

Hundreds Take Up the Cause of a Killer

Evelyn Nieves

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Little more than a week before his appointment with the state executioner, Manny Babbitt has more friends than in all his nearly 50 miserable years.

The list of those rallying to save his life is long and growing. It includes at least two of the jurors who sentenced him to death, his trial lawyer, who says his defense was inept, and a retired police officer saved by Mr. Babbitt when he was a marine in Vietnam.

Among the others: more than 600 other fellow marines who endured the 1968 siege at Khe Sanh, when American troops were pinned down for 77 days by the North Vietnamese; thousands of other veterans, and David Kaczynski – the brother of Theodore J. Kaczynski, the Unabomber – who knows the anguish Mr. Babbitt's brother feels for turning Manny over to the police.

Sitting with visitors, Manny Babbitt, stocky and open-faced, seemed perplexed by all the attention from all over the country, after 18 years on death row. "Children and women are on death row, too," he said, his eyes moistening behind his bifocals. "I hope some people try to save them."

But with the Board of Prison Terms scheduled to consider Mr. Babbitt's plea for clemency on Monday, there are people equally passionate about sending him to his death – none more so than the relatives of the 78-year-old woman he attacked in Sacramento the night of Dec. 18, 1980. They have no use for the arguments that the victim was a war casualty, that Vietnam had broken Mr. Babbitt's fragile mind. They know all they need to know: Manuel Pena Babbitt broke into Leah Schendel's apartment, beat her, grabbed a few trinkets and change, and caused the heart attack that killed her.

For Gov. Gray Davis, who is awaiting the recommendation of the Board of Prison Terms before deciding whether to commute Mr. Babbitt's sentence to life in prison, the case poses a unique dilemma. During his election campaign last year, Mr. Davis promised to be a tough-on-crime, pro-death penalty Governor. Shortly after he took office in January, he turned down the clemency plea of Jaturun Siripongs, who was put to death by lethal injection a month later.

But as an Army veteran, the Governor has also pledged to give veterans due respect. Mr. Babbitt, who was awarded the Purple Heart in a rare prison ceremony last year, has become a rallying point for Vietnam veterans of all political stripes. They are convinced that Mr. Babbitt – who wrapped a leather strap around Ms. Schendel's ankle, reminiscent of the way soldiers tagged the dead – attacked her in a flashback, a symptom of post-traumatic stress disorder, which was caused by two tours of duty in the war.

"I believe Manny when he tells me that he doesn't remember anything about the crime," said Gary Dahlheimer of Fresno, who was a mechanic in Mr. Babbitt's platoon at Khe Sanh and has collected 600 letters of support for him. "I'm not an expert on P.T.S.D., but I came very close to killing my wife once," Mr. Dahlheimer said. "I was asleep and I was dreaming of killing a North Vietnamese and I had him in a scissor lock. It was my wife."

He added: "So far I've gone to six of the Khe Sanh reunions, and everyone from private to general seems to suffer from some degree of post-traumatic stress syndrome."

Prosecutors call Mr. Babbitt a career criminal and a mean drunk who hated women. Jan Scully, the Sacramento County District Attorney, said that the post-traumatic stress disorder defense had been raised at the trial and the jury had rejected it. Ms. Scully also said that a Federal court ruled two years ago that Mr. Babbitt had received a "very good defense – a better one, in fact, than the defense argues in hindsight should have been presented."

She said the jury that convicted Mr. Babbitt and sentenced him to death understood his offenses. "It should go without saying that members of the Marine Corps are neither trained nor permitted to rape, rob or murder defenseless senior citizens," she said.

Vietnam, in many ways, was the most important point of Mr. Babbitt's life, his lawyers said. Raised dirt-poor in Wareham, Mass., in a small community of immigrants from the Cape Verde Islands, he and his seven brothers and sisters were beaten regularly by their father, Charles, relatives said. Their mother, Josephine, suffered from bouts of mental illness that worsened after Charles Babbitt died, when Manny was 14. She would stand outside in her black mourning clothes, talking to a pear tree and wake the children in the middle of the night, screaming at the top of her lungs.

Manny dropped out of school when he was in the seventh grade, at age 17. After joining the Marines, he was sent to Vietnam, where he became a highly regarded member of an antitank, antipersonnel armored car unit. He rose to the rank of corporal.

In March 1968, Mr. Babbitt was wounded by shrapnel at Khe Sanh and flown to a medical unit atop a pile of bodies. He was back on duty shortly afterward.

After Khe Sanh, he fought another battle, went home, married and signed up for another tour. In fall 1969, he was stationed at Quonset Point, R.I. But something was wrong.

At night, while patrolling with his M-16 rifle, he would kill and skin rabbits. He would scream to his wife to grab the babies and run for cover from the bombs. He took LSD, as he had in the war, and was absent without leave. By the time he was given an honorable discharge in 1971, he had been demoted to private.

Eventually he turned to crime. In 1973, he helped rob two gas stations and was sentenced to eight years in state prison. He ended up in the infamous Bridgewater State Hospital for the Criminally Insane, where he spent eight months. He was returned to prison, then sent back to the hospital two months later after trying to commit suicide because his wife was leaving him.

In 1975, after paranoid schizophrenia was diagnosed, he was granted parole from the hospital.

He moved near his half-brother Charles in Providence, R.I., met a woman, and tried to settle down. Instead, he became known for the town crazy. For sport, according to defense affidavits, some patrons of his half-brother's bar would ply Manny with drugs and alcohol, knowing that would set him on a tear.

James Schenk, Mr. Babbitt's court-appointed lawyer for his murder trial, could have found dozens of witnesses willing to discuss his client's mental condition to corroborate his psychiatric defense. He did not seek them.

Mr. Schenk, who resigned from the state bar last year after pleading no contest to embezzling \$50,000 from clients' trust funds, admitted in court papers that he "failed completely in the death penalty phase" of the trial.

He never called witnesses who had served with Mr. Babbitt in Vietnam, never documented his family history of mental illness, an aggravating factor in the post-traumatic stress, and never sought Mr. Babbitt's Vietnam medical records. The records documented that Mr. Babbitt had "dissociative reactions," or bouts of amnesia, during particularly stressful events in his two tours of duty.

Mr. Babbitt says he does not remember attacking Ms. Schendel, or another woman the next night who was beaten. On the afternoon before he attacked Ms. Schendel, he drank and took drugs with another Vietnam veteran, Mr. Babbitt says. All he remembers of that night, Mr. Babbitt says, were lights in the fog that reminded him of incoming aircraft in Vietnam.

Mr. Babbitt's appeals lawyers, Jessica McGuire, a public defender, and Charles Patterson, a private lawyer who fought at Khe Sanh, say Mr. Babbitt saw the lights in the fog and "dissociated." The sight of aircraft would always be followed by fire from the enemy in Vietnam and soldiers would duck for cover. Mr. Babbitt, they say, ran for cover in Ms. Schendel's house and reacted as a soldier – brutally – when she panicked at the sight of him.

Ms. Schendel, whose forehead was split open to the bone, was found with her dress pulled above her waist a mattress over her and a cord around her ankle.

The mattress, defense experts say, is significant because soldiers covered the dead with anything available to protect them until they could be recovered. And soldiers always wrapped dog tags around a fallen comrade, to aid in identifying him.

Mr. Schenk said he never explored the way Mr. Babbitt left Ms. Schendel. He also said he did not object when the prosecution argued that Ms. Schendel had been sexually assaulted, although its expert could only say that it was "possible."

William Babbitt, who had moved his younger brother Manny from Providence to live with him in Sacramento shortly before the attack on Ms. Schendel, said that his brother should have received help, not a death sentence. He called the police after finding coins and a cigarette lighter with the initials "L. S." among his brother's belongings and said the police assured him his brother would "not go to the gas chamber."

He blames a justice system that most severely punishes blacks when the victims are white, as in his brother's case.

Laura Thompson, Ms. Schendel's granddaughter, is angry at the system, too. For 18 years, she and her family have waited for justice, she says, while Manny Babbitt's appeals wound their way through the courts. Mr. Babbitt was refused an evidentiary hearing at every turn, and the Supreme Court declined to review the case. Now, Ms.

Thompson fears that the campaign to spare the killer who ruined her family will be successful.

Manny Babbitt, who has taught himself to read and write, said he would like to write Ms. Thompson a letter and tell her he is sorry, and that if he is executed, he hopes it will bring her closure.

His execution by lethal injection is set for May 4, one day after his 50th birthday.

The Ted K Archive

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The New York Times, April 26, 1999, Section A, Page 15.
<www.nytimes.com/1999/04/26/us/hundreds-take-up-the-cause-of-a-killer.html>

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