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MICHAEL P. JUDGE
PUBLIC DEFENDER

TO: THE HONORABLE GLORIA MOLINA
Chairperson, L.A. County Board of Supervisors

FROM: MICHAEL P. JUDGE
Public Defender
Executive Office

DATE: August 11, 2005

RE: MINUTES - EXPANDED STAFF MEETING

Attached is a copy of the Minutes of the Expanded Staff Meeting of the Office of the Public Defender held on June 9, 2005.

MPJ: lfg

Attachment

cc: Each Supervisor
Each Justice Deputy
CAO: Sharon Harper, Chief Deputy



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MICHAEL P. JUDGE
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TO: ALL STAFF

FROM: MICHAEL P. JUDGE
Public Defender

DATE: August 11, 2005

RE: MINUTES - EXPANDED STAFF MEETING

The Expanded Staff Meeting for the Public Defender's Office was held on June 9, 2005. The following are members:

Michael P. Judge	Patricia DeLaGuerra	Paula Montez
Robert E. Kalunian	Wendy Edmisten	Carol Ojo
John Vacca	Gregory Fisher	Elaine Palaiologos
Ronald Brown	Bobby Gil	Diane Parris
Winston Peters	Stu Glovin	Ramon Quintana
Rosie Maloof	John Gonzales	Susan Roe
Alan Abajian	Carolyn Gray	Rudy Rousseau
Michael Concha	Bernice Hernandez	Vicky Russell
Kelly Emling	Steve Hobson	Stan Shimotsu
Laura Green	Marvin Isaacson	Leslie Stearns
Lita Jacoste	Robert Johnson	Haydeh Takasugi
Stanley Shimotsu	Cheryl Jones	Karen Thompson
Ron Yorizane	Clyde Juloya	Mark Windham
Patricia Aguilar	Gareth Kim	Janet Yarbrough
Verah Bradford	Charlie Klum	
Charles Cervantes	Mark Lessem	
Carol Clem	Albert Lew	
Corrine Cortinas		
Joan Croker	John Martinez	

Prior to discussing office business, Mr. Judge presented Irene Jozefczyk, with a 20-year paper weight. Mr. Judge also spoke with great appreciation about the accomplishments of Helena Vargas, Senior Paralegal, who is retiring from the office. Mr. Judge stated that he received a letter from Ms. Vargas assessing her experience. In her letter, she indicated she was involved 57 special circumstance cases, including ten that went all the way through the penalty phase and in 9 out of these 10 penalty phase trials the client's life was saved.

The meeting began and the following topics were discussed:

I. NEW MILEAGE CLAIMS PROCEDURES by Michael Concha

Mr. Concha indicated that beginning July 1, 2005, all mileage claim forms will be sent for processing to the County Auditor-Controller, Shared Services, which will be taking over a large portion of the Department's Payroll/Fiscal Services.

To eliminate the possibility of the improper dissemination of confidential attorney/client information contained on the claim forms, the following modifications to the Department's mileage claim procedures will go into effect on July 1, 2005. In any trip made on behalf of a client, no reference will be made to either the name of the client and/or the client's court case number in the "Purpose of Trip" column. The entry in this column should only refer to the general purpose for the trip, such as: client interview, case investigation, witness interview. All other information will continue to be entered as is presently required.

When a trip is made on behalf of a client, in the "Purpose of Trip" column, only the investigation number of the case for which the trip was taken should be entered. No reference will be made to the name of the client and/or the court case number. This will protect confidentiality and allow only the Department to identify the case. Effective July 1, 2005, the mileage reimbursement will increase from .34 to .37 cents per mile.

II. NEW STATISTICAL REPORTING & PROTOCOLS by Laura Green, Stanley Shimotsu, and Lon Sarnoff

Laura Green, Stanley Shimotsu and Lon Sarnoff presented an overview of the Department's new monthly statistics collection and reporting system. At the heart of the new system is a distinction between **caseload** counts and **workload** counts. **Caseload** refers to the intake of cases new to the Department as a whole. For

caseload purposes each new case must be counted once and only once. On the other hand, **workload** refers to cases newly assigned to a given attorney. Thus, the
Expanded Staff Meeting
June 9, 2005
Page 4

same case which counts only once for departmental caseload purposes might during its pendency be assigned to more than one attorney and should accordingly be counted in each attorneys workload. An example of this distinction is a felony case filed in an area office. That case should be counted only once as a new felony case by the area office for caseload purposes. It should be counted in the workload of the attorney who handles the arraignment on the complaint. The case is then assigned by the DIC to a different deputy for purposes of preliminary hearing. That attorney should also count it as part of his/her workload. After being held to answer the case is transferred to the Branch Superior Court for trial and is assigned to a felony trial attorney who likewise should count it for workload purposes. Thus, the case which was tabulated once for **caseload** purposes, is counted in three different attorneys' **workloads**.

A Departmental written protocol and sample caseload tabulation forms and workload forms were presented, and their use was summarized. Detailed training in the collection of data and the use of Excel spreadsheets for reporting monthly statistics will be presented at the Department's Computer Lab on three separate days during June. The new system goes into operation July 1, 2005, the start of the next fiscal year. It is felt important that we be able to collect the entire fiscal year's statistics using the new system.

Head Deputies were instructed to design local operating procedures in writing consistent with the protocol by June 24, 2005, to describe how the new system will be implemented in their branches. The local managers and Head Secretaries are the ones most familiar with the local court operations, and the new system must be as unobtrusive as possible for use by our staff. It is anticipated that the new system will provide more accurate, reliable, timely, and meaningful statistics for the Department's use in allocation of resources and preparation of budget documents.

III. DETECTIVE ANDREW MONSUE CASES by Ramon Quintana

Many of you have probable read an article or a series of articles by the "LA Times" on a former LAPD Detective Andrew Monsue's misconduct . Mr. Quintana and PIAS are interested in identifying any cases in which this detective was involved. It is estimated that this Detective handled over a 1,000 homicides in his career. It is very likely that our department handled a few hundred and possible that many of these cases are tainted. Please survey your lawyers and notify PIAS of any such cases as it is possible that with this information we can go to the DA's Office and obtain Brady discovery.

Mr. Judge indicated that Detective Monsue was involved in a considerable number of cases. The case the "Times" did the feature on was a case in Van Nuys, but Detective Monsue may have handled cases anywhere in the city and the lawyers involved could have been transferred to a different assignment. For this reason it is important that all of our lawyers be surveyed. Detective Monsue was very clearly dishonest in the reported case. He got caught and had an I don't care attitude. He submitted a statement and was proven to be false and it was a critical factor in the case to keep this person in custody. His credibility in all cases is very much in question. By his own account of how he approaches investigations, it also appears that he was a sloppy investigator who jumped to conclusions. Because of his approach to investigations, he may have railroaded a lot of people.

We need to do a thorough survey of our staff and try to motivate people to try to remember whether or not they had this detective on a murder case. Mr. Judge will be contacting the Alternate Public Defender's Office, at least as to those lawyers from our office who transferred there, to survey them as well.

The Department is in the process of trying to get a list of cases that were handled by Detective Monsue from the District Attorney, but haven't been successful yet.

IV. **WARWICK V. SUPERIOR COURT**, by AI Menaster.

The California Supreme Court has recently issued a major Pitchess decision. The case is Warrick v. Superior Court. The case was from our office. Deputy Public Defender Leslie Ringold was trial counsel. She ran a Pitchess motion arguing that the police were liars. The judge bought the City Attorney's argument, that the defense has to show that the defense theory is plausible. The City Attorney argued that the police deny the defense version of the facts and so the defense version is not plausible. Here, as in many previous cases, the judge bought that argument hook line and sinker, and ruled that the police version made the defense version implausible, and denied discovery.

Our Appellate Division, by Mark Harvis, ran a writ in the case. The Court of Appeal agreed with the trial judge, ruling our defense was not plausible. The California Supreme Court has now reversed the Court of Appeal, and has ruled that trial judges are not to make a credibility determination, not to weigh conflicting declarations. They say the issue is whether the defense theory might or could have happened.

There is a sentence in the case saying that merely a general denial is a sufficient showing to obtain the discovery. We are reluctant to push this point, because we

are not sure the appellate courts will agree. Appellate advises the trial lawyers to continue to lay out a factual showing of relevance sufficient to compel discovery.

V. **PROP 69 DNA TEST** by Mark Windham

As you may recall in November, of last year, the voters passed Proposition 69. However it was believed that it would be some time before clients would be able to be sampled. The court clerks now have the new codes to enter the order for DNA testing, the sheriffs and the LAPD have the kits, and in May the District Attorney issued the directive for sampling to begin in felony cases. In misdemeanor cases the sampling will begin in July, and in Juvenile cases in September.

A quick review Prop. 69 requires: The DNA sampling by oral swab of defendants convicted of any felony. Also at the time of arrest persons can be swabbed if they are arrested for murder, arson or sex offenses, or attempts of any of those crimes or for manslaughter. The results of the DNA testing, the genotypes, are then added to the state database which is part of a national database known as CODIS. The unsolved crimes are compared weekly against this growing database. The result is the department will likely have more rape and murder cases. The majority of the unsolved cases tend to be rape or murder cases. Already with the database at the size it is we are reportedly getting several cold hits per week in this county and we can expect a lot more cold hit cases in the near future.

Several questions present themselves. First of all, for the lawyers, do we object to the DNA sampling at the time of sentencing. The objection will likely be overruled, California case law is pretty clear that they are allowed to do this. However, the Department believes the case law is wrong and there is a good Fourth Amendment argument that is set out in United States v. Kinkade. It's a ninth circuit opinion, which reminds us of the idea that you can't ordinarily search someone without reason to believe that they have committed a crime. In fact, these searches are taking place before there is any suspicion at all that the person is involved in any particular crime.

The sampling of the person is a search, looking at their biological material to determine their genotype is a search, yet this is taking place without probable cause to believe the person has committed a crime. So we believe there is a good Fourth Amendment argument on Federal grounds.

There is an exception for regulatory searches, there are several supreme court cases outlining the types of regulatory searches that may be done without probable cause. For example, to protect the highways, a checkpoint might be started. There are

other types of searches that are permissible. The Kinkade case suggested that, and this was a split decision 4-4-1, four upheld the search, four judges signed the dissent. One judge concurred, Justice Gould, wrote that perhaps a search of this type is permissible regulatory search while the person is on probation or on parole. Once they are off probation or parole there really shouldn't be any reason to maintain them in a database.

When do you make the argument? You can object certainly at the time of sentencing and your client can appeal this order, or if your client refuses to give a sample, but that's a misdemeanor (298.1 of the Penal Code). If your client is being prosecuted for refusing to give a sample that may be a valid offense. We think that most likely the challenge to the statute will occur during a 1538.5 motion on a cold hit case where the person was sampled without probable cause, and they matched them to a crime and now you make the Fourth Amendment argument. Could you waive it by not objecting at sentencing? Probably not if the person was coerced into giving the sample. The fact that there will be more cold hit cases, is another matter of concern. These cases do have some important issues. There are some statistical issues that are different in a database case and there is always a right to a bonafide Kelly-Frye hearing in a DNA case as in People v. Rene. As a head deputy if your are aware that your lawyers have a cold hit case please call Jennifer Friedman or Mr. Windham. Either one of us can help you with that. As far as the objections, there will be an article in PDQ as far as how to deal with it.

The last component, is the issue of expungements because the law does entitle a person who does not belong in the database to have his profile expunged. That would happen if a person is acquitted, the case is dismissed or the person is only convicted of a misdemeanor, such a person should not be included, would have a right to get an expungement. Our Department will represent indigent persons who qualify for an expungement. An agreement has been negotiated with the D.A. Office, where a one page stipulation will be used. The DA doesn't really want to unnecessarily litigate such obvious cases and are willing to sign off if the person appears to qualify for the expungement.

This is not really a big issue right now, but in 2009 the law changes. Under Prop. 69 people who are arrested now for a murder, manslaughter, rape, arson or attempts on conviction of any felony can be sampled. Starting in 2009 arrest for any felony causes such persons to get swabbed at the time of arrest. However what happens on these so-called felony arrests, according to the city attorney's office 75% of the time they are referred to the city attorney for a misdemeanor prosecution. People are going to be charged with a misdemeanor, and shouldn't be in the database. These persons are entitled to an expungement and that could be quite a few cases. That's in 2009 we have some time to gear up for this increased

Expanded Staff Meeting

June 9, 2005

Page 8

workload. Just be aware that our clients will be in many cases entitled to an expungement and we are going to do what we can to secure that from them.

A chart which the DA issued is an easy cheat sheet, to see which persons qualify for testing and which don't. Mr. Windham distributed the chart.

VI. **COMPUTERS** by Ronald Brown

The Resource Advisory Group (RAG) committee meets about once a month to talk about Departmental computers issues. This past year the department distributed new computers by about January. This year computers are going to be distributed in August or September. We have already purchased 90 new computers. They are all notebook computers. The reason the department is buying notebook computers instead of desktop computers is we have found that our Data Systems staff was spending about a third of their time moving computers of staff reassigned. This will be reduced with the purchase of notebook computers as they will move with reassigned staff. Persons getting new notebook computers do not have to go through the RAG process in order to get a standard keyboard or a mouse. If persons want a keyboard or a mouse just simply call data systems and order. Data systems is on order to provide those items to staff. Monitors will not be needed because of the quality of the new notebooks. The displays are pretty close to monitor capability. They have very sharp displays.

However, other requests have to be done through the normal request process. Staff wanting a computer must make a request through the RAG committee. If you don't ask for a computer you will never get a computer. It's not automatic, if you want a computer you have to go the PDWeb under hardware/software request. There is a form there, you put in a request with justification to the RAG committee, which meets once a month, RAG will either grant or deny your request and move from there.

If staff have VL5 computers, requests for a new computer will automatically be granted because we are phasing the VL5 out.

How do you know if your request has been granted or even been received? That has been one of our failures, RAG has not be able to get that information out. Prior to Elaine Palaiologos' promotional transfer to Human Resources, she developed a protocol for notifying people. The new manager Albert Lew is going to follow that protocol.

Members of the RAG Committee are Acting Assistant Public Defenders Winston
Expanded Staff Meeting
June 9, 2005
Page 9

Peters and Ronald Brown, Bureau Chief Ronald Yorizane, Head Deputy Ramon

Quintana, IT manager Albert Lew, and Knoble Kennamer. As in the past, RAG will solicit input from the managers in helping decide who will get new computers. If we for example are considering providing a computer to a lawyer, and a manager determines that the lawyer will use it as a paperweight, the manager is obligated to inform RAG and RAG won't give him/her that computer. Managers know lawyers better than RAG. Mr. Brown was at the head secretary meeting yesterday, and they suggested before managers respond to RAG they should inquire of the head secretaries who know even more about which attorneys are likely to benefit from a computer.

If staff has VL5 computers, if they ask, their request will automatically be granted the VL5 have Windows 95, and it's no longer supported by the manufacturer, so we are getting rid of them.

There is this myth that RAG is sitting on this big stack of new computers and are not doling them out. This is a falsehood, the department doesn't have enough computers, when people quit the office the computer is taken and redistributed.

VII. **COURT RULE 2.6** by Mike Concha

A new court rule, Court Rule 2.6 which takes effect July 1st, deals with the problem of conflicting restraining or protective orders being issued by various courts. A Dependency Court might issue an order in regards to a child. A criminal court, which is handling the case of the father or mother of the same child, might issue a restraining or protective order which conflicts with the Dependency Court order. The purpose of the new rule, besides promoting communication among the various courts, is to make certain that all parties are aware of the protective orders issued in similar cases. One problem with the rule, however, is that it requires a court, before issuing a criminal or non-criminal protective order, to inquire of the parties whether there are any cases in the LA Superior Courts in which there are criminal or civil protective orders that involve a child of the parties in the current case.

Obviously, we take the position that bench officers should not be allowed to make inquiries directly to our clients because of the attorney/client privilege and the Fifth Amendment. Although Rule 2.6 states that the courts must inquire, it does not direct us to answer. So, we don't have to answer. However, there might be a case where an attorney feels that answering the inquiry would be appropriate and beneficial to the client.

As a result of this new rule, beginning July 1st, prosecutors in misdemeanor and
Expanded Staff Meeting

June 9, 2005

Page 10

felony cases involving domestic violence will be expected to file a form, entitled "Notice of Other Cases Involving Minor Children," which lists the various courts and

case numbers in which a party to the criminal case is also named. A copy of the form is to be turned over to counsel representing the client.

Pursuant to the Penal Code, criminal court protective orders are given precedence over non-criminal-issued protective orders. Rule 2.6 provides a mechanism whereby a non-criminal court can request a criminal court to modify its protective order. As an example, let's say we represent a defendant in a criminal court which has issued an order to the client to stay away from the spouse and child. In addition, there is a Dependency Court matter involving the same child in which the judge has issued visitation and contact orders which allow the client to have contact and visitations with the child. As of July 1, the Dependency Court judge will be able to send the above-mentioned notice and proposed order to the criminal court requesting the criminal court to modify its stay-away order. If neither the criminal court or a party in the criminal case objects within fifteen days, the criminal court order will be modified according to the proposed order from the Dependency Court. However, if there is an objection by the criminal court or any party to the case in that court, the court must set a hearing within thirty days. If a hearing is set, a possible benefit to defense counsel would be having a pretrial opportunity to cross-examine the complaining witness. The Superior Court has agreed to serve these notices and proposed orders regarding any of our clients through us. We will forward them to Supervising Paralegal Eric Johnson, who will forward them to the appropriate head deputy for delivery to the deputy assigned to the criminal case.

VIII. **ARCHIVING OF RECORDS** by Rosie Maloof

Ms. Maloof explained that the County is under taking a monumental task of taking inventory of all records in archives and developing retention schedules. Ms. Maloof introduced Janet Yarbrough to speak about the County's plan.

Ms. Yarbrough distributed a survey to all and informed everyone of the August 1st, date to complete the survey. The cover memo summarizes what has been going on. Ms. Yarbrough explained that the Department has been involved for about a year and half now, and its just getting to the departmental manager level. What is attached to the cover letter are samples to different surveys. There are two different forms. One is called the Records Inventory Work Sheet, and one is called the retention schedule. We are asking the each head deputy, each administrative manager, to fill out these forms. What we are looking to do is to identify all of the records that are in our offices. Do not worry about closed case files, we have enough information on closed case files. We are going to pool what we have gathered so far and

Expanded Staff Meeting

June 9, 2005

Page 11

incorporate it into the final product. The information will be, put in a report and sent over to the CAO to be approved. It has to go through several processes after it goes over.

On each of these surveys, on the records inventory work sheet there is a summary of what all of the codes mean. On the retention schedule, the purpose of the retention schedule is to identify what records are out there, but also how long we have to keep them. There are some things there, there are statutes, there are limitations as to how long we have to keep them, for instance in the area of contracts, the contract must be retained for five years. That's the type of thing that would be identified on the survey. Ms. Yarbrough doesn't know all of the types of records that are in each of the branch and area offices. She doesn't know what's there. This is what the retention schedule is intended to identify. These are samples. The blank forms will be e-mailed because we are hoping to get the forms in e-mail format so we may provide them a little easier in Excel format.

That concludes the agenda items.

The next expanded staff meeting is scheduled for July 14, 2005 at 2:00 p.m. in the Library Conference Room.