



April 12, 2011

Attorney General William J. Schneider
Six State House Station
Augusta, ME 04333

**RE: REQUEST FOR REMOVAL OF ‘NO-DROP’ PROSECUTION POLICIES, AND OTHER
RELATED CONCERNS**

Dear Attorney General Schneider:

Stop Abusive and Violent Environments (SAVE), a national victim advocacy organization, is writing to bring to your attention the existence of a mandatory prosecution policy (often referred to as “no-drop” prosecution) in Prosecutorial Districts Numbers 1 and 7, and possibly in other prosecutorial districts in the State of Maine.

No-drop prosecution policies make a mockery of the legal notion of “innocent until proven guilty,” openly violate the Rules of Professional Conduct of the Maine Board of Overseers of the Bar, fill court dockets with cases that carry a low probability of successful prosecution, and ultimately squander the scarce prosecutorial resources that true victims deserve and need.

Background

On April 24, Ligia Filler of Hancock County had an apparent nervous break-down, running in the streets partially clothed, threatening to kill police officers on the scene, and accusing her then-husband, Vladek Filler of assault. The woman was taken to a local hospital for a psychiatric evaluation. Despite the highly questionable credibility of the accuser, Vladek was arrested two days later and charged with marital sexual assault.

Subsequently, it was revealed that:

1. One hour after the alleged assault, the accuser’s children did not notice any difference in her demeanor or physical condition.
2. The accuser never showed any cuts, bruises, or tears according to her examining physician.
3. The accuser refused to undergo a “rape kit” evaluation.
4. No DNA, fingerprint, or other forensic evidence was located on the scene.

In addition, Ligia Filler is a substantiated child abuser. In its December 3, 2009 decision, the Ellsworth District Court documented repeated instances of the mother’s abuse of her children,

concluding, “The children were victims of violence from their mother,” including hitting one child “with spatulas and spoons, leaving bruises.” Another child “sees himself as his mother’s victim on many levels,” according to the District Court.

Despite these facts, assistant district attorney Mary Kellett decided to prosecute the case, with the trial held January 12-15, 2009.

On September 9, 2010 the Maine Supreme Judicial Court remanded the case for a retrial, ruling that Kellett “had improperly encouraged the jury to use the absence of evidence regarding the marriage ending and a child custody dispute – evidence that had been excluded based on the State’s objection – as a reason to reject Filler’s defense.”¹

In the words of court-appointed attorney Neil Fishman, the prosecution of Vladek Filler became so tainted with procedural errors and violations of constitutional protections as to resemble a “Salem Witch Trial.” One legal analysis characterized ADA Kellett’s conduct in the case as “morally grotesque.”²

Based on the Supreme Court finding and numerous other irregularities, SAVE petitioned the Maine Board of Overseers of the Bar for the disbarment of ADA Mary Kellett.³ In addition, SAVE petitioned District Attorney Carletta Bassano requesting the dismissal of all charges against Mr. Filler, citing the failure of the case to meet the probable-cause standard.⁴

No-Drop Prosecution Violates a Key Provision of the Maine Rules of Professional Conduct

On February 26, 2009, the Maine Board of Overseers of the Bar adopted the American Bar Association’s Model Rules of Professional Conduct. The Maine Rules of Professional Conduct state: “the prosecutor shall refrain from prosecuting a criminal charge that the prosecutor knows is not supported by probable cause.”⁵

In addition, the Maine Rules of Professional Conduct emphasize, “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.”⁶

By definition, a no-drop prosecution policy “prohibits prosecutors from dismissing charges.”⁷ In other words, the policy requires criminal prosecution of the allegation without regard to probable cause, the willingness of the accuser to cooperate, or previous false allegations by the accuser.

¹ Maine Supreme Judicial Court. State of Maine v. Vladek Filler. September 9, 2010.

http://www.courts.state.me.us/court_info/opinions/2010%20documents/10me90fi.pdf

² Prosecutor’s Conduct in Vladek Filler Case both Heinous and Unpardonable. The False Rape Society. March 29, 2011. <http://falserapesociety.blogspot.com/2011/03/prosecutors-conduct-in-vladek-filler.html>

³ Grievance Complaint dated March 29, 2011. <http://www.saveservices.org/wp-content/uploads/COMPLA1.pdf>

⁴ Letter to Carletta M. Bassano, April 4, 2011. <http://www.saveservices.org/wp-content/uploads/BassanoLtr4.4.2011.pdf>

⁵ Maine Rules of Professional Conduct. 3.8(a)

⁶ Maine Rules of Professional Conduct. Comment. [1]

⁷ What-When-How. No-drop Prosecution. <http://what-when-how.com/interpersonal-violence/no-drop-prosecution/>

Clearly, a policy that baldly ignores evidentiary standards and prosecutes all cases is inconsistent with ethical requirements for probable cause.

No-Drop Prosecution is Harmful for Other Reasons

No-drop prosecution undermines a range of important public policy objectives:

Undermines the Principle of Innocent Until Proven Guilty

According to a report from the Maine Prosecutorial District 3, “Armed with the knowledge that most victims will recant their statements to the police, investigators work hard to find evidence of the crime beyond the victim’s testimony.”⁸ Important to note is the absence of the adjective, “alleged.”

Likewise, the New Hampshire Prosecution Protocol for domestic violence advises, “During every phase of the prosecution of a domestic violence case the focus must remain on the offender’s criminal behavior.” Again, nowhere in the Protocol is the word “offender” qualified by the word “alleged.”⁹

Hence, no-drop prosecution appears to foster a mindset that is inconsistent with the notion of being a “minister of justice.”

Wasteful Use of Scarce Resources

Prosecuting a case in which the accuser is unwilling to cooperate places far greater resource demands on the criminal justice system. According to Prosecutorial District 3, “Domestic violence cases require more resources than many other cases prosecuted by the District Attorney...Armed with the knowledge that most victims will recant their statements to the police, investigators work hard to find evidence of the [alleged] crime beyond the victim’s testimony.”¹⁰

In an era of limited public resources, such policies inevitably take away resources from other cases with greater merit.

⁸ Prosecutorial District Three: 2006 Domestic Violence Report. Page 16.
http://www.maine.gov/ag/children_families/docs/Prosecutorial%20District%20Three.pdf

⁹ Governor’s Commission on Domestic Violence: Prosecution: Domestic violence protocol. No date.
<http://doj.nh.gov/victim/pdf/dvprosecution.pdf>

¹⁰ Prosecutorial District Three: 2006 Domestic Violence Report. Page 16.
http://www.maine.gov/ag/children_families/docs/Prosecutorial%20District%20Three.pdf

Unknown Effectiveness

Rigid no-drop policies may deter victims from seeking police assistance and escalate partner conflict. One research team concluded, “We do not know whether no-drop increases victim safety or places the victims in greater jeopardy.”¹¹

Unethical ‘No-Drop’ Policies are Currently Being Followed in Maine

At least two Prosecutorial Districts in Maine adhere to no-drop prosecution policies:

District One

According to its annual report, “District One does not ‘screen out’ from prosecution these difficult cases simply because they may present significant obstacles to eventual prosecution...District One has adopted a practice of always charging [domestic violence cases].”¹²

District Seven

Prosecutorial District No. 7 maintains a website on the internet. On its homepage, the website quotes District Attorney Carletta Bassano as saying, “As District Attorney, I will...vigorously prosecute all cases.”

By its own admission, Prosecutorial District No. 7 prosecutes “all” cases, including cases that fail to meet minimum probable cause standards.

Certain Information on the Attorney General’s Website is Misleading and False, and May Be Prejudicing the Even-Handed Administration of Justice

The Office of the Maine Attorney General maintains a website that provides information about the nature of domestic violence.

By way of background, national surveys by the U.S. Centers for Disease Control have shown men and women are equally likely to be physical aggressors with their intimate partners.¹³ Likewise, researcher Renee McDonald noted in her national survey, “Differences were observed

¹¹ Davis RC, Smith BE, and Davies HJ. The effects of no-drop prosecution of domestic violence upon conviction rates. *Justice Research and Policy*, Vol. 3, No. 2, 2001, pp. 1–13, (NCJ Number 193235).

¹² Prosecutorial District One: 2006 Domestic Violence Report. Pages 12-13.
http://www.maine.gov/ag/children_families/docs/Prosecutorial%20District%20One.pdf

¹³ Centers for Disease Control and Prevention. Physical dating violence among high school students – United States, 2003. *Morbidity and Mortality Weekly Report*, Vol. 55, No. 19, May 19, 2006. <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5519a3.htm>

in the rates of male and female partner violence, with female violence occurring more frequently.”¹⁴ These conclusions are supported by the findings of over 250 scholarly studies.¹⁵

It is also well-known that male abuse victims are less likely to call the police for assistance, and not surprisingly, arrest statistics show a predominance of female victims. *So crime statistics distort and underreport the true prevalence of domestic violence.*

A review of the Attorney General’s website reveals the following claims:¹⁶

1. “[I]n the vast majority of cases, the perpetrators are male and the victims are female.”
2. Our culture “supports men’s violence against women.”

These statements are not supported by any citations to scholarly research. Based on the studies cited above, such claims are one-sided, misleading, and false. Also, the website inappropriately uses the pronoun “he” to denote a domestic violence offender.

The misrepresentation of domestic violence research on the Attorney General’s website may serve to bias prosecutorial decision-making throughout the state.

This is apparently what happened in the case of Vladek Filler. Even though credible testimony revealed Ligia Filler once punched her husband in the face, and a police investigation revealed a partially used box of rat poison following an unexplained illness of Vladek Filler, the prosecutor refused to charge the woman with assault or attempted homicide.

Conclusion

Maine’s no-drop prosecution policies and its four-year effort to convict Vladek Filler, with an outcome that currently remains in doubt, is now attracting national and international media attention.^{17,18,19,20,21,22,23}

¹⁴ McDonald R. Estimating the number of American children living in partner-violent families. *Journal of Family Psychology*, Vol. 20, No. 1, pp. 137–142. 2006. <http://www.smu.edu/experts/study-documents/family-violence-study-may2006.pdf>

¹⁵ Fiebert ML. References Examining Assaults by Women on their Spouses or Male Partners. California State University, 2010. <http://www.csulb.edu/~mfiebert/assault.htm>

¹⁶ http://www.maine.gov/ag/children_families/domestic_violence.html

¹⁷ Carey Roberts. In Maine, It Doesn’t Pay to be a Man. *Renew America*. February 1, 2010.

¹⁸ Robert Franklin. Vladek Filler Gets a New Trial. *Fathers and Families*. September 13, 2010.

¹⁹ TJ Ward. Cry Rape! The Plague of False Accusations. Radio interview. March 15, 2011.

²⁰ False rape claims exposed on AVoiceforMen Radio with T.J. Ward. *Current.com*. March 10, 2011.

²¹ Robert Franklin. Vladek Filler’s New Trial Scheduled for May. *Fathers and Families*. March 25, 2011.

²² Robert Franklin. State Bar Ethics Complaint Against Vladek Filler’s Prosecutor, Mary Kellett. *Fathers and Families*. March 30, 2011.

²³ Carey Roberts. Abuse shelter exploits mentally-ill woman to push political agenda. *Renew America*. April 11, 2011. <http://www.renewamerica.com/columns/roberts/110410>

No-drop prosecution violates ethical requirements of the Maine Rules of Professional Conduct and is harmful for a variety of policy reasons. On these grounds, we are now requesting that your Office:

1. Mandate the removal of no-drop prosecution policies currently being followed by Prosecutorial Districts in the State of Maine.
2. Emphasize prosecutorial adherence to the Maine Rules of Professional Conduct, including the requirement that “the prosecutor shall refrain from prosecuting a criminal charge that the prosecutor knows is not supported by probable cause.”
3. Remove misleading domestic violence information from the Office of the Attorney General website.

We will be happy to answer any questions you may have. We look forward to your speedy response.

Sincerely,

Stop Abusive and Violent Environments

cc: Paul LePage, Governor
Jud Knox, Chairman, Board of Overseers of the Bar
Carletta M. Bassano, District Attorney, Prosecutorial District No. 7