the power boat was going away from me. So, away from Konocti towards the other side.

Haltom: Okay. So then what part of the power boat would you have been looking at, the front, back, or side?

Stole: I would have been looking at the side of the power boat.

Haltom: How would you characterize the speed of the power boat?

Stole: He was going way too fast.

Haltom: Okay.

Stole: By the sound of the engine, he was probably going around 50/60 miles an hour.

Haltom: Do you know anything about boating?

Stole: Yes.

Haltom: Power boating or sailboating, or both?

Stole: Power boating.

Haltom: You've done a lot of that?

Stole: Yes.

Haltom: Do you feel like you're pretty good at being able to gauge the speed of a boat on the water?

Stole: Yeah, absolutely.

Haltom: Have you spent much time in Clear Lake?

Stole: Yeah, I go up there probably about 4 or 5 times a Summer.

Haltom: Let me ask you this. A number of individuals in this case, witnesses who have expressed fear about talking to us about the case or about disclosing information that they think Lake County authorities might not want to hear, are you in that group of people?

Stole: Somewhat in that group. I mean if somebody wants-. Well, just knowing Lake County, there's a lot of things that go on there. Kind of a-. We refer to it as kind of a good ole boy community. They kind of stick together and kind of watch each other's backs.

Haltom: Are you're familiar with that just having spent some time up there?

Stole: Yeah. Just having spent time up there.

Haltom: Back to the actual facts of the accident. You said that you saw these lights coming together. Were these lights that you saw running lights, or navigation lights?

Stole: What I saw was running lights come together, and then I saw the lights on the speedboat coming towards the other lights, then they hit.

Haltom: Now, in the earlier recorded statements that you've given, you mentioned something about-you saw also the powerboat going really fast, so that's what caught your attention.

Stole: Right.

Haltom: And then you saw other lights that the powerboat ultimately hit.

Stole: Right.

Haltom: And in those other interviews you said at first, "I don't even know if the other lights were dock lights or headlights," is that correct?

Stole: Right, correct.

Haltom: Well you know what happened in this case?

Stole: Right.

Haltom: Do you have any doubt that what you saw was the powerboat colliding into the sailboat?

Stole: Yeah. No, I don't have any doubt at this point.

Haltom: Now, how about the colors of the lights that you saw? Here we are more than three years after the accident. Can you remember, as you sit here right now, what colors these lights were?

Stole: I really couldn't. Couldn't really tell you what color the lights were. I mean, I would say in the previous interview I said one was blue. And it could have been blue or green. It was nighttime, so I was looking probably halfway across the lake. So it could have been colored blue or green.

Kirkman: You were looking halfway across the lake, or the cove?

Stole: The cove area. So Bayview's over here, and then you go around, you go out and so it happened right over here.

Haltom: We're talking into a recorder and you just made some gestures with your hands, so I'm going to put that into words so that it makes sense.

Stole: Right.

Haltom: If somebody needs to understand that later. You were standing in between Konocti and Richmond?

Stole: Right.

Haltom: And that's a cove, I guess is what you call it?

Stole: Right.

Haltom: Or actually a bay. So that's what you were looking--halfway across that--

Stole: Across the cove, right.

Haltom: Did you hear--after the collision--did you hear any voices?

Stole: No, I didn't hear any voices. The next thing I heard was sirens. Sirens coming down the hill.

Haltom: I know you were with some people when you made these observations. Did these people that you were with see what you saw?

Stole: I'm not sure if they saw it. What caught my attention was the boat going fast across the water.

Haltom: And you gave the gentleman who initially interviewed you their names. The Keyes. K-e-y-e-s.

Stole: Right.

Haltom: I think a dad and two daughters?

Stole: Right. A dad and two daughters.

Haltom: A gentleman named Cooper Henderson?

Stole: Right.

Haltom: I'm not going to ask you on tape for their contact information. Have you talked to them since this about the case?

Stole: No, not really.

Haltom: Do they want to be "not" involved?

Stole: Yeah, I would think they probably wouldn't want to be involved.

Haltom: Why is that?

Stole: Probably the same reason. Two of them live up in Ukiah so they--

Haltom: Can we put that on pause for a moment, my phone is ringing. (Taking call for a minute.) You were explaining the reluctance of your friends, and you said basically you really don't want to be involved in this.

Stole: Right, so I imagine they wouldn't. They go up there even more so than I do. Probably every other weekend they go up there to the Lake.

Haltom: And they have a place up there? To this day?

Stole: Yeah, it's their parents. Their parents' place up there.

Haltom: After the accident happened--well let me ask you this. How close would you say you were to the actual shoreline of the lake when you saw this?

Stole: I was right on the shoreline, so about 2 or 3 feet from the water.

Haltom: Okay. Who was with you at the time of the accident?

Stole: Christie Keyes was with me. Her dad came down afterwards to see what had happened.

Haltom: So at the time of the accident, it was just you and Christie?

Stole: Right.

Haltom: Were there other people around the cove?

Stole: No, it was pretty late at night, so most people have already gone to bed, or went back up to their place.

Haltom: It was a pretty dark night?

Stole: Yeah.

Haltom: Were there a lot of other boats out on the lake that night, that you noticed?

Stole: No. That was probably the only boat I had even heard going across that part of the water right now.

Haltom: Do you know if the boat was--you were between Konocti and Richmond. Was the powerboat moving toward Konocti or toward Richmond?

Stole: It was going toward Richmond.

Haltom: Coming from Konocti?

Stole: Yeah, coming from Konocti.

Kirkman: So that would have been what side of the boat? If you were observing the side of the powerboat, would that be the port side or the starboard side?

Stole: Starboard's to the right. The right side.

Kirkman: And the running light you observed, would have been the green running light.

Stole: Green on the right.

Kirkman: So you're familiar with the setting.

Stole: Port side is red, Starboard side is green.

Kirkman: And the one in the back is just a white--

Stole: White, right, on the back.

Haltom: You heard the sound of the collision?

Stole: Right.

Haltom: That was a bang I assume.

Stole: Right.

Haltom: Did you see the actual collision?

Stole: Yeah, I saw the two lights coming together. Now as far seeing the boat go on top of the other one, no I didn't see that part. Maybe because once the two lights hit, maybe the lights went out. I couldn't see the boats across the cove.

Haltom: Did you immediately--well I assume you immediately knew there was an accident, because you heard the bang?

Stole: Right.

Haltom: Did you see like lights go up or down, or anything like that? Or just pretty much--

Stole: Just pretty much hit.

Haltom: Okay. And what did you guys do? Were you guys like a little stunned? Like, "Whoa."

Stole: Yeah, right. We were pretty stunned. And then probably about 2 minutes later we heard the sirens coming down the hill.

Kirkman: How many minutes?

Stole: Probably about 2 or 3 I would say. I mean it's right next to Richmond Park Bar & Grille, so you can always hear music coming from over there.

Kirkman: From the bar area?

Stole: Yeah.

Haltom: We're going to make a transcript of this statement you are providing to us. We're going to give copies of it to the District Attorney's Office. Is there anything that you feel like we need to add, that you know about the circumstances of this accident?

Stole: Well I know the speedboat was going way too fast, and I know there really aren't any speed limits on the water other than would have been safe.

Kirkman: What is a safe speed.

Stole: Yeah, what is a safe speed. It'd be driving in Montana where there are no speed limits on the road. You're not going to go 100 miles an hour around a mountain.

Haltom: Was that speedboat you saw going at a safe speed that night?

Stole: No, it wasn't going at a safe speed. Not at all. I mean, at night, you can maybe go 10, 20 miles an hour at the most.

Haltom: Actually, the lead detective for the Lake County Sheriff's Office testified that he was on the water that night, and the fastest that he felt he could go--when he thinks he's out there trying to save people--is about 10 to 15 miles an hour.

Stole: Yeah. You should never go more than that at night. Especially a dark night like that one, there's really no moon out. There's nothing to light up the water. You're pretty much a black hole and have to steer your way around all the tree limbs and weeds and everything else.

Haltom: Let me ask you one thing here. Again, this is more than three years after the accident. You gave a statement to Mr. Berger, I think within days or weeks of the accident. You said a couple things then that are not exactly consistent with what you said now. Do you think your memory would have been better then or now? Let me tell you what you said that's different. I think in that interview you said that maybe you were like 40 feet back from the shore--from the water when the accident occurred. Today you said maybe just a couple feet. When do you think your memory would have been better?

Stole: Um I'd say probably better now. Being at the lake, at that spot where we are on the lake, you can't be more than 10 feet from the water at any point on the grassy area.

Haltom: The little area. The interview, here we're face to face and in person. This is the first face-to-face in-person interview you've had regarding this case.

Stole: Right.

Haltom: Has anybody from the Lake County District Attorney's Office, other than Mr. Clements, tried to contact you?

Stole: Not that I know of.

Haltom: Anything else you can think of John [Kirkman]?

Kirkman: Just wanted to see if you can recall around what time it was that you observed the two boats come together? You say the sun was down at that time?

Stole: Right. It was really dark.

Kirkman: Can you give me an estimate of about what time it was?

Stole: I'd probably say around 9:30, 10:00 probably.

Haltom: The accident happened, we can tell by cell phone records, it was right around 10 minutes after 9:0 when it happened that night. Does that sound like it?

Stole: Sounds about right. It was already pretty dark outside.

Kirkman: The only other thing I would ask, is I or Mr. Haltom may have other questions for you in the future. We just want to be sure that you're okay with us contacting you?

Stole: Yeah.

Haltom: If the District Attorney's Office wants to contact you, is there a phone number they can contact you at?

Stole: Yeah, absolutely. It's the same number that you have, but [REDACTED].

Haltom: And that's [REDACTED] area code?

Stole: Yeah, [REDACTED] area code, right.

Haltom: Anything that you would like to add for anybody else that wants to look at what you have to say.

Stole: No, other than I don't think the person on the sailboat was at fault at all. The speedboat was going way too fast across the water, at an unsafe speed. There's no way, even if you were 3 miles away from seeing something, there's no way you could have stopped the boat in time before you hit something.

Haltom: The speed at which that boat was going.

Kirkman: Have you driven a powerboat at night on the lake before?

Stole: Yeah.

Kirkman: When it was as dark as it was on April 29, 2006?

Stole: I usually don't take it out that often at night, just because that lake is really dangerous at night. There are a lot of tree limbs, a lot of weeds, and it's really difficult to navigate your way around. But when I have taken it out, I never go more than 15, maybe 20 miles an hour at the fastest.

Haltom: One other thing. We're hoping that this case does not go to trial, and we don't have to have any hearings. We're hoping that the State Attorney General's Office takes over the case. We do, however, have a hearing coming up next week in the case. Are you aware of that from the news coverage?

Stole: Right.

Haltom: After we're done recording this, I brought a subpoena to give you, and I want to avoid having you come up to Lakeport, but I just want to—I'm going to give that to you and I will tell you before the hearing whether in fact I am going to need you. Is that alright?

Stole: Okay. Yeah, that's fine.

Haltom: I think you said your day off is Wednesday?

Stole: That'd be this week. I've already talked to my work and let them know that I may have to go up there on the 30th.

Haltom: Actually, the 30th is maybe a two day hearing. I brought subpoena for you to come up on July 1st, which is a Wednesday.

Stole: All right. Yeah, it's pretty—it's kind of like jury duty where they have to let you off.

Haltom: And I can certainly talk to an employer if they have questions, to verify.

Stole: Yeah, they're fine with it.

Haltom: Any other questions for me?

Stole: No, I don't think so.

Haltom: Well thank you very much, Brian.

Kirkman: Brian, I'm going to give you my business card. If you have anything else you need to add, or you remember something that we didn't talk about here today, feel free to call me anytime, okay?

Stole: All right.

Kirkman: Any other questions? That concludes the interview at this time. The time is 12:35 pm.

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the above-entitled action; my business address is 428 J Street, Suite 350, Sacramento, California 95814.

On the date below, I served the following document(s):

REQUEST FOR RELIEF DUE TO PROSECUTORIAL MISCONDUCT

(X) BY MAIL. I caused an envelope containing the above-specified document(s), with postage thereon fully prepaid, to be placed in the United States Mail at Sacramento, California addressed as follows:

() BY PERSONAL SERVICE. I caused such document(s) to be delivered by hand to the offices of the person(s) listed below:


() BY FACSIMILE SERVICE. I caused the document(s) to be served via facsimile to the person(s) listed below:

(X) BY E-MAIL SERVICE. I caused the document(s) to be served via e-mail to the person(s) listed below:

Jon E. Hopkins
District Attorney's Office
Lake County
225 North Forbes Street
Lakeport, CA 95453
e-mail: johnh@co.lake.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 20, 2009, at Sacramento, CA 95814.


Declarant