

**RESPONSE TO 2002/2003 EL DORADO COUNTY GRAND JURY REPORT
CRIMINAL JUSTICE COMMITTEE
CITIZEN COMPLAINT #C34-02/03
August 22, 2003**

Respondent: Gary L. Lacy, District Attorney, El Dorado County

Preface

The Grand Jury is a valuable tool for the citizens of a county to ensure that their elected and appointed representatives are conducting themselves appropriately. Additionally, it allows some oversight of the operations of government and its effectiveness. As with any tool, the Grand Jury can be useful and productive when used properly. When used improperly however, it can be harmful and destructive. The success of a Grand Jury is dependant upon the ability of its members to focus on relevant issues and fend off the influences of special interests and agendas. Additionally, the Grand Jury must be able to skillfully use all available means within the law to conduct its investigations. The assistance of an attorney who is well versed in the law, investigative techniques, and the internal processes of local government is therefore critical to the effectiveness of the Grand Jury's investigation and their final report.

The importance of this legal assistance has long been recognized and as a result the California Legislature enacted a law which requires training for the grand jury. California Penal Code Section 914(b) states in relevant part:

“...the court in consultation with the district attorney, ... shall ensure that a grand jury that takes action on civil matters receives training that addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority.”

The 2002/2003 Grand Jury did not receive appropriate training within the meaning of Penal Code Section 914(b). Since 1995 when I was sworn in as District Attorney of El Dorado County, and every year thereafter, I have participated at the request of the El Dorado County Superior Court with training for the new incoming grand jurors. This is the first year that neither I nor anyone associated with my office has participated in this training because the courts did not contact me as required by Penal Code Section 914(b). The first opportunity I had to introduce myself to this grand jury was when I called them requesting a meeting with them which was several months into their term. At that time I explained the importance and availability of legal counsel for the grand jury in their work and offered to provide any assistance they might desire for investigative training. Their lack of training in investigations and their lack of proper legal counsel is quite evident in the type of investigation this grand jury conducted and the report it submitted.

This report was prepared by the Criminal Justice Committee of the El Dorado County Grand Jury. The Criminal Justice Committee has made some egregious errors in the course of its investigation. These errors were not all innocent mistakes but some resulted from extreme negligence if not an intentional malicious act. This work of this committee has been manipulated and the committee may well have misled the rest of the Grand Jury membership. Shortly after my testimony before the Grand Jury, I sent a letter to the foreperson alerting him of this fact but it apparently was not deemed important. Attached as **Exhibit A** is a copy of this letter.

In my response to this portion of the 2002/2003 Grand Jury report, I am quite critical of the Grand Jury Criminal Justice Committee. Wherever I make reference to the "Grand Jury." I am referring the Criminal Justice Committee of the Grand Jury and not the entire membership unless otherwise specified.

FINDINGS:

F1. *The District Attorney involved himself in "Friend's" Court proceedings with the Complainant.*

The respondent disagrees partially with the finding.

The name of my "Friend" is Jeanette McDonald and the "Complainant's" name is David Gallo. There is a very long history of court proceedings between Ms. McDonald and Mr. Gallo regarding child custody and child support issues. Mr. Gallo has filed false police reports on several occasions and he has also filed numerous frivolous and harassing motions with the court which required Ms. McDonald to appear in court over 30 times in the last five years. A visiting judge from another county finally recognized what Mr. Gallo was doing through his abuses of the legal processes and on March 5, 2001, declared Mr. Gallo to be a "**Vexatious Litigant**" (see **Exhibit B** attached). This is defined in section 391 of the California Code of Civil Procedure as a person who:

In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

Mr. Gallo has harassed and intimidated anyone who attempted to assist Ms. McDonald, including me. This report he has made to the Grand Jury is a continuation of these tactics.

I did sign a proof of service for some court papers Ms. McDonald had to file due to a frivolous motion Mr. Gallo filed. Because of his past conduct in harassing anyone who

got involved in assisting Ms. McDonald (including subpoenaing these people into court for no apparent reason), I offered to serve the paperwork by mail upon Mr. Gallo and sign the necessary proof of service.

The declaration I signed was due to the fact I was a witness to certain conduct by Mr. Gallo which was relevant to issues in the civil court proceedings associated with the child custody matter. Therefore, I did not voluntarily interject myself into the proceedings in this regard but rather was a witness who became involved because I heard certain statements made by Mr. Gallo.

Since the child custody matters were civil proceedings, the fact I served and signed a proof of service **did not** create a possible conflict of interest with the handling of criminal matters which are our responsibility. Additionally, the possibility that I may become a witness in a civil case **did not** create a possible conflict of interest for the same reasons.

Normally the District Attorney is the legal advisor to the Grand Jury. However, if the Grand Jury is investigating the District Attorney, as in this case, the Grand Jury must either proceed without legal counsel or ask the court to appoint outside legal counsel. The fact that the Grand Jury believed there were potential conflicts of interest here would seem to indicate the Grand Jury was acting without the advice of legal counsel. A competent attorney should have recognized there was no potential for a conflict of interest.

It is an unfortunate aspect of this Grand Jury investigation and a very poor reflection on the integrity of their entire process that the Grand Jury did not care to investigate the credibility of Mr. Gallo upon whom they heavily relied for their information. I informed the Grand Jury of the fact that Mr. Gallo was declared to be a "Vexatious Litigant" as well as the fact he had engaged in other aberrant conduct including filing false police reports, but they disregarded these facts or did not understand the importance of them. This information received very little comment from the Grand Jury in their report other than a very brief reference on page 21 that Mr. Gallo was found to be a "vexatious litigant." Additionally, Mr. Gallo was ultimately determined by the El Dorado County Superior Court to be in need of psychological counseling.

F2. *The District Attorney's Office continues to handle "Friend's" son's criminal cases resulting in the appearance of impropriety to the public.*

The respondent disagrees partially with the finding.

While it is true that Ms. McDonald's son's cases continue to be prosecuted by this office, I have no direct or indirect input, contact, or knowledge of the cases. Other prosecutors in our office have been instructed to keep me completely isolated from these cases and to

prosecute these cases using the same standards and guidelines as any other cases we handle.

This method of handling cases which have the appearance of a “conflict of interest” is in accordance with the statewide standard procedure developed by the California Attorney General’s Office for handling cases of this nature. To ensure that we were acting in conformity with the law, we have referred these cases to the California Attorney General’s Office (which prosecutes any cases deemed to be a conflict of interest for a county prosecutor’s office) for their review. They have consistently maintained that it is **not a conflict of interest** for our office to handle these cases as long as the protocol is followed and I am isolated from the cases. For this reason, the Attorney General’s Office has refused to assume prosecution responsibilities for the cases. Attached as **Exhibit C** is a letter from the California Attorney General’s Office stating there **is no conflict of interest** in our office prosecuting the cases and consequently, the Attorney General will not accept prosecution.

There is no other reasonable or legal option for handling these cases. If we were to fail to prosecute them, there would be no prosecutions at all of this person, and that is not an option I am even willing to consider.

The irony here again is that I have no desire whatsoever to protect Ms. McDonald’s son and I even assisted law enforcement on one occasion in having him arrested when he had an outstanding warrant for his arrest.

I delivered to the Grand Jury a copy of the Attorney General’s guidelines for handling these types of cases and explained the process we used in the El Dorado County District Attorney’s Office to handle Ms. McDonald’s son’s cases. The Grand Jury however, either chose to ignore it or did not understand how such cases must be handled.

F3. *The District Attorney did not follow his office procedures relating to the logging in and custody of “Friend’s” weapon.*

Respondent disagrees wholly with the finding.

The firearm belonging to Ms. McDonald which I took possession of and logged into a safe in the District Attorney’s Office, was done in accordance with the law and office procedures. The log clearly shows when it was received and when it was returned. Further, paperwork filed with the court is consistent with these facts. Attached as **Exhibit D** is a copy of a court document showing Ms. McDonald turned her firearm over to me pursuant to the court order and consistent with the entry on the property log I prepared which the Grand Jury cited on page 23 of their report.

The Grand Jury, despite several trips to my office to see our processes, still was not aware that we had two secure locations in the office wherein property is stored. The Grand Jurors who visited my office were reported by my staff to be very secretive about what they were seeking, and consequently, did not ask the right questions of my staff. They only asked about our main evidence room and looked for evidence of the firearm being logged into the main evidence room. Further, while my testimony before the Grand Jury explained the differences in the types of property we store and the different procedures used to log them in, the Grand Jury never inquired about the safe I have in my office and where the weapon was logged into. The Grand Jurors assumed the firearm must have been logged into the main evidence room if it was logged in at all. I did not know this was a particular issue with them until the report came out. Consequently, I was not able to clarify the matter for them. It is quite apparent the Grand Jury did not understand the procedures we utilize in logging and storing property and their attempt to be secretive caused them to miss some important information as was apparent in many aspects of their investigation.

F4. *The District Attorney has \$1,254.00 in his personal office safe for eight years and cannot explain this.*

The respondent disagrees partially with the finding.

I have \$1,254.00 in the safe in my personal office but I know precisely where it came from and why it is there. This again is another example of how the Grand Jury only asked limited questions and therefore only received limited responsive information. The Grand Jury then proceeded to make assumptions based upon incomplete information and the result is a completely inaccurate finding. To further explain how this happened, which should give greater insight into the faulty investigative techniques used by this Grand Jury, I will describe the sequence of events during their investigation.

In response to the Grand Jury's inquiry about the safekeeping of the firearm (see F3 above), I provided a copy of my records for the property which had been placed in the safe. Some of the Grand Jurors noticed the entry in the record about the money. When I testified, I was asked about this money and at that time did not recall what it was for since it had been logged into the safe in 1995. After testifying, and wanting to ensure that every question the Grand Jury had about this money was answered, I returned to my office, confirmed the money was still in the safe and determined that it was evidence from an old death penalty murder case that had been reversed on appeal and was retried by our office. I called the Grand Jury on the telephone and advised them the money was still in place. The Grand Jury did not ask me during the telephone conversation what the money was from or why it was in the safe. From this, the Grand Jury states that I "cannot explain" anything about the money. The Grand Jury either was so inept that it could not ask the right questions to get the information it needed or just jumped to conclusions

when it did not have the necessary information to develop the conclusion regardless of the availability of the information.

F5. *The District Attorney does not maintain a complete and proper evidence log of the contents of his personal office safe.*

The respondent disagrees wholly with the finding.

During my testimony before the Grand Jury, I discussed the safe in my office and a general description of its contents. I mentioned that there were files in my safe which were not listed on the property log. These were personnel files with confidential information that I stored in the safe in a separate compartment. They do not constitute stored evidence or property and therefore are not listed on the report. This should not be equated with any deficiency in the record keeping for the stored property. The evidence and other property which has been placed into the safe is completely accounted for and the other space in the safe is merely used for a secure storage place for confidential files just as a locked file cabinet would be used.

F6. *The District Attorney hired "Friend" to work in his office on several occasions, most recently December 2002, while involved in a personal relationship with her.*

The respondent agrees with the finding.

For many years, the El Dorado County District Attorney's Office has had need for transcription services to transcribe taped interviews of suspects and witnesses. Meeting this need has required this office to hire extra-help employees to transcribe the tapes. Qualifying for the job required not only the job skills but also the clearance of a criminal background check since we are a law enforcement agency. The background check is conducted by our criminal investigators and is a lengthy, laborious and expensive process. Ms. McDonald was hired as an extra-help (extra-help employees do not get any benefits such as vacation, paid sick time, health or dental insurance, etc. and do not become permanent employees) employee after passing the background investigation. She was well qualified for the work in that she had previously been employed by the District Attorney's Office in the Family Support Division and worked her way up through the ranks to a supervisory position. She had been transcribing tapes for our office for some time before December of 2002. When the crisis developed with the staffing shortage, I asked her if she would help out as an extra-help employee (at the lowest pay step of her classification) until we were able to hire additional permanent employees. We had sufficient funds in our budget to pay for this since we had considerable salary savings as a result of the vacancies.

F7. The District Attorney's "Friend" working in his office has created a perception of favoritism and an adverse effect on the staff morale.

The respondent disagrees partially with the finding.

I am not personally aware of what specific complaints if any, the Grand Jury received about adverse effects on morale that Ms. McDonald working on a temporary basis as an extra-help employee may have caused. I am certainly sensitive to staff morale and I realize that the morale of a few employees may have been effected. However, I took every reasonable precaution to ensure that Ms. McDonald was not given any special consideration or treatment. I was faced with a crisis situation which required immediate attention and my options were very limited by the budget crisis and the new Chief Administrative Officer of the county. I proceeded in the fashion that I felt would be in the best interest of the safety of the citizens of this county and would have the least financial impact on the taxpayers. That is, to get our clerical staff some immediate assistance to keep the work flowing and reduce the possibility of overworking my employees and thereby possibly subjecting the county to additional financial liability.

Here is how our office found itself in a difficult situation as far as the employee staffing. In the later part of 2002, the clerical functions of the El Dorado County District Attorney's Office were severely impacted through the loss of several clerical personnel. These individuals either retired, left for other jobs, or moved out of the area. Their departure left the staffing of the clerical unit down by approximately 30%. At the same time, the county was anticipating a serious financial situation as a result of the budget deficit on the state level. Additionally, the county had a new Chief Administrative Officer who was trying to become familiar with the county departments and was being very cautious in authorizing any new employees to be hired in anticipation of possible layoffs of county personnel.

This "perfect storm" of events left my office in a dire situation wherein our workload was increasing while our staffing was decreasing without the ability to hire replacements. Several employees had stress related claims associated with the workload demands being placed upon them. The only viable option I saw was to hire extra-help employees. The catch however, was to find people who were not only qualified and could pass the background check, but who also had sufficient knowledge of our operations and technology systems to be able to quickly integrate into the working structure.

I was well aware my critics and political enemies would use this as an issue against me, but I felt I had no other choice if I were to keep the office running as efficiently and productively as possible.

F8. *The District Attorney had an ex parte communication with a Court Commissioner in violation of Rule 5-300 of the California Rules of Professional Conduct for attorneys.*

The respondent disagrees wholly with the finding.

During the ongoing child custody matters I alluded to earlier, Ms. McDonald had primary custody of the daughter she shares with Mr. Gallo. This daughter's name is Holly. Mr. Gallo had visitation on a periodic basis with Holly. On July 8, 1999, Mr. Gallo sought and received a restraining order from the El Dorado County Superior Court against Ms. McDonald. Ms. McDonald was served with a copy of the restraining order upon picking her daughter up from a visitation with Mr. Gallo. The copy of the restraining order she was served with is attached as **Exhibit E**. This restraining order prohibited Ms. McDonald from any contact with Holly.

The following day, I went over to the court to find out what allegations Mr. Gallo had made to support the issuance of this restraining order. Upon locating the court's copy of the restraining order (attached **Exhibit F**), I discovered that the copy of the restraining order in the court's file (**Exhibit F**) was **different than** the copy which had been served upon Ms. McDonald (**Exhibit E**). The orders differed in paragraph 4b, in that the court's copy of the order (**Exhibit F**) has Holly's name crossed out whereas, Ms. McDonald's copy of the order (**Exhibit E**) has Holly's name without a line through it. As will be noted, both of the orders are "Certified," meaning they are declared by the court and by law to be a "true copy", of the documents which are in the court file. **Exhibit E was certainly not a "true copy" of Exhibit F.**

These differences in the wording of the orders meant that under the terms of **Exhibit E**, Ms. McDonald who was the primary custodial parent of her daughter Holly, would be prohibited from having any contact with her daughter. Under the terms of **Exhibit F**, Ms. McDonald would still be lawfully allowed to have contact with her daughter.

I then requested to speak with Commissioner Emery who was the one who issued the orders to find out which one was the correct order and how there could be **two different "Certified" copies of the same order**. Commissioner Emery was not sure how the different orders resulted and said he would get back to me with the information. He later called me and explained that it was a clerical error that resulted in the different orders and Holly's name should have been deleted from both orders.

Shortly thereafter, Commissioner Emery recused himself from any further dealings with the custody and child support issues between Ms. McDonald and Mr. Gallo contending that I had engaged in improper ex parte communications with him about the court orders. I was contacted by Superior Court Judges Kingsbury and Keller who inquired about the communication I had had with Commissioner Emery. After explaining my actions and expressing that the contact was for administrative purposes only (which is an allowable

basis upon which to contact a judicial officer about a case according to State Bar rules and California case law), I felt the judges agreed with me and decided not to take any further action.

In November 2000, the California State Bar contacted me as a result of a complaint Mr. Gallo had made about this contact with Commissioner Emery. The California State Bar conducted a thorough investigation into the matter to determine whether I had engaged in improper ex parte communications with a judicial officer, in violation of State Bar Rules. If I had engaged in an ex parte communication which was found to be in violation of the State Bar rules, I would have been subject to discipline. In April 2003, the State Bar sent me a letter indicating their investigation would be closed and the “matter does not warrant further action.” This means the **California State Bar found that I did not engage in an ex parte communication in violation of State Bar Rules with the Commissioner.** Attached as **Exhibit G** is a copy of the State Bar’s letter concluding their investigation.

This investigation was conducted by the statewide organization responsible for ensuring the proper professional conduct of attorneys. They have investigators and attorneys who are specially trained and experienced in this work on their staff. They are very knowledgeable about the legal and ethical aspects of these types of communications.

When I provided the reports the State Bar relied on for their investigation along with their letter clearing me of any wrongdoing to the Grand Jury, the Grand Jurors appeared to be disinterested. It became clear that the Grand Jury had their own agenda and would not be swayed by the State Bar’s investigation and findings. The Grand Jury, without the legal training or knowledge of what constitutes an improper ex parte communication, reached a conclusion which is contrary to the State Bar and contrary to the law. What the Grand Jury has consistently failed to realize, but the California State Bar readily recognized, is that not all ex parte communications with a judicial officer by a member of the State Bar are improper under the State Bar Rules. The communication must be “upon the merits of a contested matter” to be in violation of Rule 5-300. In this case, the discussion about the court orders with the Commissioner was not “upon the merits of a contested matter,” but was administrative to correct the clerical error on one of the court orders. Presumably, Judges Kingsbury and Keller who spoke with me about this communication recognized this as well since it is the correct application of the law.

F9. *The District Attorney misled a Court Commissioner with a false statement of fact in violation of Business & Professions Code, Section 6068 (d).*

The respondent disagrees wholly with the finding.

It is unknown what the Grand Jury is referring to by this finding other than the reference on page 28 of the report wherein the Grand Jury states that I am reported to have told Commissioner Emery that I asked another Judge to vacate the Commissioner's order. This is absolutely untrue. I never asked another Judge to vacate Commissioner Emery's order nor did I say or imply that I had asked another Judge to vacate his order. I don't know where this is coming from but if Commissioner Emery has said that I told him these things, I suggest Commissioner Emery's credibility be scrutinized. In this regard, I would note that shortly after this incident with the conflicting court orders, Commissioner Emery was fired from his job as a Court Commissioner. I have no idea if his termination was in any way related to this incident but it is a matter of record that the California State Bar suspended Greg Emery's (former Commissioner Emery) license to practice law for some type of misconduct. I have never been disciplined by the State Bar of California for any type of misconduct.

F10. The District Attorney misrepresented facts regarding his communication with the Commissioner to the State Bar of California and to this Grand Jury.

The respondent disagrees wholly with the finding.

This is absolutely an untrue statement and relates to F8 and F9 above. I have never intentionally misrepresented any facts to either the State Bar of California or the Grand Jury. As I have shown thus far and will continue to show, this Grand Jury was completely inept in their investigation of these matters and even more inept in their interpretation of the information they collected. It also appears the Grand Jury intentionally refused to consider any evidence which contradicted their desired outcome. By misconstruing, misinterpreting and misunderstanding the evidence they did collect, and misunderstanding the applicable law, the Grand Jury has reached findings which are inconsistent with the truth. I have never in my 20 years of practice as an attorney and my 18 years as a prosecutor, seen a more egregious abuse of a government process designed to ferret out the truth for the benefit of the public.

F11. The District Attorney sent a letter to the Grand Jury misquoting Rule 5-300 of the California Rules of Professional Conduct for attorneys.

The respondent disagrees partially with the finding.

Upon the conclusion of my Grand Jury testimony, I was given the standard admonition given to all witnesses about not discussing my testimony with anyone until the

investigation was concluded. There was however, some additional information I wanted to provide to the Grand Jury regarding the law on ex parte communications with judicial officers. I felt this was necessary because it became apparent during their questioning of me that the Grand Jurors were unfamiliar with the proper application of this rule of Professional Conduct and the California Court decisions interpreting this rule. I decided to send the Grand Jury this information in a letter. Normally, I dictate my letters to my secretary who types and prepares the letter for mailing. In this case however, I was unable to have my secretary assist me with preparing the letter because it would have violated the Grand Jury admonition. I therefore typed my own letter to the Grand Jury. The letter I prepared is attached as **Exhibit H**. The second paragraph of the letter is the subject of this finding by the Grand Jury.

In preparing the letter, I intended to quote a portion of a widely recognized legal publication from Witkin which helped explain the application of Professional Rule of Conduct 5-300. The page from the legal publication I was quoting from is attached as **Exhibit I**. In preparing the letter to the Grand Jury, the second paragraph of **Exhibit H** was supposed to be a quote from paragraph (b) of **Exhibit I**. This quote however, due to a clerical error on my part, was incomplete and would appear on its face to be an incorrect statement of the law.

It is clear to a reasonable person that this was an honest mistake and certainly not an intentional act to mislead or deceive as the Grand Jury would characterize it. I confess that I am guilty of poor typing and letter preparation skills. To illustrate that anyone, including this Grand Jury can make clerical errors, I would point out that **the Grand Jury misquoted my misquote** in their report. Note that on page 29 of the report in the third full paragraph, the Grand Jury misquotes a portion of my letter as follows:

“He wrote, ‘A member may directly or indirectly communicate with or argue to a judge or judicial officer, except...’”.

My letter which is **Exhibit H**, says:

““An attorney may directly or indirectly communicate with or argue to a judge or judicial officer on the merits of a contested matter pending before that judge or judicial officer, only in the following circumstances:””

F12. Sworn testimony by the District Attorney and other witnesses conflicts in important and significant details.

The respondent is unable to agree or disagree with this finding because I was not present to hear whether there were discrepancies in the testimony taken.

The first observation I would make is that the events which were investigated by this Grand Jury and reported in this report occurred some 4-6 years ago. There are always some discrepancies in the statements of witnesses observing the same recent incident and the discrepancies increase as time passes. This fact is even set forth in a jury instruction for trial jurors. When taken in consideration with the numerous errors this Grand Jury made in collecting and interpreting other evidence in this investigation, I seriously question the validity of this finding. For example:

The credibility of the Grand Jury's main witness, the Complainant (David Gallo), was not scrutinized by this Grand Jury and they appeared to accept as true everything Mr. Gallo told them. What the Grand Jury did not find out or take an interest in was the fact Mr. Gallo has raised these same issues to the El Dorado County Superior Court, the California State Bar Association and the California Attorney General's Office on numerous occasions and each time they were found to be without merit. Mr Gallo has filed a false police report alleging that Ms. McDonald and I were conspiring to kidnap and murder Ms. McDonald's daughter and blame Mr. Gallo for it. On June 16, 2003, Commissioner Gregory Dwyer of the El Dorado County Superior Court found that Mr. Gallo filed this false report for "no legitimate purpose other than to harass Ms. McDonald." As result, Commissioner Dwyer determined Mr. Gallo needed psychological counseling (see **Exhibit J**, pages 9-11). On July 26, 2000, the Honorable Harold Bradford, Judge of the Superior Court for El Dorado County, found that Mr. Gallo prepared under penalty of perjury and filed with the court, false financial documents (see **Exhibit K**).

These factors bearing on credibility are important to any jury in a criminal or civil trial or any judge who is hearing evidence in a case, and they **should have been important** to this Grand Jury as well.

Another witness whose credibility should have been scrutinized is former El Dorado County Superior Court Commissioner Greg Emery. Mr. Emery appears to have also testified before the Grand Jury. Mr. Emery has no particular affinity for me since I embarrassed him by bringing to the public's attention the serious error he made in issuing two substantially different copies of the same restraining order. Not only were these orders with differing terms issued, but they were "Certified" by the court as being true and accurate copies of the documents in the court's file. After this was brought to light, Mr. Emery was terminated from his position as a Superior Court Commissioner (again, I don't know if this was related to his termination). After the termination, the State Bar of California suspended Mr. Emery's license to practice law for misconduct.

A former prosecutor with the El Dorado County District Attorney's Office and my opponent in last November's election for District Attorney, Erik Schlueter was also a witness for the Grand Jury. Mr. Schlueter's bias and interest in testifying is obvious. I terminated Mr. Schlueter from his employment as a prosecutor with this office due to incompetence and insubordination for his involvement with the "Women Helping

Women” illegal pyramid scheme. The termination was upheld by the El Dorado County Civil Service Commission on a unanimous vote.

This Grand Jury on at least one occasion that I am aware of, obtained conflicting statements from witnesses because they did not ask the same questions of each of the witnesses on the same topic. For example:

When questioned during my testimony before the Grand Jury about the reasons I hired Ms. McDonald as an extra-help employee, I informed the Grand Jurors about the crisis situation with the short staffing levels in my clerical units. I testified as to the total number of vacant clerical positions which included both Legal Secretary and Legal Office Assistant classifications. The Grand Jury then subpoenaed Mary Kimbell-Smith, an employee with the El Dorado County Department of Human Resources. They questioned Ms. Kimbell-Smith on the same topic but asked her very different questions. Naturally, the Grand Jurors received a different answer. From this, the Grand Jury tries to make it look like I lied to them (see page 26, the second full paragraph). The attached **Exhibit L** is an email I received from Mary Kimbell-Smith after the Grand Jury report came out on this issue wherein she makes comment on this fact.

On other occasions, the Grand Jury got the evidence completely wrong and consequently drew improper conclusions which resulted in negative comments about Ms. McDonald or me. Some examples are:

Ms. McDonald owned a handgun which was a .380 caliber Smith & Wesson pistol. This is the only handgun she has owned, but due to information the Grand Jury received from Mr. Gallo, the Grand Jury was convinced Ms. McDonald owned more than one handgun and had kept that information from the court. In questioning her, the Grand Jury kept referring to a .22 caliber handgun. Ms. McDonald thought (but was not sure) her handgun was a .38 caliber (as indicated on page 25 of the Grand Jury report) but was certain it was not a .22 caliber gun.

When I was questioned by the Grand Jury on this issue, I informed them Ms. McDonald was not very knowledgeable about guns but that her pistol was a .380 caliber Smith & Wesson. I knew this since I was with her when she purchased it and I had taken her out to teach her how to shoot it.

The Grand Jury in their report on this on page 25, makes it look like Ms. McDonald was not being truthful with someone, although who is not clear.

In the fourth full paragraph on page 25, the **Grand Jury makes a false statement which is contradicted by the Court record.** Here, the Grand Jury grossly misstates the evidence and erroneously attributes some possible wrongdoing to

Ms. McDonald as a result. The Grand Jury states: "In addition, the "Friend" may have been in Contempt of Court for noncompliance with the April 3, 2000 Temporary Restraining Order because she did not deliver all of her weapons to the Sheriff's Department." Attached is **Exhibit M** which is a copy of a Minute Order from a proceeding on April 26, 2000, presided over by the Honorable Joseph B. Harvey, Judge of the El Dorado County Superior Court, relating to the gun and the restraining order. In it Judge Harvey clearly states that Ms. McDonald's "gun shall remain in her residence and she shall not carry the gun in her possession." The court never ordered Ms. McDonald to turn her gun into the Sheriff's Department as claimed by the Grand Jury. This is just one of the many examples of how this Grand Jury has completely botched their investigation and damaged their credibility.

I don't know all of the witnesses who testified before the Grand Jury nor do I know all of the evidence they considered because of the secrecy of the Grand Jury process. The errors committed by this Grand Jury as set forth above, are likely only the tip of the iceberg. I could go on with many more examples, most of which are supported by documentary evidence in my possession. I believe the case has already been made however. The inescapable conclusion that anyone who analyzes the conduct of this Grand Jury should reach is that the Grand Jury made some serious errors in this investigation and report. Whether the conduct of the Grand Jury was intentional or negligent, the result is the same. In attacking me the Grand Jurors have manipulated, misconstrued and misinterpreted evidence. Further, they have ignored any evidence which undermined their mission of trying to discredit me. Ironically, their work has discredited this Grand Jury and the product of their year's worth of work.

***F13.** Portions of the District Attorney's testimony and documentation were found to be lacking in truth and veracity.*

The respondent disagrees wholly with the finding.

I did not testify falsely before the Grand Jury, nor did I provide any false documentation to them. If I had, it would have been a crime and the Grand Jury should have indicted me. The fact that they did not indict me nor even mention in their "Recommendations" anything about misconduct on my part, speaks volumes to the **complete lack of any truth to this finding.** This Grand Jury is lacking in truth and veracity. Had any other governmental agency or body other than the Grand Jury committed the acts this one did, there would undoubtedly be sanctions suffered by the guilty parties.

Recommendations:

R1: *The District Attorney should establish proper written procedures for all cases involving potential conflict of interest.*

The recommendation will not be implemented because it is not warranted.

As discussed above, the California Attorney General's Office publishes a manual for the handling of cases involving a potential conflict of interest. In conjunction with the current written procedures the District Attorney's has, these types of cases are dealt with according to the proper legal and ethical guidelines.

R2: *The District Attorney should establish written procedures pertaining to his "personal" safe whereby all items are properly logged in and out with the appropriate detailed information.*

The recommendation will not be implemented because it is not warranted.

Written procedures are created to ensure that everyone is aware of what procedures are to be followed and there is consistency in the way each person conducts business. Since I am the only person who knows the combination to the safe and I am the only one who has access to the safe, written procedures are not necessary. I currently have a procedure which logs the property in and out of the safe and this process has worked well for many years.

R3: *The personal safe and evidence locker should be audited annually.*

The recommendation has not yet been implemented, but will be implemented in the future.

We will establish a written procedure for the auditing of the evidence room of the District Attorney's Office as well as the safe in my office. This audit will be conducted at the beginning of each fiscal year.

R4: *All cash received should be maintained in "double" custody.*

The recommendation will not be implemented because it is not warranted.

There is currently a procedure in place within the District Attorney's Office for all cash which is received by the office to be counted by two different employees before it is stored for safe keeping. It is unclear what exactly the Grand Jury means when it says

“maintained in ‘double’ custody.” The current procedures are sufficient to ensure the accountability for cash received.

R5. To avoid the appearance of conflict of interest, the District Attorney should set up a written protocol regarding cases whenever the accused is related to or has a relationship with an employee in the District Attorney’s Office, including the District Attorney.

The recommendation requires further analysis.

I am very concerned about the appearance of a conflict of interest in the work we perform. While the law does not recognize an appearance of a conflict of interest as a legal basis for recusal of a prosecutor’s office, the El Dorado County District Attorney’s Office has always attempted to avoid appearances of a conflict of interest. The California Attorney General’s Office has set forth standards for how a prosecutorial agency should deal with such cases and our office has always abided by those standards. We have not had a problem in the past regarding the application of these standards but I am open to the possibility of improving our handling of cases wherein either an appearance or an actual conflict of interest exists. I will explore whether a separate office policy tailored to our specific office is helpful. This question will be resolved within six months.



OFFICE OF THE
DISTRICT ATTORNEY
EL DORADO COUNTY, CALIFORNIA

GARY L. LACY, DISTRICT ATTORNEY

MEMORANDUM

SEAN O'BRIEN
Chief Assistant District Attorney

PAUL S. SUTHERLAND
Assistant District Attorney
Placerville

HANS M. UTHE
Assistant District Attorney
South Lake Tahoe

DAVID J. KREPS
Chief Investigator

TERESE V. CLUSIAU
Office Manager
Criminal Division

TERESA WHEELER
Victim/Witness Coordinator
Placerville

SUE MEYER
Victim/Witness Coordinator
South Lake Tahoe

TO: Richard Brunner, Foreman, El Dorado County Grand Jury 2002/2003
FROM: GARY L. LACY, District Attorney
DATE: May 28, 2003
RE: Supplemental Information to Grand Jury Testimony

Subsequent to my testimony before your Grand Jury on May 21, 2003, I had an opportunity to review various documents, records, and materials which lead me request another meeting to provide clarifying and supplemental information relevant to areas of your inquiry. Due to the fact some of the questions misstated foundational facts, some of the questions erroneously assumed certain foundational information to be true, and some questions involved topics which I either did not have any knowledge of or did not have a clear recollection of due to the length of time which has passed, I could not provide responses which were as clear, concise and accurate as I would like. Based upon telephone discussions with both you and Louise Closs, it was arranged I could appear again before your Grand Jury on June 4, 2003, at 11:00 a.m..

In preparation for my further testimony, Ms. Closs requested that I prepare a summary of the information which I wish to cover. While a summary is not feasible, I have prepared a binder with various documents which I wish to discuss and which should be relevant to your overall understanding of the issues which were raised during my testimony on May 21, 2003. While the contents of this binder are not all inclusive of the information and material which is available for your consideration, it should provide you greater insight into the sources of your information, the validity of your previously acquired information and the legal basis upon which you should evaluate the performance of my duties as District Attorney.

I maintain that every aspect of the operations of the El Dorado County District Attorney's Office have been in full compliance with the law and the principles of ethics required of prosecutors. Further, I have not abused my authority as District Attorney nor have I abused the authority of the District Attorney's Office. I recognize based upon the nature of the questioning that there are potentially serious issues which must be investigated with respect to the operations of the District Attorney's Office. The confidence and respect of the citizens of this community in the integrity of their District Attorney's Office is

Please Reply To:

■ 515 Main Street
Placerville, CA 95667
(530) 621-6472
fax (530) 621-1280

□ 1360 Johnson Blvd., Ste. 105
South Lake Tahoe, CA 96151
(530) 573-3100
fax (530) 544-6413

VEB
www.c... dorado.ca.us/eldoda

EXHIBIT A

maintained by a thorough and fair investigation. However, I am concerned about the objectivity and impartiality of some of the members of the Grand Jury in this investigation. The manner in which many of the questions were posed to me along with the erroneous assumption of certain untrue facts leads me to believe some of the members are predisposed to the fact I have engaged in some type of misconduct and are focused on trying to prove it rather than ferreting out the true facts.

For example, Ms. Closs made inappropriate editorial comments during some of her questions in regards to conflict of interest issues wherein she gratuitously commented, "Oh like you did in the Getchel case?". As referenced in Exhibit 21, this matter has been fully explored by a previous Grand Jury and found to have been handled in accordance with the law. Additionally, when I explained that both Judge Harold Bradford of the El Dorado County Superior Court and the California Attorney General did not find that there was sufficient legal basis to recuse the El Dorado County District Attorney's Office Family Support Division from handling the *Gallo vs. McDonald* child support case, Ms. Closs would not or could not accept the fact that the law does not require nor even recommend recusal of our office in that case (see Exhibit 4, pages 78-82). She even went so far as to comment inappropriately that Judge Bradford is under investigation for some unknown type of misconduct (apparently in an attempt to discredit Judge Bradford's judgement). An allegation is not proof of the charge but again, Ms. Closs appears to have that mind set, even as to Judge Bradford. Finally, when I explained I had assigned other prosecutors in the office to handle any case which involved David Gallo, Jeanette McDonald, or Edward McDonald, Ms. Closs kept repeating, "But they answer to you, don't they?", or "You are still their supervisor aren't you?". This, as is illustrated in Exhibit 4, pages 23-24, is still not a proper basis upon which to recuse an entire prosecutor's office if an "ethical wall" can insulate a single prosecutor from a particular case or cases. This applies even if the prosecutor is the District Attorney.

Over zealous advocacy is appropriate in the courtroom where there is an adversarial process, but it is inappropriate in a fact finding process such as a grand jury investigation. Such advocacy amounting to leading, suggestive, and argumentative questions, combined with the interjection of incorrect facts and editorial comments can and does improperly influence the minds of other jurors. This often results in a conclusion in the minds of the grand jurors which was induced, not by the facts but by the persuasive abilities of the person leading the investigation.

Pursuant to Penal Code section 939.5, the foreman of the Grand Jury "shall direct any member of the grand jury who has a state of mind in reference to a case or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party to retire." I trust this has been done and that Ms. Closs and every member will abide by the law.

Upon review of these materials, please advise if there is any other information I can provide to help your Grand Jury fully understand the issues in this investigation. Thank you for your conscientious efforts in this matter.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

MINUTE ORDER

FILED MAR 7 2001
BY [Signature]
Deputy

CASE NO: PD4254
DATE: 03/02/01

DAVID GALLO VS. JEANETTE MCDONALD
TIME: 11:00 DEPT: 12

HEARING: COURT'S MOTION RE TO DECLARE PETITIONER A VEXATIOUS
LITIGANT

The Honorable HAROLD BRADFORD (assigned), presiding. Clerk: Kristeen
R. Dehnen. Court Reporter: Sylvia L. Smith, CSR #1398. Bailiff:
Michael Koring.

DAVID GALLO not present.

JEANETTE MCDONALD present in Pro Per.

JEANETTE MCDONALD appears by telephone with the express authorization
of the Court.

COUNTY OF EL DORADO present by counsel DAVID BURNS, Deputy District
Attorney.

Having advised the Court by telephone that he is experiencing car
trouble and that he will not be able to appear until 4:00 p.m. or 4:30
p.m. today, plaintiff DAVID GALLO requests this matter be continued
until he is able to appear. The Court denies plaintiff's request to
continue this matter and orders this matter to proceed as schedule.

Defendant JEANETTE MCDONALD presents argument.

The Court reads for the record plaintiff's RESPONCE [sic] TO MOTION BY
JUDGE BRADFORD CLAIMING PETITIONER VEXATIOUS LITIGANT.

THE COURT FINDS:

Plaintiff confuses ex parte communications with ex parte hearings.

At no time has the Court conducted an ex parte communication in this
matter.

Plaintiff has filed unmeritorious documents causing delay and
harassment and has misused the court process.

Plaintiff DAVID GALLO is a vexatious litigant.

Plaintiff has shifted from litigating this matter to attacking the
Court, the District Attorney Family Support Division, and the

EXHIBIT B

defendant JEANETTE McDONALD.

THE COURT ORDERS:

Plaintiff DAVID GALLO is prohibited from filing any documents with the El Dorado County Superior Court without the express written consent of the Presiding Judge of the El Dorado County Superior Court

Violation of this Court order may result in a finding of contempt of court.

The Clerk shall not file any documents in this matter from the plaintiff DAVID GALLO without the express written consent of the Presiding Judge of the El Dorado County Superior Court.

Motion Granted.

Date Signed ----- 3/5/01 -----

Judge's Signature ----- *Suzanne N. Kingsbury PJ* -----
Honorable SUZANNE N. KINGSBURY
Presiding Judge of the Superior Court
for the Honorable HAROLD BRADFORD
Assigned Judge of the Superior Court

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 324-5267
Telephone: (916) 324-5261
Facsimile: (916) 324-2960

March 18, 2002

Sean O'Brien
Chief Assistant District Attorney
1360 Johnson Blvd., Ste. 105
South Lake Tahoe, CA 96151

RE: People v. Eddie T. MacDonald

Dear Mr. O'Brien:

This letter is to confirm our recent conversation concerning your office's pending prosecution of Mr. Eddie T. MacDonald. As I indicated on the phone, the Attorney General's Office will not be accepting the prosecution of Mr. MacDonald's case in that there is insufficient evidence of a conflict of interest to warrant your office recusing itself. Accordingly, no further action in this matter is contemplated.

Sincerely,

Jo Graves

JO GRAVES
Senior Assistant Attorney General

For **BILL LOCKYER**
Attorney General

EXHIBIT C

1 Jeanette McDonald
3441 Mira Loma Drive, #24B
2 Cameron Park, California 95682
(530) 676-4618
3 Respondent, In Pro Per

99 JUL 17 11:10 AM
SUPERIOR COURT
BY _____ DEPUTY

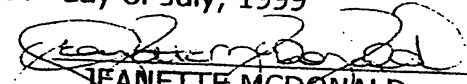
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF EL DORADO**

10 In re
11 DAVID M W GALLO,
12 Petitioner,
13 and
14 JEANETTE MCDONALD,
15 Respondent

: Case No PD-4934
: **DECLARATION & NOTICE OF**
: **COMPLIANCE -RELINQUISHMENT OF**
: **FIREARMS**

16
17 I, Jeanette McDonald, respondent in the above titled action, declare that I have
18 surrendered all firearms in or subject to my immediate possession or control, pursuant
19 to the Order to Show Cause and Temporary Restraining Order filed July 8, 1999 by
20 Petitioner David Gallo, and personally served on me on July 12, 1999, receipt of which
21 is attached hereto and incorporated by reference.
22
23
24
25

26 Dated this 14th day of July, 1999

27 
28 JEANETTE MCDONALD
IN PRO PER

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): ADDRESS WHERE YOU WANT MAIL SENT: DAVID GALLO 4907 MT AUKUM RD Placerville CA 95667 TELEPHONE NO. (Optional): 530 644-3238 FAX NO. (Optional): ATTORNEY FOR (Name):		FOR COURT USE ONLY JUL 08 1999 DEPUTY
SUPERIOR COURT OF CALIFORNIA COUNTY OF PLACER Family Law Department STREET ADDRESS: 495 Main Street MAILING ADDRESS: Placerville, CA 95667 CITY AND ZIP CODE: BRANCH NAME:		
PERSON SEEKING ORDER: DAVID GALLO		
PERSON TO BE RESTRAINED: JEANNETTE McDONALD		
TYPE OF ACTION (check all that apply) <input type="checkbox"/> DISSOLUTION/LEGAL SEPARATION/NULLITY <input checked="" type="checkbox"/> DOMESTIC VIOLENCE PREVENTION ACT <input type="checkbox"/> JUVENILE <input type="checkbox"/> UNIFORM PARENTAGE ACT <input type="checkbox"/> DISTRICT ATTORNEY FAMILY SUPPORT <input type="checkbox"/> OTHER (specify):		
ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER (CLETS) (Domestic Violence Prevention)		CASE NUMBER: PD.

THIS ORDER SHALL EXPIRE AT THE DATE AND TIME OF THE HEARING SHOWN IN THE BOX BELOW UNLESS EXTENDED BY THE COURT.

- To (name of person to be restrained): JEANNETTE McDONALD
- A court hearing has been set at the time and place indicated below. You may attend this hearing, with or without an attorney, to give any legal reason why the orders requested in the attached application should not be granted. If you do not appear at this court hearing, the court may grant the requested orders for up to three years without further notice to you.

Date: 7-28-99 Time: 8:30 am Dept.: 5 Room:

3. If child custody or visitation is an issue in this motion and in dispute, the parties are ordered to attend orientation and mandatory custody mediation services as follows:

Date: JUL 08 1999

GREGORY S. EMERY

SIGNATURE OF JUDICIAL OFFICER

TEMPORARY RESTRAINING ORDER

THE COURT FINDS:

4. a. The restrained person is (name): JEANNETTE McDONALD

Sex: M F Ht.: 5' Wt.: 140 Hair color: BRN Eye color: GRN Race: W Age: 38 Birth date: 2/20/62

b. The protected person(s) are (list names of all persons to be protected by this order):

DAVID GALLO GARRETTE GALLO
 HOLLY GALLO MICHELLE MARTIN
 CATHY GALLO

UNTIL THE TIME OF HEARING, IT IS ORDERED:

- RESTRaining ORDERS The restrained person
 - shall not contact, molest, harass, attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy the personal property of, disturb the peace of, keep under surveillance, or block movements in public places or thoroughfares of:
 - the person seeking the order
 - the other protected persons listed in item 4b

(Orders continued on reverse)

EXHIBIT E

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
 ADDRESS WHERE YOU WANT MAIL SENT:
 DAVID GALLO
 4907 MT AUKUM RD
 Placerville CA 95667

TELEPHONE NO. (Optional): 530 644-3238 FAX NO. (Optional):
 ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA IN AND FOR PLACER COUNTY County Superior Court
 STREET ADDRESS: Family Law Department
 MAILING ADDRESS: 495 Main Street
 CITY AND ZIP CODE: Placerville, CA 95667
 BRANCH NAME:

PERSON SEEKING ORDER: DAVID GALLO

PERSON TO BE RESTRAINED: JEANNETTE McDONALD

TYPE OF ACTION (check all that apply):
 DISSOLUTION/LEGAL SEPARATION/NULLITY UNIFORM PARENTAGE ACT
 DOMESTIC VIOLENCE PREVENTION ACT DISTRICT ATTORNEY FAMILY SUPPORT
 JUVENILE OTHER (specify):

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER (CLETS)
 (Domestic Violence Prevention)

FOR COURT USE ONLY
 FILED
 99 JUL -8 AM 8:1
 PLACER COUNTY SUPERIOR COURT
 BY: [Signature] .DEP

CASE NUMBER:
 PD -4934

THIS ORDER SHALL EXPIRE AT THE DATE AND TIME OF THE HEARING SHOWN IN THE BOX BELOW UNLESS EXTENDED BY THE COURT.

- To (name of person to be restrained): JEANNETTE McDONALD
- A court hearing has been set at the time and place indicated below. You may attend this hearing, with or without an attorney, to give any legal reason why the orders requested in the attached application should not be granted. If you do not appear at this court hearing, the court may grant the requested orders for up to three years without further notice to you.

Date: 7-28-99 Time: 8:30 am Dept.: 5 Room:

3. If child custody or visitation is an issue in this motion and in dispute, the parties are ordered to attend orientation and mandatory custody mediation services as follows:

Date: JUL 08 1999

[Signature]
 SIGNATURE OF JUDICIAL OFFICER

THE COURT FINDS: TEMPORARY RESTRAINING ORDER

4. a. The restrained person is (name): JEANNETTE McDONALD

Sex: M F Ht.: 5' Wt.: 140 Hair color: BRN Eye color: GRN Race: W Age: 38 Birth date: 2/20/62

b. The protected person(s) are (list names of all persons to be protected by this order):

DAVID GALLO
~~GILLY GALLO~~ GABRIELLE GALLO
 CATHY GALLO MICHELLE MARTIN

UNTIL THE TIME OF HEARING, IT IS ORDERED:

- RESTRAINING ORDERS The restrained person
 - shall not contact, molest, harass, attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy the personal property of, disturb the peace of, keep under surveillance, or block movements in public places or thoroughfares of:
 - the person seeking the order
 - the other protected persons listed in item 4b

119

(Orders continued on reverse)

EXHIBIT F



THE STATE BAR
OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

OFFICE OF THE CHIEF TRIAL COUNSEL
ENFORCEMENT

TELEPHONE: (415) 538-2000
TDD: (415) 538-2231
FAX: (415) 538-2220

DIRECT DIAL: (415) 538-2345

April 16, 2003

PERSONAL AND CONFIDENTIAL

Gary Lee Lacy
District Attorney of El Dorado County
515 Main St.
Placerville, CA 95667

RE: 00-O-10834

Dear Mr. Lacy:

This letter is sent to you based upon information that you are not currently represented by counsel in this matter. If this is incorrect, please advise me within **five** days so that future communications may be directed to your counsel.

The State Bar has completed the investigation of the allegations of professional misconduct reported by and determined that this matter does not warrant further action. Therefore, the matter is closed.

The decision to close this matter is without prejudice to further proceedings as appropriate pursuant to rule 2603 of the Rules of Procedure of the State Bar of California.

Very truly yours,

Donald R. Steedman
Supervising Trial Counsel

EXHIBIT G



OFFICE OF THE
DISTRICT ATTORNEY
EL DORADO COUNTY, CALIFORNIA

GARY L. LACY, DISTRICT ATTORNEY

MEMORANDUM

SEAN O'BRIEN
Chief Assistant District Attorney

PAUL S. SUTHERLAND
Assistant District Attorney
Placerville

HANS M. UTHE
Assistant District Attorney
South Lake Tahoe

DAVID J. KREPS
Chief Investigator

TERESE V. CLUSIAU
Office Manager
Criminal Division

TERESA WHEELER
Victim/Witness Coordinator
Placerville

SUE MEYER
Victim/Witness Coordinator
South Lake Tahoe

TO: Richard Brunner, Foreman of the 2002/2003 EDC Grand Jury

FROM: GARY L. LACY, District Attorney

DATE: June 5, 2003

RE: Points and Authorities on Ex Parte Communications

I offer the enclosed information to your Grand Jury for discussion with your legal counsel on the issue of whether or not my discussions with Commissioner Gregory S. Emery concerning the *Order to Show Cause and Temporary Restraining Order* issued on July 8, 1999, constituted a violation of Rule 5-300 of the Rules of Professional Conduct for attorneys. I feel the submission of this information is necessary because it was readily apparent during my continued testimony before your Grand Jury yesterday that Grand Juror, Louise Closs does not fully understand the concepts of what constitutes an impermissible or improper ex parte communication. Combined with the fact Ms. Closs is a licensed member of the State Bar of California and thereby may be perceived by other members of the Grand Jury as having some expertise in this area, I request your legal counsel (preferably not Ms. Closs) be consulted on this issue to properly guide the members in their assessment of my conduct.

Rule of Professional Conduct 5-300(b) states: "An attorney may directly or indirectly communicate with or argue to a judge or judicial officer *on the merits* (emphasis added) of a contested matter pending before that judge or judicial officer, only in the following circumstances:"

A corollary of this rule applicable to judicial officers is contained in Canon 3B(7) of the Code of Judicial Ethics which states that judges must "Accord a full right to be heard to every person having a legal interest in the proceeding, but refrain from initiating, permitting or considering ex parte communications except as authorized." A case from the California Court of Appeals, *People v. Hernandez* (1984) 160 C.A.3d 725, at page 739 commented on this Canon by saying, "The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, *and other persons* (emphasis added) who are not participants in the proceeding, ..."

It should be noted that Exhibit 22 (which I submitted yesterday as an addition to the binder I presented to the Grand Jury) is a copy of a report from the

EXHIBIT 22

Please Reply To:

■ 515 Main Street
Placerville, CA 95667
(530) 621-6472
Fax (530) 621-1280

□ 1360 Johnson Blvd., Ste. 105
South Lake Tahoe, CA 96151
(530) 573-3100
Fax (530) 544-6413

WEB SITE:
www.co.el-dorado.ca.us/eldoda

El Dorado County Sheriff's Department wherein a Deputy Lynn Weston engaged in an ex parte communication with Judge Douglas Phimister (who issued the restraining order at issue) about clarification of conflicting matters within the restraining order. This, as will be discussed, is an ex parte communication which would be prohibited by Canon 3B(7) if it were pertaining to the merits of the matter rather than an administrative act.

As the California Supreme Court said in *People v. Seaton* (2001) 26 Cal.4th 598, at page 695, "A trial court may engage in ex parte communications for 'scheduling, **administrative purposes**, (emphasis added) or emergencies that do not deal with substantive matters' ...".

The California court of Appeal in *Mathew Zaheri Corp. v. New Motor Vehicle Board*. (1997) 55 Cal.App.4th 1305, at page 1317 said with reference to the standards of improper ex parte communications: "The basic standard is stated several different ways, e.g., 'regarding any issue in the proceeding,' upon the merits of a contested matter,' concerning a pending or impending proceeding.' We do not assign significance to the varying terminology. ... It extends to **communication of information** (emphasis added) in which counsel knows or should know the opponents would be interested. Construed in aid of its purpose, we conclude the standard generally bars any ex parte communication by counsel to the decisionmaker of information relevant to the issues in the adjudication."

I submit my communication with Commissioner Emery did not fall within one of the listed "circumstances" of Rule 5-300. However, I maintain the communication was not "**on the merits**" of the contested matter. My contact with Commissioner Emery did not involve a communication of information. It was limited solely to ascertaining whether there was a clerical error in one of the copies of the restraining order since the copy of the order served on Ms. McDonald (contained in Ex. 12 of the binder I presented to the Grand Jury) had *Holly Gallo* named in item 4b yet, the copy of the restraining order in the courts file (contained in Ex. 13 of the binder I presented to the Grand Jury) had *Holly Gallo* stricken from item 4b.

Notwithstanding Ms. Closs' determination that I violated Rule 5-300 of the Rules of Professional Conduct, two El Dorado County Superior Court Judges and the California State Bar (which is the statewide agency responsible for disciplining attorneys for misconduct) found that my conduct was not in violation of the restrictions on ex parte communications with a judicial officer. This type of communication occurs each and every day as a necessity for law enforcement personnel seeking clarification of mistakes or confusing terms in court orders. It is a communication on an administrative matter which is permissible under both the Rules of Professional Conduct and the Code of Judicial Ethics.

View Witkin California Procedure. 4th Table of Contents

TABLE OF CONTENTS--Witkin California Procedure
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Witkin California Procedure, Fourth Edition
Copyright (c) 2003 By
ALBA WITKIN, executor
of the estate of BERNARD E. WITKIN

CHAPTER I - ATTORNEYS

IX. RULES OF PROFESSIONAL CONDUCT
F. Advocacy and Representation.
6. Contact With Officials (Rule 5-300).

1 Witkin Cal. Proc. Attys § 523

[§ 523] Contact With Officials (Rule 5-300).

(a) *Gifts and Contributions.* An attorney may not directly or indirectly give or lend anything of value to a judge, official, or tribunal employee unless the personal or family relationship between the attorney and these individuals is such that gifts are customarily given and exchanged. However, an attorney may contribute to the campaign fund of a judge running for election or confirmation pursuant to applicable law pertaining to these contributions. (Rules of Professional Conduct, Rule 5-300(A).)

(b) *Communications With Judge.* An attorney may directly or indirectly communicate with or argue to a judge or judicial officer on the merits of a contested matter pending before that judge or judicial officer, only in the following circumstances:

- (1) In open court. (Rules of Professional Conduct, Rule 5-300(B)(1).)
- (2) With the consent of all other counsel in the matter. (Rules of Professional Conduct, Rule 5-300(B)(2).)
- (3) In the presence of all other counsel in the matter. (Rules of Professional Conduct, Rule 5-300(B)(3).)
- (4) In writing with a copy thereof furnished to the other counsel. (Rules of Professional Conduct, Rule 5-300(B)(4).)
- (5) In ex parte matters. (Rules of Professional Conduct, Rule 5-300(B)(5).)

As used in Rule 5-300, "judge" and "judicial officer" includes law clerks, research attorneys, or other court personnel who participate in the decision-making process. (Rules of Professional Conduct, Rule 5-300(C).) (On A.B.A. Model Rules of Professional Conduct, Rule 3.5 (impartiality and decorum of tribunal), see *supra*, § 446.)

SUPPLEMENT:

(b) *Communications With Judge.* In *Mathew Zaheri Corp. v. New Motor Vehicle Bd.* (1997) 55 C.A.4th 1305, 64 C.R.2d 705, counsel for a party to an administrative proceeding informed the administrative law judge (ALJ) ex parte that the opposing party had been crying during a witness' testimony and that counsel was concerned for his and cocounsel's safety. *Held*, the prohibition on ex parte communication applies to an ALJ, and the communication was improper.

EXHIBIT 

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 5

HON. GREGORY WARD DWYER, JUDGE

---oO---

In Re the Matter of:

PETITIONER: DAVID GALLO

AND

No: PD4254

RESPONDENT: JEANETTE McDONALD

_____ /

---oO---

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

JUNE 16, 2003

---oO---



A P P E A R A N C E S

FOR THE PETITIONER:

DAVID GALLO, PRO PER

FOR THE RESPONDENT:

JEANETTE McDONALD, PRO PER

REPORTED BY:

CINDY BELLALON, CSR # 10618

EXHIBIT J

1 PLACERVILLE, CALIFORNIA

2 MONDAY, JUNE 16, 2003, (AM SESSION)

3 DEPARTMENT NO. 5

HON. GREGORY WARD DWYER, JUDGE

4 ---oOo---

5 THE COURT: Okay. We're back in session. I will
6 order the fee waiver filed, madam clerk.

7 Mr. Gallo, I'll grant a fee waiver of the court
8 reporter fees on this as it relates to your share. I'll
9 order that filed now.

10 All right. The issue of -- we're ready to proceed on
11 the issue of custody and visitations issues. The Court is
12 prepared to rule and rules as follows in this matter: This
13 is a request for modification of custody and visitation by
14 Ms. McDonald, as well as the request for attorneys fees, as
15 well as it was a reservation of attorneys fees as to previous
16 hearings in this matter.

17 This is an unfortunate five-year custody battle that
18 commenced in approximately 1996. The Court has heard the
19 testimony. What brings us here today primarily is the
20 incident wherein Mr. Gallo filed a police report indicating
21 that he believed that Ms. McDonald was going to attempt to
22 kidnap and kill their daughter. I have previously issued
23 an order based upon the mediator's report of 4-11 -- that
24 being Mr. Banks' order wherein legal and physical custody
25 of Holly was awarded to the mother, as well as supervised
26 parenting to the father -- and that was a temporary order
27 pending further order of this court. The parties have
28 stipulated into evidence the mediator's reports which the

1 Court considers as evidence in this matter, that being the
2 mediator's report of January 22nd of 2003 and April 11th,
3 2003. Also incorporated by reference into those reports is
4 a previous report of January 7th, '03, by Ms. Wilson. The
5 Court has also considered the testimony of the parties, as
6 well as Mr. Bank's testimony that he once again testified
7 reiterating his position that the father should be on
8 therapeutic or professionally supervised parenting. All
9 the evidence that this court has received in this case points
10 to -- clearly demonstrates that there is a conflict between
11 the parents which is affecting the health, safety and welfare
12 of this child. The Court is disturbed by the most recent
13 incident which brought us here today of the alleged fear of
14 kidnapping of the daughter.

15 And Mr. Gallo, basically I think the Court leans
16 heavily on Mr. Barks' perception of this issue in that I do
17 appreciate that you and Ms. McDonald have your conflicts
18 and your disagreements, but for you to come to the conclusion
19 that Ms. McDonald would in any way harm this child is indeed
20 disturbing.

21 If there is anything that is clear to this court is
22 that both of you have a very strong affection for this
23 child. The evidence also supports the mother's allegations
24 and her contention that the father has used guilt and verbal
25 manipulation to attempt to influence the child both in
26 mediation and as to her preference. And the Court finds
27 that the father does continue to make disparaging remarks
28 about the mother. This court concludes as to the issue of

1 the most recent incident that the filing of the report in
2 this matter as to the mother's -- Mother and her significant
3 other's possible kidnap of Holly was not made in good faith.
4 And the Court concludes that this report to law enforcement
5 was designed and perpetrated to harass and annoy Ms. McDonald
6 and it served no legitimate purpose.

7 It is also of concern to the Court that the most recent
8 hiatus in the father's parenting seems to be a pattern, the
9 same pattern back in the year before where parenting was
10 interrupted by a three-month hiatus or interruption of the
11 parenting.

12 The financial -- current financial situation of
13 Mr. Gallo has been considered in this Court's ruling today,
14 but it would appear that part of the financial limitations
15 of Mr. Gallo are self-imposed in that he has a job that
16 only generates 20 hours a week -- 20 or 21 hours a week.

17 Is that right, Mr. Gallo, 21, 22 hours?

18 MR. GALLO: Yes, sir.

19 THE COURT: The Court is going to continue its order
20 of legal and physical custody to the mother. I feel there
21 is a showing of an inability from a legal custodial
22 standpoint regarding the educational issues and one parent
23 clearly needs to be able to be responsible for the decision.

24 Ms. McDonald, I am going to order that any significant
25 legal decision regarding this child that Mr. Gallo be
26 advised of it not less than 10 days after it is made. And
27 I would prefer that he be advised prior thereto.

28 MS. McDONALD: Understood.

1 THE COURT: Any medical decision would be advised to
2 Mr. Gallo not less than two weeks before the medical
3 procedure so you have a right to address the Court if you
4 object to it.

5 On the parenting, I'm going to authorize --

6 Mr. Gallo, I'm going to authorize you to use the
7 Child Connect program for the next 60 days. That is a low
8 cost program through Seventh Day Adventist church and it's
9 two hours on Sundays. That is for the next 60 days. I'm
10 also going to authorize you to have parenting through
11 professional parenting agencies. I'll authorize Summit,
12 Family Connections or Tim Rood. That will be up to two
13 hours; that will be at your cost.

14 MR. GALLO: Two hours a week? A day?

15 THE COURT: That's two hours a week. That's the four
16 hours. Child Connect is only \$10, but it's only two hours
17 a session. Okay?

18 Now, I will make a finding that the father is in need
19 of counseling, as well as age-appropriate parenting classes
20 in order to deal with the developmental needs of Holly.

21 It is unclear, Mr. Gallo, if you have the funds to
22 attend either a parenting class or attend counseling, but I
23 would consider -- if you go to up to two months of counseling,
24 eight sessions of counseling, and attend a parenting class
25 successfully, I would be willing to revisit supervised
26 parenting. Can you afford counseling?

27 MR. GALLO: No, Your Honor, I can't afford it.

28 THE COURT: I feel, Mr. Gallo, that -- I'm going to

1 indicate to you that if you do -- I'm not going to order
2 the counseling because you're telling me you can't afford
3 it and based on the limited financial information that is
4 here, 3190 would require findings that you can financially
5 afford it. I'm telling you you're going to have to come
6 forward to court with some indication if you wish to have
7 something other than supervised parenting at this point.
8 This unfortunate conflict that you have with Ms. McDonald
9 has reached the point where I agree with Mr. Banks. This
10 child is -- her whole personality appears to be in danger
11 of being influenced by this constant -- I mean, it is -- it
12 borders on warfare. That's probably a poor word. It is a
13 child custody dispute of the highest degree that I think
14 one can have. I think that some of the things that have
15 been said in this hearing or that have been told to Mr. Banks
16 or I've heard through testimony here demonstrate that you
17 would profit greatly from taking a class in order to learn
18 how to deal with a teenage daughter. Some of the things
19 that are taking place clearly are not -- are harmful to
20 her, harmful to her emotional and psychological health.

21 And I respectfully disagree with you as to the need
22 for you to file a police report and create the issue which
23 primarily brought us here. If anything, Mr. Gallo, that
24 seems to focus the issue of your intense distrust of the
25 mother has reached the point where it almost has no basis in
26 reality. For you to think that Ms. McDonald is going to
27 kill or kidnap Holly is absolutely incredulous to me. It is.

28 And as I said, if anything, one of the reasons why I

1 keep trying to encourage you in terms of your parenting is
2 the child does have an affection for you. The child does
3 want to spend time with you. And I'll make that finding on
4 the record. It's clear that this child loves you and I
5 would indicate loves you despite all of the conduct which
6 has taken place. If these problems continue, we'll have to
7 readdress these issues, but you need to come back to court.
8 I would like to see you get off of supervised parenting;
9 you're going to have to come back to the Court and indicate
10 -- show the Court that something is changing; that there's
11 a reason for us to get you off of the supervised parenting.
12 I gave you a 60-day order on the Child Connect because I'm
13 not going to -- that's a low cost service to the community
14 that gives you just enough time to obtain some kind a
15 counselor and address some of these issues.

16 And, quite frankly, I would authorize -- if you seek
17 counseling, I would authorize Holly to participate in that
18 counseling to the extent that the counselor felt that that
19 was appropriate.

20 MR. GALLO: Thank you, Your Honor. I appreciate that.

21 MS. McDONALD: May I clarify? You're authorizing,
22 not ordering?

23 THE COURT: No, I'm not ordering. If the counselor
24 indicates that this would be a benefit to you and to Holly.
25 But I would like to see that in writing and I'm sure
26 Ms. McDonald would too.

27 MR. GALLO: So we would have to schedule another
28 court date to have a counselor approved?

1 THE COURT: No. I'm not saying that at all. I'm not
2 saying that at all. You know, Mr. Gallo, all you need to
3 do is find a counselor who wants to work with you. Okay?
4 Wants to work with you and your relationship with Holly,
5 not Ms. McDonald and not Mr. Lacy. You and Holly working
6 out a parenting plan where you two can resume a parenting
7 plan that you started with that you enjoyed originally. I
8 believe your conduct is causing significant emotional
9 psychological harm to this child; so does Mr. Banks; so
10 does Ms. Wilson; so does Ms. McDonald. When everybody
11 starts coming to that conclusion, at some point in time you
12 at least ought to investigate that as a possibility, wouldn't
13 you agree?

14 MR. GALLO: Yes, sir. I will.

15 THE COURT: If you get some counseling, that's eight
16 sessions, there's any number of sliding scale places --
17 sliding scale agencies that will assist you on that. Even
18 mental health would assist you with that. Come back with
19 some parenting plan, give me something back that these issues
20 are being worked on, even worked on.

21 Mr. Gallo, as far as this court is concerned they
22 don't even have to be resolved, they have to be worked on.
23 I want to see that you're serious about addressing some of
24 these issues. You know, so much of the litigation between
25 you and Ms. McDonald addresses issues that are far outside
26 the scope of this court and far outside of what I'm trying
27 to do. I'm trying to create a situation where you and Holly
28 and Ms. McDonald can share this child and this child can

1 have the benefit of two parents. And if they're fighting
2 tooth and claw all the time, it's difficult, if not
3 impossible, to engineer such a parenting plan and you need
4 to recognize that. You need to get a different perspective.
5 Because as I said --

6 And I want to point out, you know, Mr. Gallo, that
7 everything I've said the mother is shaking her head in
8 agreement. She wants you to have a relationship with your
9 daughter.

10 MR. GALLO: No, sir, she doesn't.

11 THE COURT: You don't believe that.

12 MR. GALLO: No.

13 THE COURT: But she does and I do. Come back to
14 court showing that you're working on these issues and it
15 would be my pleasure to address an increased parenting plan
16 lifting the supervised. All these things I feel compelled
17 to do for the safety of your daughter.

18 MR. GALLO: Can we schedule a court date instead of
19 me having to file a motion 60 days out?

20 THE COURT: Are you going to go get the counseling?

21 MR. GALLO: I'll do the best that I can, Your Honor.

22 MS. McDONALD: Your Honor, I would hate to have a
23 pending court date if nothing has been changed when we come
24 in.

25 MR. GALLO: Your Honor, they'll be changed. Again,
26 the negativity of Ms. McDonald.

27 MS. McDONALD: I just want my life back, Your Honor.
28 I don't want a pending court date out there if Mr. Gallo

1 isn't serious about obtaining counseling.

2 THE COURT: I'll do this, Mr. Gallo: You come back
3 when you've taken a parenting class and you've gotten into
4 some counseling and you show the Court by attachments, okay,
5 I will -- that has to go through Judge Kingsbury, of course,
6 but I will authorize an order shortening time. I'll put
7 the thing right on calendar. And, in fact, if I know it's
8 coming in, I'll even call the PJ just so it has to go
9 through her that you did what I asked you to do and I'd like
10 to get this on as soon as possible.

11 MS. McDONALD: I would stipulate to an order shortening
12 time right now.

13 THE COURT: She wants to work with you. I want to
14 work with you, but something has got to change.

15 MR. GALLO: I have one problem though with the
16 counseling. When the counselor agrees that Holly and I
17 need to meet, I'm unclear on how to accomplish that.

18 THE COURT: Okay. This is what you need to do. If
19 you get a counselor and you started work on these issues
20 and the counselor feels that Holly's involvement would be
21 beneficial to the counseling and you get that in writing,
22 you give it to Ms. McDonald; Ms. McDonald will assist you
23 in these issues. There are psychological issues that are
24 starting to emerge in this case where it may benefit her
25 greatly to have you in a therapeutic counseling session
26 together, but first you need to set up the counseling protocol
27 with yourself and then involve her.

28 And so if you get a letter, then, Ms. McDonald, you

1 will -- unless you need to bring that back to court for
2 some reason, you can arrange for that. We're only talking
3 about eight sessions here.

4 MR. GALLO: I understand that, but my fear is, Your
5 Honor, we'll get it set up, I'll be making positive
6 movements in the right direction, submit the letter from
7 the psychologist to Ms. McDonald and like with Tim Rood
8 she'll refuse to deliver her child to the session like she's
9 supposed to.

10 THE COURT: Then what would happen is you and
11 Ms. McDonald would and the therapist would arrange a mutually
12 convenient time. Okay?

13 And I'm going to direct you, Ms. McDonald, not to be
14 unreasonable in working out a schedule.

15 MS. McDONALD: Absolutely not. I will do everything
16 I can to facilitate the counseling. However, I don't want
17 to get a letter next week saying joint counseling is going
18 to commence. I want Mr. Gallo to understand counseling for
19 him and then Holly will come in at the point when the
20 counselor feels is necessary.

21 THE COURT: I would like you to be in counseling at
22 least four sessions before there's any considering her being
23 brought in the counseling.

24 MS. McDONALD: I will absolutely facilitate it.

25 THE COURT: On the issue of 271 sanctions.

26 Mr. Gallo, I believe that there has been a showing, as
27 I indicated on the record, that the filing of that police
28 report was in bad faith and served no legitimate purpose

1 other than to harass Ms. McDonald. However, based upon the
2 information I have in front of me, you don't have the
3 financial ability to respond to a sanction, which is a
4 second requirement under 271. So I'm not going to order
5 sanctions.

6 MR. GALLO: Thank you, sir.

7 (Proceedings were concluded.)

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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 5

HON. GREGORY WARD DWYER, JUDGE

---oOo---

In Re the Matter of:

PETITIONER: DAVID GALLO

AND

NO. PD4254

RESPONDENT: JEANETTE McDONALD

_____ /

STATE OF CALIFORNIA)
COUNTY OF EL DORADO)

I, CINDY BILLALON, Certified Shorthand Reporter of the State of California, do hereby certify the foregoing pages 1 through 11 are a true and accurate transcription of my said stenographic notes taken in the above-entitled matter or:

DATE OF PROCEEDINGS: JUNE 16, 2003

Dated at Placerville, California, this 7th day of July, 2003.

Cindy Billalon
CINDY BILLALON, CSR 10618

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF EL DORADO
HAROLD BRADFORD, JUDGE PRESIDING

CERTIFIED COPY

DAVID GALLO,

Plaintiff,

vs.

No. PD-4254

JEANETTE McDONALD

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
HEARING
JULY 26, 2000
SOUTH LAKE TAHOE, CALIFORNIA

APPEARANCES:

For the Plaintiff:	In Pro Per
For the Defendant:	In Pro Per
For the DA's Office:	DAVID BURNS, Deputy District Attorney

REPORTED BY:	MICHEL DOTY LOOMIS, California CSR #6863
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1 Mr. Gallo is letting on.

2 THE COURT: Well, a review of his income and expense
3 declaration and particularly coupled with the Exhibit 2, the
4 declarations he made with respect to a small claims action
5 reveal that Mr. McDonald's --

6 MR. GALLO: Mr. Gallo, sir.

7 THE COURT: Excuse me, Mr. Gallo, excuse me.
8 Ms. McDonald -- Mr. Gallo's statements on his income and
9 expense declaration inherently ought not to be trusted.

10 MR. BURNS: I wouldn't think so, your Honor.

11 THE COURT: You do not make \$3,250 expenses on a
12 thousand dollars a month gross.

13 MR. GALLO: That's absolutely true, sir, with the
14 respect of, if I may clarify, there are three people that are
15 contributing to the total of these bills. The first one is
16 Michelle Martin who receives child support and has a savings
17 account.

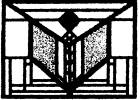
18 THE COURT: No, no. You previously said she makes
19 no contribution.

20 MR. GALLO: No, sir, I said she was unemployed. I
21 did not say she did not contribute to the family.

22 THE COURT: Mr. Burns, I guess you have a whole
23 tawdry of wealthy people to look in to here.

24 MR. BURNS: Yes, your Honor.

25 MR. GALLO: These, actually three people in the
26 house, the first would be myself which I make about a thousand
27 dollars a month, the second would be my mother who's been a
28 full-time resident with me for roughly three years who



Mary Kimbell-Smith
Sent by: Mary I
Kimbell-Smith

To: Gary L Lacy/PV/EDC@TCP
cc: Gay M Fisher/PV/EDC@TCP
Subject: Vacancies

07/21/2003 11:37 AM

I have listed below the vacancies that Human Resource records show as of 11/26/02 - the date requested of me by the Grand Jury.

There were three vacancies on that date in the allocation of Legal Secretary I/II. Your allocation is for 7.0 in this position and our records show that on that date, you had four incumbents: Landroche, Hayes, Tenley, and Long.

In Legal Office Assistant, Human Resources show the following incumbents as of 11/26/02: Ronquillo-Ruhnke, Harrington, Cimino (.5), and Leonard. This would mean 1.0 vacancies. There was also an incumbent (Roybal) in this classification underfilling a Legal Secretary allocation. She must be counted at one of the levels. I had not included her as a Legal Secretary so if we count her as a Legal Office Assistant, it means that you did not have any vacancies in your 4.5 allocation of Legal Office Assistant I/II as of 11/26/02.

Niebauer was underfilling the Senior Legal Secretary allocation, so I didn't count her as a Legal Secretary I/II. Hunt was underfilling a vacancy Legal Secretarial Services Supervisor position, so I didn't count her as a Legal Secretary.

As I said on the phone, it may be worth mentioning that when two different questions are asked of two different people and they are given to different dates to use in providing their answer, the answers will never be the same. Especially when the question is on a subject where the numbers can change each and every day depending on when paperwork is filed/received.

Hope this gives you what you need.

Mary Kimbell-Smith
Personnel Analyst

EXHIBIT L

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

MINUTE ORDER

CASE NO: PD4254
DATE: 04/26/00

DAVID GALLO VS. JEANETTE MCDONALD
TIME: 8:30 DEPT: 12

HEARING: ORDER TO SHOW CAUSE RE: TEMPORARY RESTRAINING ORDER
FILED BY DAVID GALLO

Honorable JOSEPH B. HARVEY, Judge (assigned) presiding. Clerk,
Kristeen R. Dehnen. Court Reporter, Christy Hamrey, CSR #11721.

DAVID GALLO present in Pro Per.

JEANETTE MCDONALD present in Pro Per.

Both sides present argument.

Either party may remove the minor from El Dorado County for a period not to exceed 24 hours without prior written permission from the Court or other party.

Defendant's gun shall remain in her residence and she shall not carry the gun in her possession.

The court grants Mutual Restraining Orders finding the parties primary aggressors and neither primarily acted in self defense; order expires 04/26/03.

The parties shall have no contact except to arrange for visitation.

Findings and Order After Hearing to be prepared by JEANETTE MCDONALD.

CC: DAVID GALLO, 4907 Mt. Aukum Road, Placerville, CA

CC: JEANETTE MCDONALD, 3441 Mira Loma Drive, #24B, Cameron Park, CA

EXHIBIT M