



**OFFICE OF THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

TO: BONNIE DUMANIS, DISTRICT ATTORNEY  
JESSE RODRIGUEZ, ASSISTANT DISTRICT ATTORNEY

FROM: LAURA GUNN, DEPUTY DISTRICT ATTORNEY

RE: PEOPLE v. CYNTHIA SOMMER  
ABQ622 / SCD195202

DATE: April 17, 2008

---

In the course of preparing this case for retrial, several developments have occurred that seriously undermine the arsenic evidence against the defendant.

At the original trial in this case, the defense mounted a substantial challenge to the arsenic findings of the Armed Forces Institute of Pathology (AFIP). In March and April of this year, we consulted with two new experts, Dr. Michael Kosnett of Colorado and Dr. Jean-Philippe Weber of Quebec. Dr. Kosnett is a renowned expert in the field of arsenic and has published extensively in this area (far more so than anyone who has been involved in the case to date). Dr. Weber is the recently retired director of the Quebec Toxicology Center (QTC). He developed a proficiency testing program for arsenic that is now used by approximately 180 labs all over the world. The QTC is considered the "gold standard" for metals testing worldwide, according to Dr. Kosnett. The purpose of consulting these doctors was to bring fresh expertise to the case. We felt that the case would benefit from the insight of neutral experts who had no connection with the previous litigation.

On March 4, 2008 I first spoke with Dr. Kosnett. His initial position was that the testimony on both sides of the case was flawed in various respects. Dr. Kosnett's preliminary sense was that this case "could possibly be" an arsenic death, but he couldn't say more. He gave an estimate to us for further work on the case, which was approved after a roundtable meeting on HOJ 13 that included the District Attorney, the Assistant District Attorney, all four Chief Deputies District Attorney, Division Chief Lagotta, and me.

Exhibit "A"

DA/ME - 006911

Sommer Status Memorandum 041708

p. 2

I sent Dr. Weber several materials reference this case and spoke to him on March 13. Dr. Weber concluded that despite the unorthodox methods used by the AFIP lab, AFIP's results were correct and the testing had been done competently. However, he felt that the tissue distribution shown was physiologically impossible. He therefore opined that the tissues tested by AFIP were likely contaminated at some stage in the process, most likely at autopsy.

On March 20, our investigators went to the autopsy suite at Balboa to check for arsenic contaminants based on Dr. Weber's statements. They learned that there were several samples of Todd's tissues still there, stored in paraffin cassette blocks. These blocks are used to make slides for autopsy. The tissue in them is first dehydrated, then rehydrated using an alcohol/Xylene concentrate. I sent emails to Weber and Kosnett asking them whether they thought testing these paraffin samples would be valid and/or useful. Neither replied right away.

On April 2 and April 3, I spoke with both doctors. Dr. Kosnett outlined four major problem areas with our case: (1) the absence of arsenic in the urine; (2) the absence of any species of arsenic other than DMA, (3) the massive discrepancy between the high levels of arsenic in the liver and kidney and the low or nonexistent levels in the other organs and (4) substantial problems with the methodology employed by AFIP. The lab problems included serious variations in reporting, large discrepancies in math, and unorthodox sample prep methods. Dr. Kosnett could not say that Todd Sommer died of arsenic poisoning to a reasonable medical certainty; there were too many facts that were inconsistent with an arsenic death, in his view.

Neither doctor seemed particularly excited about testing the paraffin samples. Kosnett said it "probably wasn't a bad idea" but warned that retesting would only solve the lab issues, not the others (urine, tissue distribution). Weber agreed and said he fully expected that the paraffin sample results would mirror those of the frozen samples tested by AFIP and NMS labs. He said he would be "totally floored" if they were any different. He agreed to speak to QTC about an estimate and to see how long it would take to get the paraffin samples done.

On Friday April 4, we got the estimate: \$200 per sample and a 7-working day turnaround time. This seemed very reasonable so we decided to go ahead with it immediately.

On Monday April 7, the paraffin samples were collected by NCIS agent Rendon and Fedex'd to QTC in Quebec.

DA/ME -- 006912

Sommer Status Memorandum 041708

p. 3

On Wednesday April 9, Alain LeBlanc of QTC called to say he'd gotten the samples and to clarify whether we wanted all 31 tested. I asked him to test one sample of each organ represented – 10 total. (Only one slide dealt with the liver).

On the afternoon of April 16<sup>th</sup>, I received an email from Alain LeBlanc in Quebec informing us that there was no arsenic in any of the paraffin samples. He said that a preliminary metals panel showed that there were high mercury levels in some tissues. I tried to call him to clarify the email, but he had left for the day. I also called Dr. Weber, who was very surprised at the results. He said that in his mind, the new findings tended to support the contamination theory.

I spoke to Alain LeBlanc this morning. He said the arsenic result was indeed a final and solid result. He doubted that testing the other 21 samples would be useful, because they have already tested the main organs.

I called Dr. Weber and asked if there was any way that an acute arsenic poisoning victim could have 92.4 ppm of arsenic in one part of his liver and none at all in another part. He said no, it was not possible. The same was true for the kidney; it is not feasible that Todd would have 16 ppm of arsenic in part of his kidney and not a trace of it in another part.