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July 16, 2007

John Van de Kamp, Chair  
California Commission on the Fair Administration of Justice  
900 Lafayette Street, Suite 608  
Santa Clara, CA 95050

RE: Prosecutorial Misconduct in Death Penalty Cases

Dear Mr. Van de Kamp,

I was disappointed to hear the Commission received something less than the facts regarding the trial and appeal of Manuel Babbitt, who was executed in 1999. In a letter submission from the ACLU and in testimony from Charles Patterson, Mr. Babbitt was portrayed as the victim of an incompetent attorney and a prosecutor who engaged in misconduct. This letter draws from the official record to set the matter straight.

On December 18, 1980, in Sacramento, Manuel Babbitt committed an attempted rape of 78 year old widow and grandmother, Leah Schendel, beat her brutally, and stole from her, leaving her nude from the waist down. The next day he robbed, beat and attempted to rape Mavis W., also leaving her nude from the waist down. While Mavis W., who was left unconscious, survived, Leah Schendel did not. She did not die "as a result of a heart attack brought on by fright," as was reported to your commission. She died "from a heart attack brought on by a severe beating and possible suffocation." See People v. Babbitt (1988) 45 Cal. 3d 660, at 677.

It is also untrue that prosecutorial misconduct affected the decision of the jury. No court has so found. The California Supreme Court concluded that most of the alleged prosecutorial misconduct was not misconduct at all, that one remark "skirted the edge," and one other was "improper," but that these were harmless in the overall context of the case. The claim that prosecutorial misconduct somehow impacted the trial is so utterly without merit that it was not even originally urged as a basis for reversal in the Ninth Circuit Court of Appeal.

Claims that Babbitt's trial counsel was ineffective were also summarily dismissed as being without merit, in both state and federal court.

The findings of the many courts that reviewed Manuel Babbitt's case cannot be cavalierly disregarded. After his trial, his case was heard on direct appeal and on at least four separate habeas corpus petitions. The California Supreme Court ruled against him unanimously on appeal and on habeas corpus. His claims of error were reviewed and rejected twice by the U.S. District Court, and twice unanimously by the Ninth Circuit Court of Appeal. In these full hearing matters in state and federal court, heard by a total of 12 judges, all 12 rejected Babbitt's claims. The case was three times before the U.S. Supreme Court, which rejected it each time -- first in 1989 by a vote of 7-2 (the only two dissenting votes being by staunch opponents of the death penalty\*) and twice in 1999 by unanimous votes of 9-0. A total of 13 U.S. Supreme Court Justices participated in these three reviews.

Leah Schendel was an old woman who lived alone and weighed less than a hundred pounds. Manuel Babbitt attacked and tried to rape her, then the next day attacked and tried to rape Mavis W. Those are the facts. The evidence of Mr. Babbitt's guilt was overwhelming and conceded at trial and on appeal. He had every opportunity to present evidence of his alleged mental illness through both diminished capacity and insanity claims. The jury did not buy it. He then had every opportunity to air his claims on appeal. The appellate courts did not buy it.

Now, opponents of the death penalty raise before this Commission the same claims, repeatedly rejected by many courts. The Commission should not buy it. Manual Babbitt's case is an example of the fair administration of justice, not the lack of it.

Sincerely yours,

  
JAN SCULLY  
DISTRICT ATTORNEY

cc: Commission members:  
Gerald Uelmen, Executive Director  
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Harold "Bosco" Boscovich  
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James Fox  
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Jerry Brown  
Judge John Moulds  
Douglas Ring  
Sheriff Curtis Hill

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\* Justices William Brennan and Thurgood Marshall