

MCBREEN & SENIOR  
1880 CENTURY PARK EAST  
SUITE 1450  
LOS ANGELES, CALIFORNIA 90067

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TELEPHONE: (310) 552 - 5300  
FACSIMILE: (310) 552 - 1205

February 15, 2006

**VIA FACSIMILE**

916-445-4633 [6 pages]

Governor Arnold Schwarzenegger  
State Capital Building  
Sacramento, California 95814

Re: Michael Morales Clemency

Dear Governor Schwarzenegger:

As appointed counsel for Michael Morales I hired an experienced investigator, Kathleen Culhane, to assist with the presentation of clemency materials. Last weekend, I reviewed the allegations made against her by the Attorney General and the District Attorney, and immediately removed her from further involvement in this case. Moreover, anything she provided to me immediately was withdrawn from your consideration. We are continuing our investigation and will be cooperating fully with any outside investigation into the matter.

I have practiced law for 24 years. My record at the State Bar is unblemished. I have a wife of 25 years, and two boys. It would be an understatement to say that the allegations have stunned me, and caused me tremendous concern. The pivotal point, however, is that Michael Morales's life is at stake. I cannot sit idly by. Accordingly, I present to you the facts as to what transpired for your consideration.

Beginning in March 2005, I spent countless hours attempting to get counsel to represent Mr. Morales in clemency proceedings, all to no avail. I can fully document my efforts. On December 27, 2005, your office directed me to submit a clemency petition on his behalf, presumably because I was his last attorney of record. On December 29, 2005, the California Supreme Court authorized me to expend investigative funds on Mr. Morales's behalf if I agreed to accept an appointment to represent Mr. Morales in clemency proceedings before you. I accepted the appointment from the Supreme Court on January 9, 2006, in large part, because while Mr. Morales has been condemned to death for nearly a quarter of a century, he never was

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provided any post-conviction investigative funds by the State of California. During years of federal habeas corpus proceedings, Mr. Morales was provided with only \$2,000 in investigatory funds by the United States. I felt a tremendous injustice would take place if Mr. Morales was executed without even rudimentary expert analysis of certain issues germane to his case.

Your office requested Mr. Morales's clemency petition to be filed 18 days after my appointment, on January 27, 2006. In light of the limited time to investigate any matters, I retained two investigators. I only will address Ms. Culhane, whose work is at issue here.

I retained Ms. Culhane after receiving exemplary recommendations regarding her abilities from at least three attorneys and one capital litigation investigator. These recommendations came from individuals with substantial employment experience at the highest levels of this State's capital litigation resource centers. These individuals had years of direct supervision of her work during many years of employment. Ms. Culhane had as many as eight years of capital litigation experience at this State's capital litigation agencies/offices, where she had been trained and supervised.

I was advised that Ms. Culhane was just returning from temporary employment in late 2005 as a translator in Colombia. She was employed when I contacted her, but was interviewing for new jobs. I was advised that she had received a job offer and had accepted employment at a southern state's capital resource center to begin work on April 1, 2006. This confluence of events made her available for this short period to work for me, and I asked for her assistance. I confirmed both with her and her former employer that her departure from employment at this State's capital litigation agencies was on good terms.

I sought Ken Starr's assistance in this matter as a result of his tremendous legal skills and experience, and his recent clemency experience in a capital case in Virginia. I initially provided Ken with a copy of the petition for writ of certiorari that had been filed in the United States Supreme Court outlining the facts and certain issues in the case, as well as a proposed outline for the clemency petition. Based upon extensive telephone conversations and a meeting in San Francisco on January 25, 2006, Ken agreed to my request to serve as co-counsel in this petition for clemency.

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Following the meeting in San Francisco, Ken returned that evening to Los Angeles. The next day, January 26, Ken began receiving draft sections of the petition. Ken assisted throughout the day (January 26) in suggesting edits, and crafted a proposed Introduction to the petition. The petition for clemency was then submitted to your office on January 27, two days after Ken joined me as co-counsel.

At no time did Ken participate in the investigation into the facts, nor was he asked to. He did not meet with investigators, communicate with them, advise them or direct them. The ongoing field work of the investigators was described in various conversations, including in the initial meeting in San Francisco on January 25, and the investigators' backgrounds and professional experience were described to Ken in some detail; however, Ken's work did not include any co-laboring or communicating with, or in directing or supervising, the investigators in the field.

As to supervision and review of Ms. Culhane's work, I obtained the assistance of two very experienced capital litigation lawyers who had worked with her for many years, and had years of prior experience directly supervising her work. These lawyers have unblemished records, and train capital litigation counsel throughout our nation. At times, I fielded Ms. Culhane's calls, but typically was third in line, and generally directed her back to her direct supervising lawyers who have far more experience and training in this work than I do. In any event, my files are hereafter an open book as to what I knew, what advice I provided, and what information I responded to. I believe that this will reveal that I never had any idea of any wrongdoing on her part, and was in fact expressly advised to the contrary. Moreover, I believe the exact same is true with respect to the two attorneys who were directly supervising her work.

Some mention has been made that I was put on notice by the District Attorney's opposition to the clemency petition regarding the Patricia Felix declaration. This opposition was delivered to me at 5:00 p.m. on February 6, 2006 in Los Angeles. Our reply was due in Sacramento 24 hours later. The opposition was 26 pages with 139 exhibits totaling 711 pages. Our review of most of the materials was completed around midnight on February 6/7, and we began drafting a reply which was completed at around 10:30 a.m. when it was sent out for copying, binding, and my personal delivery to your office in Sacramento. At that time, I had no reason to believe the Felix declaration was false. In fact, in the middle of the night we attempted

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to carefully compare the three different signatures at issue. We even made them into an exhibit for your comparison which was submitted in our reply brief. Moreover, I was advised under penalty of perjury - as you were in a declaration submitted by Ms. Culhane in the reply - that our document was true and correct.

I am a civil litigator. I have been involved in capital litigation on three cases for 15 years. With everything I do in these cases, I expect the closest scrutiny to be conducted by the Attorney General, and I welcome that. Our cards must be face up to have any credibility. I have worked with Keith Borjon from the Attorney General's office for the better part of 15 years, and now with Matthew Chan in the Sacramento office for many years. I hold these attorneys in high regard. Although we may disagree on many things, and fight each other in the courtroom as zealously as ethically required, I do not lie or cheat.

I have litigated capital cases in front of the Hon. Dickran Tevrizian in the United States District Court, Central District, and Magistrate Judge Gregory Hollows in the United States District Court, Eastern District, for the better part of 15 years. I never have received relief from either judge, but have come to know, learn from, and respect both of them at the highest level. To my knowledge, they have never questioned my honesty. And finally, the California Supreme Court solicited me to present this clemency petition.

I should not be the focus here. I do this work because I think it is the right thing to do, and I try my best. For now, I want you to know that Michael Morales has had nothing to do with these allegations. This clemency proceeding should be about him, not me or Ken Starr. We will continue to seek the truth, and then take whatever additional action is appropriate in light of the facts as we discover them. Fervent belief in the justice of Michael Morales's cause cannot, and does not, warrant unprofessional, unethical or illegal conduct in seeking to save his life. After all, the moral core of our claim for mercy on Michael Morales's behalf is that he was condemned, wrongly, by the false testimony given under oath by a profoundly untrustworthy jailhouse informant and serial felon. We urge you to continue to focus on the facts on this case.

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1. Michael Morales's regret, remorse, and rehabilitation. This evidence is in the record, it is written in Michael's own hand to you, and it is set forth in the prison records generated by San Quentin State Prison;
2. The letters sent by Michael's children, parents, and friends who he continues to love and help despite the limitations imposed by his incarceration;
3. The letter from the Hon. Charles R. McGrath, the trial judge appointed by then Governor Ronald Reagan; and
4. The Attorney General's investigation establishing the presentation of false testimony by jailhouse informant Bruce Samuelson.

The irrefutable facts remain these: Michael Morales's cousin, the undisputed architect of that terrible crime and the instigator of those events a generation ago, has been justly sentenced to life imprisonment without possibility of parole. Yet Michael has been sentenced to death. This unconscionable disparity -- life versus death -- is attributable to what we describe in the clemency petition as "the manifestly unreliable, poisonous testimony of a self-interested jailhouse informant. This should not occur in a rational, humane justice system that prides itself on integrity." It would be profoundly unjust now for the wrongdoing -- if wrongdoing there was -- on the part of a single investigator to compromise -- much less jeopardize -- our plea for mercy to you. We will find the facts, and we will act properly and appropriately on the basis of what we find. But there is no justification for ignoring our plea for mercy.

Respectfully submitted,



David A. Senior

cc: Andrea Lynn Hoch, Esq.  
Legal Affairs Secretary

Kenneth W. Starr, Esq.

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Hon. Charles R. McGrath

Keith H. Borjon, Esq.  
Supervising Deputy Attorney General

Charles Shultz, Esq.  
Deputy District Attorney

Hon. Dickran Tevrizian

Hon. Magistrate Gregory G. Hollows

Matthew Chan, Esq.  
Deputy Attorney General

Mr. Frederick K. Ohlrich  
Court Clerk  
Supreme Court of California