



CHAMBERS OF  
**The Superior Court**

CHARLES R. McGRATH, JUDGE

HALL OF JUSTICE  
P.O. Box 6489  
VENTURA, CA 93006-6489  
(805) 654-2238

January 25, 2006

Governor Arnold Schwarzenegger  
Office of the Governor  
Sacramento, CA 95814

Re: *Morales v. Brown*  
M & S file no. 60430

Dear Governor Schwarzenegger:

I was appointed to the bench in Ventura County by then Governor Ronald Reagan in 1974. In 1983, I performed the most solemn duty a judge is asked to undertake: As the trial judge in the capital murder prosecution against Michael Morales (I also was the trial judge for the subsequent capital prosecution against his co-defendant and cousin Ricky Ortega), I independently reviewed the evidence, determined that it supported the jury's penalty phase verdict, and on that basis sentenced Mr. Morales to be executed in San Quentin Prison. I now write to recommend that you grant Mr. Morales clemency, so that he is sentenced to life in prison without the possibility of parole.

My decision to uphold the jury's death verdict was based on the apparent strength of the prosecution evidence against Mr. Morales, the cornerstone of which was the testimony of Bruce Samuelson, a jailhouse informant. I found Mr. Samuelson to be credible and believable. I said so on the record.

Mr. Samuelson testified that he obtained a confession from Mr. Morales admitting to murder and rape. The Supreme Court has long recognized that a confession is probably the most probative and damaging evidence that can be admitted against a criminal defendant. *See, e.g., Arizona v Fulminante*, 499 U.S. 279, 296 (1991). In this case, Mr. Samuelson's testimony describing the confession was the *only* evidence to support the single special circumstance -- lying in wait -- that made Mr. Morales eligible for the death penalty, as well as the rape conviction.

Mr. Samuelson was also the source of the prosecution's substantial aggravating evidence. Mr. Samuelson testified that almost two years after Mr. Morales was arrested,

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he made obscene, derogatory references to the victim, Terri Winchell, and callously boasted of the assault upon her. Such testimony effectively demonstrated a heartless lack of remorse by Mr. Morales, and completely undermined his attorney's presentation of penalty phase testimony that Mr. Morales immediately felt deep remorse for his involvement in the incident. Mr. Samuelson also described how Mr. Morales had solicited him to murder trial witnesses Pat Flores and Raquel Cardenas, thus demonstrating that Mr. Morales presented a serious and continuing danger to society even while confined in prison. I believe that Mr. Samuelson's testimony was instrumental in convincing the jury, as it did me, that death was the only appropriate punishment in this case.

New information has emerged to show the evidence upon which I relied in sentencing Mr. Morales to death – Mr. Samuelson's testimony – is false. Significantly, the revelations were brought to light by the California Attorney General's subsequent investigation into Mr. Samuelson's account of the circumstances surrounding Mr. Morales' confession. When the Attorney General asked Mr. Samuelson to explain how he induced Mr. Morales to speak freely between jail cells in a crowded cellblock widely known to hold informants, Mr. Samuelson answered that he conversed with Mr. Morales in Spanish. In response to Mr. Samuelson's claim, Mr. Morales' attorneys have verified under oath from numerous sources that, apparently unbeknownst to Mr. Samuelson, Mr. Morales does not speak Spanish. The Attorney General has never contested any of these facts. (*See, e.g.*, The Attorney General's most recent filing, in response to Mr. Morales' petition for certiorari to the United States Supreme Court.)


Mr. Samuelson's testimony was indispensable to proving the lying-in-wait special circumstance finding upon which Mr. Morales' eligibility for a death sentence now rests, and proved critical in tipping the balance of aggravating and mitigating circumstances in favor of a death sentence. The jury was explicitly instructed to consider Mr. Samuelson's testimony in choosing the appropriate sentence and that Mr. Samuelson's testimony alone could be used to outweigh all mitigating evidence and compel a death sentence.

I am not aware of any state or federal court having conducted an evidentiary inquiry into the truthfulness of Mr. Samuelson's testimony. I know that I have not been asked to testify regarding the significance of the information that has been disclosed since I was led to believe that Mr. Morales actually made the incriminating statements attributed to him by Mr. Samuelson. If I had been asked to do so, I could and would have testified truthfully that impeachment of Mr. Samuelson's testimony with evidence of his untruthfulness in describing the circumstances of the purported confession would have rendered his testimony, and the prosecution's case, insufficient to support the death sentence. Accordingly, I would have set the death sentence aside.

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The statutory requirement that trial judges review death verdicts is intended to enhance the fairness, uniformity and reliability of penalty determinations in capital cases. The conscientious discharge of this weighty obligation protects the integrity of the judicial system, public confidence in the administration of the state's power to impose death, and the rights of defendants to individualized sentencing decisions. If, in the course of performing my judicial duty, I had been permitted to consider evidence of Mr. Samuelson's falsehoods that was belatedly discovered by the Attorney General and Mr. Morales' attorneys, I would not have let the death sentence stand; and the awesome decision whether to spare his life would not be before you at this time. Under such circumstances, executing Mr. Morales would frustrate the design of our sentencing laws, and would constitute a grievous and freakish injustice. I respectfully recommend that you grant clemency to Mr. Morales.

Respectfully yours,

  
CHARLES R. McGRATH  
Retired Judge of the Superior Court

CRM:sj

cc:

William W. Lockyer, Esq.  
Attorney General

David A. Senior, Esq.