January 9, 2017

U.S. Congressman Xavier Becerra
California State Capitol – California Attorney General Appointed
Sacramento, CA 95814


Dear Honorable Becerra:

The California Attorneys for Criminal Justice (CACJ), a statewide association of criminal defense attorneys, respectfully requests that during your presentation tomorrow at the Assembly Public Safety Committee you share your views and plans to address police and prosecutorial misconduct in California. In the past few years, the California Legislature has created new remedial avenues to respond to improper activities of prosecutors and law enforcement officials. The California Attorney General can play an influential role to ensure the civil rights of everyone in California. Thank you for your consideration of this issue. CACJ will also reach out directly to you to discuss these matters further. Below you will find some helpful background points.

Legislative Background

AB 1909 (Lopez), a measure sponsored by CACJ, was signed by the Governor in 2016. The first bill of its kind in the nation. AB 1909 addresses a growing epidemic of prosecutorial misconduct by holding prosecutors, who ignore their constitutional and ethical obligations, accountable. This bill makes it a felony for bad-acting prosecutors to knowingly and intentionally withhold exculpatory evidence from the defense.

AB 1328 (Weber), sponsored by CACJ, signed into law in 2015, also addresses the growing epidemic of prosecutorial misconduct, by requiring a judge to report a prosecutor to the State Bar of California when there is a finding of an intentional withholding of evidence that could prove a defendant’s innocence. In addition, the court has the discretion to disqualify an individual prosecutor from the underlying case and disqualify an entire prosecutor’s office if the court finds a systemic, pattern and practice of withholding evidence.
AB 2634 (Bradford), also sponsored by CACJ and signed into law in 2014, creates a legal remedy for individuals who fall victim to police abuse by allowing a person, who successfully sues for violation of civil rights and demonstrates that these violations are part of a pattern and practice of the law enforcement entity, to ask a court to issue an injunction to require a change in departmental policy and action. This legal remedy will help reduce the incidents of police abuse in California. The California Attorney General has similar authority. Then Attorney General Jerry Brown exercised his authority to pursue reforms within the Maywood Police Department.

Additional Background

9th Circuit Justice Kozinski issued a public statement that prosecutorial misconduct has reached epidemic levels, stating, “There is an epidemic of Brady violations abroad the land,” and “[o]nly Judges can put a stop to it.”¹

In Orange County, there has been a long-standing issue regarding the use of jailhouse informants and the failure/refusal of the district attorney's office to divulge this information to the defense and the accused.

See articles:
- Orange County DAs Knew About Jailhouse Snitch Program Well before They Admitted, Says Public Defender: http://www.huffingtonpost.com/entry/oc-jailhouse-snitch-program_us_57d2de40e4b00642712d2b78

Additionally, there has been much discussion about a potential pattern of misconduct at the San Francisco Police Department.

See article:

Again, thank you for your time and consideration. If you have any questions, please feel free to contact me at 916-447-9719.

¹ Rampant Prosecutorial Misconduct: https://www.nytimes.com/2014/01/05/opinion/sunday/rampant-prosecutorial-misconduct.html?r=0
Sincerely,

Ignacio Hernández  
Legislative Advocate, CACJ

CC:  Assemblymember Reggie Jones-Sawyer, Co-Chair  
     Assemblymember Mark Stone, Co-Chair  
     Assemblymember David Chiu  
     Assemblymember Jordan Cunningham  
     Assemblymember Susan Eggman  
     Assemblymember James Gallagher  
     Assemblymember Tom Lackey  
     Assemblymember Eloise Reyes  
     Assemblymember Shirley Weber