

## Werner: Open letter to Lake County District Attorney Jon Hopkins

Contributed by Ryan Werner  
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Mr. Hopkins,

This is in response to your "Open Letter" regarding the prosecution of Bismark Dinius, posted and available to the public on the Lake County website as of Friday, July 17

([www.co.lake.ca.us/Assets/DistrictAttorney/Press+Releases/January+2008/July+17\\$!2c+2009++Dinius+Sailboat+Case+Open+Letter.pdf](http://www.co.lake.ca.us/Assets/DistrictAttorney/Press+Releases/January+2008/July+17$!2c+2009++Dinius+Sailboat+Case+Open+Letter.pdf) ). In that letter you claim to take your "responsibilities as District Attorney seriously." You claim to believe "in a system of justice that does not presume people to be guilty." You claim to "work tirelessly to find the truth." Let's examine those claims.

The very first sentence of your letter asks "Why do so many people support drunken sailors on the lake at night with their running lights off?" Near the end of your letter you assert that Chief Deputy Perdock collided "with a sailboat operated by drunken sailors at night without their running lights." So much for the presumption of innocence.

A widespread perception of injustice has resulted in considerable public scrutiny of, and investigation into, the facts surrounding this case. Most of the information that has been turned up by the press and others directly contradicts the official version of the "facts" produced by Lake County law enforcement. You did not seek out, let alone turn up this information yourself. Indeed, for many months your office failed to turn over to Mr. Dinius's lawyer exculpatory evidence that you did have. Now, rather than integrate all of the exculpatory evidence into an honest appraisal of the case, you simply dismiss that evidence as "wrong, false and misleading," or as "rumors and misinformation." You pick the bits of evidence you like and you belittle the rest. So much for your search for the truth.

That is one of the reasons that intelligent people around the world, recoil in astonishment and horror at what you are doing. In a country which holds itself out as having the finest and fairest justice system in history you, as representative of the legal and moral authority of the state, have never made an honest evaluation of the most fundamental legal and moral question at issue here. That question is, did Mr. Dinius cause Lynn Thorton's death?

Your case, as you yourself describe it, boils down to this &ndash; that a drunk Mr. Dinius caused Ms. Thorton's death because he put her in harm's way. He put her in harm's way, you contend, by (1) failing to turn on his sailboat's running lights, and (2) not maneuvering the sailboat out of the way of Chief Deputy Sheriff Perdock's speedboat, both of which he would have done had he been sober. The intellectual dishonesty in your arguments is breathtaking.

As to the running lights, the eye-witness testimony is inconclusive, and you know it. What is significant, however, is testimony by some of the witnesses that law enforcement officers refused to take their statements that they saw the lights on. Those are the witnesses who became known as a result of public outcry and scrutiny. For the better part of three years you prosecuted this case on the false premise that with only favorable witnesses you could prove the running lights were off. And, of course, you ignore the evidence from the forensic investigator who examined the lights and concluded they were on when the collision occurred.

Even more significantly, you dismiss the undisputed testimony that the sailboat's cabin lights were on. That, you argue, "does not satisfy the legal requirement for running lights." Of course, you have to make this technical argument because your case depends upon a drunk Mr. Dinius having failed to take some legally required action. But cabin lights, as you know full well, are far brighter and far more visible than running lights. Even assuming the sailboat's running lights were not on, and even assuming Mr. Dinius had a legal duty to turn them on but drunkenly failed to do so, how could running lights possibly have avoided a collision that the far more visible cabin lights did not prevent?

As to maneuvering out of the way, why do you contend it the responsibility of the sailboat driver to avoid the speedboat? You claim to have been "reading the law and the rules regarding water vessels." Surely you came across the very basic rule that a power boat (being more maneuverable) is obligated to stay clear of a sailboat. Is the rule different on Clear Lake? On Clear Lake does might make right of way?

Moreover, on what basis do you claim it was even possible for the sailboat to evade the speedboat? You assert that "everyone on the sailboat says it was under sail and moving." How fast was it moving? You yourself insist it is impossible to prove how fast Chief Deputy Perdock was going, and you say that despite Chief Deputy Perdock's own admission that he was going 30 mph and his own admission that the speedometer needle was straight up (which would put his speed at 50 mph). Despite those admissions you maintain that as to Chief Deputy Perdock's speed, "[a]ll we have are estimates, guesses and speculation." Yet, there is even less evidence as to how fast the sailboat was moving. How can you contend that the sailboat was moving fast enough to have been maneuvered out of the way of the racing speedboat, even by a stone-cold sober driver?

This brings me to another reason why intelligent observers around the world are aghast at your prosecution of Mr. Dinius. Assuming, as you insist, that Mr. Dinius did something to put Lynn Thorton in harm's way, what about Chief Deputy Perdock? If, as you argue, it was reasonably foreseeable to the driver of a sailboat that speedboats would be racing about Clear Lake in the dark at grossly reckless speeds, was it not equally foreseeable to a speedboat operator (a high ranking law enforcement official, no less) that sailboats, even poorly lit or unlit sailboats, would be present on the lake? If illegal operation of powerboats is foreseeable to sailors, why is illegal operation of sailboats not equally foreseeable to powerboaters?

In short, your evidence and reasoning that Mr. Dinius caused Ms. Thorton's death because he was drunk is flimsy at best. But if, flimsy as it is, it is sufficient to support your prosecution of Mr. Dinius, what credible explanation do you have for charging Mr. Dinius but not charging Chief Deputy Perdock? The excuse you have repeatedly given, that

you can't prove how fast Chief Deputy Perdock was going, just doesn't pass the smell test. Whatever his exact speed, it was obviously and indisputably way too fast. It was recklessly fast. It was fatally fast. You know it, I know it, everyone knows it.

In your letter you state, "We have a serious problem in Lake County with boaters of all types operating while under the influence." Maybe so, but the evidence in this case is that the problems you have are motorboaters going too fast, and differing standards of justice for those who are in power and those are not. You express your hope that "this tragedy will cause boaters to think of the consequences and dangers of boating under the influence." What about the consequences and dangers of unsafe speed?

It is a fundamental precept of American justice that when the state brings its authority and resources to bear against an individual it must do so fairly and evenhandedly. It is fundamental that the integrity of our system requires avoidance of actual injustice. It is fundamental that continued respect for, and therefore the very survival of, our system compels the avoidance of even the appearance of injustice.

By any objective measure, the evidence supports the conclusion that Chief Deputy Perdock is at least as potentially culpable as Mr. Dinius, if not more. Yet, you chose to ignore Chief Deputy Perdock and to prosecute only Mr. Dinius. In the absence of equally serious charges against Chief Deputy Perdock, your prosecution of Mr. Dinius for the death of Ms. Thorton not only appears unjust, it is unjust.

You would have us believe that your search for truth led you to seek dismissal of the manslaughter charge against Mr. Dinius. Yet, you persist with a different charge that requires proof of essentially, if not exactly, all the same elements. Your continuation of this case on a lesser charge is nothing but a vindictive attempt to salvage whatever you can from three years of fundamentally dishonest prosecution.

Your handling of this case brings the Lake County judicial system, and by association the entire California judicial system, into worldwide disrepute.

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