

OPEN LETTER FROM JON HOPKINS, LAKE CO. DISTRICT ATTORNEY

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.

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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 Konocti. **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%.

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

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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.