

Santa Barbara News-Press, October 6, 2006

Two Veteran Prosecutors Taken Off Cases

BY DAWN HOBBS - NEWS-PRESS STAFF WRITER

Two veteran Santa Barbara County prosecutors were removed from cases Thursday -- including the high-profile murder trial of Jesse James Hollywood -- after the Court of Appeal determined that their involvement with book and movie deals posed conflicts of interest.

In unprecedented opinions released about three hours apart, the justices harshly criticized Senior Deputy District Attorneys Ron Zonen and Joyce Dudley for mixing the criminal prosecution of pending cases with the entertainment industry -- but also recognized that neither had bad intentions in their unrelated endeavors.

"You have to sit up and take notice whether you agree or not," said Assistant District Attorney Patrick McKinley. "It's an alarm bell. I thought they (the justices) were quite harsh . . . And I personally don't like it when the District Attorney's office is smeared like that.

"But when the Court of Appeal does that, you don't dig your claws in and say we're going to fight this to the end of the Earth. You have to pay attention to what the Appellate Court says."

The rulings are significant because it is rare that a recusal motion is approved at the trial-court level -- and even rarer in the higher appellate court. However, the justices did not recuse the entire District Attorney's office, as each defense lawyer had requested. It is not yet known who will take on the cases.

The appellate justices recused Mr. Zonen from the Hollywood death penalty case because he shared "virtually the entire file" about the kidnapping and murder suspect, who was still at large at the time, with a filmmaker who was working on a fictional account of the brutal slaying of a teenage boy: "As far as we know, no prosecutor has ever been a consultant (even without pay) to a film director on a pending criminal case that he or she is prosecuting."

"Prosecutors," according to one of the opinions, "should try their cases in courtrooms, not in the newspapers, television, or in the movies."

Mr. Zonen, who was out of the office, could not be reached for comment. Defense lawyer James Blatt heralded the ruling.

"All we've been asking is that Mr. Hollywood receive a fair trial and that he not be tried through the use of television or movies prior to the trial . . . There is no question, because this is a published opinion, that it sends a powerful message to prosecutors -- and defense lawyers, for that matter. "We have created new law in this area," he said.

The film, "Alpha Dog," closely follows the prosecution's theory about the kidnapping and murder of 15-year-old Nicholas Markowitz in August 2000; however, the names and places have been changed. The teen was snatched from the streets near his West Hills home and taken to Santa Barbara, where he was held captive for three days before being placed in a shallow grave off West Camino Cielo and shot to death.

Mr. Hollywood, who immediately fled the area, is accused of orchestrating the crime. In March 2003, after he successfully prosecuted Mr. Hollywood's four co-defendants, Mr. Zonen was contacted by film director and screenwriter Nick Cassavetes.

Mr. Zonen never asked for and was not given any money for his assistance. In opposition to the recusal motion, he has declared that he cooperated with Mr. Cassavetes because the movie would be "the last opportunity to get the kind of widespread publicity necessary to locate (Mr. Hollywood) and bring him to justice."

The release of the film, whose ensemble cast includes Emile Hirsh, Justin Timberlake, Bruce Willis and Sharon Stone, has been postponed until early next year. Mr. Hollywood was nabbed in Brazil in March 2005

Of Mr. Zonen, the justices noted: "His well-intentioned motives are beside the point. It is the consequences of his action that prompt our decision. His actions allowed 'show business' to cast an unseemly shadow over this case."

Mr. Blatt said he is still evaluating whether to appeal the decision to not remove the entire District Attorney's office from the case. Next month, he plans to go to federal court to request that the motion picture not be released until after his client's trial, which was originally expected to begin shortly after the first of the year, but could now be significantly postponed.

"Let's just say, it's not over," Mr. Blatt said. "This is just the beginning."

Ms. Dudley, meanwhile, was recused from prosecuting Massey Haraguchi, citing a "disabling conflict" for promoting her self-published book "Intoxicating Agent." The justices concluded that "there is a reasonable possibility that Dudley's desire to see her book succeed is so strong that it will trump her duty as a prosecutor."

They added: "Our decision does not result in a wholesale recusal of Dudley in criminal cases or

sexual assault cases. We conclude only that she has a disabling conflict of interest in the instant case where (Haraguchi) is being prosecuted for raping an intoxicated person while the prosecutor

is promoting her novel involving the identical charge." Ms. Dudley has promoted the book throughout the county.

The justices noted, "Perhaps without intending to do so, Dudley is potentially infecting the jury pool with her views on the righteousness of cases prosecuted by (the Santa Barbara County DA's) office."

Mr. Haraguchi was charged in September 2005. The prosecutor was writing her second self-published book prior to the case, but it was not released until January 2006.

Robert Sanger filed the motion for recusal, alleging his client could not get a fair trial in April 2006.

The justices noted: "Although her novel and petitioner's case have differences in their facts, enough similarities exist to suggest Dudley is relying on petitioner's case for plot lines."

Mr. Sanger said he and his client were "obviously pleased" by the decision, "but cannot comment further because this is a pending case." On Thursday, Ms. Dudley also declined to comment

However, in opposition to the recusal motion, she declared: "The fictional book does not describe any events or details of the case against (Haraguchi). The fact that I have written and published this fictional book has not affected or impacted any of my decisions in this case."

While the justices noted their opinion should not be "construed as an attack on the character of this prosecutor," they warned, "We will grant the petition as to Dudley with the hope that this case of first impression will make a case of lasting impression."

e-mail: dhobbs@newspress.com