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May 2, 2008

Honorable Dolores Carr  
District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110

Dear Ms. Carr:

You have requested that the Attorney General's Office review your decision not to file charges relating to a March 2007 incident involving an alleged sexual assault upon a 17-year-old girl.<sup>1/</sup> This incident occurred at a college party attended by many young people where a significant amount of alcohol was consumed.

In response to your request, our attorneys and investigators spent well over 1,000 hours conducting a thorough and careful investigation of this case, both reviewing the materials you presented to this office as well as conducting our own independent investigation. Our process included the following:

- We reviewed many hundreds of pages of reports and grand jury testimony as well as scores of audio and video taped interviews. These interviews and grand jury transcripts included testimony and statements from over 30 people who attended the party and from the nine men present in the room with Jane Doe, including three who had been granted immunity for their testimony. We also examined all existing physical evidence in the case, including forensic laboratory results.
- We independently interviewed 20 people, some of whom had previously been questioned and others who had not. Among those we met with were Jane Doe and the three young women from the De Anza College women's soccer team who broke up the incident, took Jane Doe to the hospital, and reported the incident to the authorities. We also spoke to a number of others who

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1. To protect her privacy, we will refer to the girl as Jane Doe.

attended the party, including a young man who stood with the women from the soccer team outside of the room where the incident occurred. We interviewed two young women who lived at the house where the party took place. And we interviewed Jane Doe's mother.

- We obtained several search warrants for physical evidence not previously sought in the case, including computers and cell phones. A thorough analysis of those devices failed to produce any new relevant information.
- We consulted with law enforcement personnel from the San Jose Police Department, the Santa Clara County Sheriff's Office, the Santa Clara County District Attorney's Office, the Santa Clara County Crime Laboratory, and the Foothill/DeAnza Community College District Police Department.

As you know, in any criminal investigation the ability of the prosecutor to file charges depends upon the evidence and witnesses available to support the case. Although the alleged behavior that led to the sexual assault allegations in this case is disgraceful, a number of significant evidentiary problems make impossible the establishment of a crime or the identification of the perpetrator(s). These evidentiary problems include the following:

- The extreme level of alcohol consumption appears to have clouded the memories of many people at the party. Jane Doe has no memory of anything that happened at the party beyond her initial arrival. The men who allegedly engaged in assaultive behavior give inconsistent accounts of the events. None of the potential suspects believe or confirm that a sexual assault occurred.
- We were truly impressed with the actions taken by the three women from the soccer team who assisted Jane Doe and we carefully evaluated their forthright reports of the incident. However, these women became aware of events with Jane Doe only immediately prior to their helping her leave the party. Given their brief and late involvement, and their limited vantage point (i.e. looking at the incident through a curtained door), they were unable to provide consistent, useful identifications of the persons they observed engaging in sexual contact with Jane Doe. Without such identifications we cannot ethically pursue a prosecution. It is certainly not proper to simply criminally charge everyone who may have been in the room with Jane Doe because mere presence cannot support criminal liability.

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In sum, the many witnesses who have been interviewed and who provided grand jury testimony present such wildly conflicting accounts of the events that it is impossible to determine what actually happened, when it happened, and who was involved. Our exhaustive evaluation of the record as it now exists thus leaves us with the firm conclusion that there is insufficient admissible evidence that would support the criminal prosecution of any suspect.

As with any serious incident of this nature, there is always the possibility that new evidence may arise. Should that occur we would certainly participate in further review or investigation, since there is a 10 year statute of limitations for felony sex crimes in these circumstances. However, based upon all of the considerations set forth above, we believe there is insufficient evidence at the present time to warrant prosecution. It is our opinion that the Santa Clara County District Attorney's Office did not abuse its discretion in declining to file charges.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dane R. Gillette', written in a cursive style.

DANE R. GILLETTE  
Chief Assistant Attorney General

For EDMUND G. BROWN JR.  
Attorney General

DRG:dmn